

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES," B-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA. No. 608/JPR/2024
निर्धारण वर्ष / Assessment Year : 2015-16

Neeraj Gupta D-50, Chomu House, C-Scheme, Jaipur.	बनाम Vs.	The DCIT, Circle-1, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AIJPG6330N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri S.L. Jain, Adv. &
Shri Ashok Kumar Gupta, Adv.
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 15/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 15/07/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

Assessee-appellant is proprietor of Gupta Builders. He has challenged the order dated 22.03.2024 passed by the Learned CIT(A), u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

Matter pertains to assessment year 2015-16.

2. Vide impugned order, appeal filed by the assessee challenging assessment order dated 06.09.2017, passed u/s 143(3) of the Act, has been dismissed.

Vide abovesaid assessment order, Assessing Officer assessed total income of the assessee at Rs. 63,23,520/-while making following two additions to the income declared by the assessee:-

<i>"Income as declared by the assessee</i>	<i>Rs. 56,05,310/-</i>
<i>Add: Addition as per para 3 above</i>	<i>Rs. 5,25,514/-</i>
<i>Add: Addition as per para 4 above</i>	<i>Rs. 1,92,691/-</i>
<i>Total assessed income</i>	<i>Rs. 63,23,515/-</i>
<i>r/o u/s 288</i>	<i>Rs. 63,23,520/-"</i>

3. Hence, this appeal.

4. Arguments heard. File perused.

5. While framing assessment, the Assessing Officer made addition of a sum of Rs. 5,25,514/-, as regards certain liabilities, which, in the opinion of the Assessing Officer, were outstanding since long, as per claim of the assessee, but, actually which had ceased to exist.

This addition came to be made while resorting to the provisions of section 41(1) of the Act.

6. Second addition to the tune of Rs. 1,92,691/-, was made by the Assessing officer, while observing that the said amount was found to have

been received by the assessee from Shri Raj Kumar Gupta as contract receipt, but the assessee did not account for the same in the year under consideration.

7. It may be mentioned here that in the course of arguments, Learned AR for the assessee has not pressed the first ground of appeal which is to the effect that the assessment was barred by limitation, in view of provisions of section 143(3) of the Act.

8. On merits, the learned AR for the assessee has referred to the impugned order passed by Learned CIT(A), which depicts that 6 notices were issued to the assessee, and submitted that the first notice dated 31.12.2020 was issued during Covid period and could not be noticed by the assessee.

He has further submitted that the second notice came to be issued after 3 years i.e. on 13.12.2023, and because of the long gap, it also could not be issued by the assessee, particularly because the assessee had stopped doing business as a civil contractor.

As regards next three notices, Learned AR for the assessee has pointed out that the same were issued in the month of January, 2024 with a very short interval, whereas the last notice issued on 15.03.2024 provided very short time to the assessee to respond the same.

Therefore, Learned AR for the assessee has urged that a reasonable opportunity, of being heard was not afforded to the assessee, and as such the impugned order deserves to be set aside.

9. At the same time, Learned AR for the assessee has submitted that this is a case where provisions of section 41(1) of the Act do not come into application, reason being that the assessee had carried forward said liabilities from year to year, and paid that liability in the next year i.e. 2015-16, but this fact has not been considered by the Assessing Officer or by the Learned CIT(A), and as such, the addition made on this account deserves to be set aside, and the matter needs to be remanded to the Assessing Officer for decision afresh, after providing opportunity of being heard to the appellant.

10. As regards, second addition of Rs. 1,92,691/-, Learned AR for the assessee has submitted that even though said income received during the year under consideration was not accounted for in the same year or reflected in 26 AS, while filing the return of income, said income was shown in the return of income furnished subsequently, and requisite tax liability was discharged, but this fact was not taken into consideration by the Assessing Officer, and as such, the matter needs to be remanded to the

Assessing Officer for decision afresh, even on this account, after providing opportunity to the appellant of being heard.

11. Learned DR for the department has not objected to the submissions made by the Ld. AR for the assessee for remand of the matter to the Assessing officer for decision afresh on each account i.e. as regards each addition referred to above.

12. As regards notices issued by the office of Ld. CIT(A) to the assessee, Form 35 presented before Learned CIT(A) would reveal that e-mail address i.e. advsljain@gmail.com was furnished in column 17 for communication of notices to be issued to the appellant by the said office. When the email ID was of the Advocate engaged by the assessee, it was for him to notice the same and take appropriate steps after contracting or consulting the appellant-assessee. Therefore, there is no merit in the submission that the notices could not be noticed by the assessee.

13. First notice was issued during the Covid period; the second notice was issued after 3 years; the next three notices were issued in the January, 2024 itself, within short duration; and the last mentioned notice dated 15.03.2024 also provided very short time to the assessee to respond. In this situation, we find that the assessee, who had engaged an advocate

and whose e-mail ID was furnished, cannot be made to suffer for non furnishing of response to the said notices.

14. Even otherwise, as is available from the impugned order, Learned CIT(A) dismissed the appeal, while observing that the appellant was not interested in pursuing the appeal on merits, and that there was no evidence to rebut the assessment order.

15. It may be mentioned here that even if an assessee-appellant does not appear before Learned CIT(A), while disposing of the appeal, Learned CIT(A) is required to state the points involved for determination, discuss the same and then give decision on each point involved in the appeal.

In this case, we find that Learned CIT(A) neither stated the points for determination nor discussed the same, and simply confirmed the assessment order due to the reason that there was no appearance on behalf of the assessee-appellant or no evidence was led to rebut the assessment order. Even on this account the impugned order deserves to be set aside.

16. In the course of arguments, Ld. AR for the assessee has referred to the return of income for the assessment year 2016-17 and pointed out that therein gross total income of Rs. 83,56,969/- was shown, and taxes to the tune of Rs. 32,35,966/- were paid. Reference has also been made to copy

of Profit and Loss Account (page 26 of paper book) wherein net profit of Rs. 51,804.04 has been shown as as contract income.

Copy of ledger account of Dhruv Cement Products available at page 26 of the paper book also reflects transaction of Rs. 42,526/-.

All this material needs to be verified and considered by the Assessing Officer as regards addition no. 1.

17. As regards second addition, copy of ledger account of Goyal Savitri Industries with Proprietor as Raj Kumar Gupta, and copy of Form 26AS for the financial year 2015-16 had been made part of the paper book (pages 28-34). These also need to be verified and considered by the Assessing Officer, as regards the second addition made vide impugned assessment.

18. In other words, having regard to the material referred to above, on the abovesaid aspects, material relied on by the assessee-appellant needs to be verified and considered by the Assessing Officer for decision afresh.

Result

18. In view of the above referred to documents, and the reasons recorded above, the appeal is disposed off, for statistical purposes, and while setting aside the impugned order passed by the Learned CIT(A), matter is remanded to the Assessing Officer for enquiry and verification of the material furnished by the assessee-appellant and any further material,

as shall be required by the Assessing Officer, and to take all requisite steps for the purpose of framing of assessment afresh after providing reasonable opportunity, of being heard to the assessee-appellant.

Order pronounced in the open court on 15/07/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 15/07/2024
*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Neeraj Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-1, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 608/JPR/2024)

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar