

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A"-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. 692/JPR/2024
निर्धारण वर्ष/Assessment Year : 2017-18

Premi Bai Uderani 7, Parwati Villa, Bungalow Colony, Beawar Road, Ajmer.	बनाम Vs.	The ITO, Ward-2(1), Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AATPU1485C		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओरसे /Assessee by : Shri Sunil Porwal, C.A. (Th.V.C.)
राजस्व की ओरसे /Revenue by: Shri A.S Nehra (Addl. CIT)

सुनवाई की तारीख /Date of Hearing :24/07/2024
उदघोषणा की तारीख /Date of Pronouncement: 25/07/2024

आदेश /ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

On 29.11.2023, Learned CIT(A), NFAC, Delhi has dismissed the appeal filed by the assessee-appellant, whereby she challenged the assessment order relating to assessment year 2017-18. Feeling aggrieved, the assessee has come up in appeal.

2. The appeal before Learned CIT(A) was filed challenging the assessment order dated 21.12.2019 relating to the assessment year 2017-

18, whereby total income of the assessee was recomputed at Rs. 1,40,94,687/- u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

While so recomputing the income of the assessee, addition of a sum of Rs. 1,36,34,92/- was made. The reason for said addition, as observed in the assessment order, was that a sum of Rs. 1,36,34,920/- deposited by the assessee in her bank account was unexplained. As per assessment order, the assessee did not furnish any justifiable explanation regarding the said cash deposited during the Financial Year 2016-17 and further that she also failed to produce cash book, cash flow statements, and other related documents.

The Assessing Officer made said addition in view of provisions of section 68 of the Act r.w.s. 115BBE of the Act. At the same time, the Assessing Officer also initiated penalty proceedings u/s 271AAC(1) of the Act.

3. Feeling dissatisfied with the above assessment, the assessee preferred appeal before Learned CIT(A),NFAC, but, as mentioned above said appeal came to be dismissed, and this brings her before this Appellate Tribunal.

4. Arguments heard. File perused.

5. As mentioned above, the impugned order was passed by Learned CIT(A) on 29.11.2023. Present appeal before this Appellate Tribunal came to be presented on 15.02.2024 i.e. beyond the prescribed period of limitation. So, Registry raised a deficiency note that the appeal was filed after 108 days of the prescribed period of limitation. Thereupon, on 30.08.2024, the assessee came up with an application dated 17.05.2024 seeking condonation of delay in filing of the appeal.

Firstly, this application seeking condonation of delay is taken up.

6. In the application, the assessee-applicant has alleged that the impugned order dated 29.11.2023 was received by her on 29.03.2024, same having not earlier been displayed on the portal of the department and that it was viewed only on 29.03.2024.

The assessee has further alleged that due to lack of communication with her Advocate dealing with her income tax matters, the appeal could not be filed before Learned CIT(A) within the prescribed period of limitation.

It may be mentioned here that while presenting said application on 30.08.2024, the assessee has also submitted her affidavit dated 09.05.2024 (attested on 17.05.2024).

7. Ld. AR for the assessee-appellant has referred to the above said averments in the application and submitted that there being sufficient cause

for non filing of the appeal within prescribed period of limitation, the application be allowed and appeal be entertained on merits.

8. In the course of arguments, on specific query raised by us as to any material to substantiate that the order dated 29.11.2023 could not be viewed on the portal of the department prior thereto 29.03.2024, and that it was viewed only on 29.03.2024, but Ld. AR for the assessee-applicant has candidly admitted that no such document forms part of the record.

9. On going through contents of para 17 of Form No. 35, it transpires that e-mail address of the authorized representative dealing with income-tax matters of the assessee, was furnished for the purpose of communication of notices by the office of Learned CIT(A).

In the course of arguments, Ld. AR for the assessee has admitted that this e-mail ID was of the Advocate earlier engaged by the assessee for the purpose of filing of appeal before Learned CIT(A), but added that said Advocate did not communicate to the assessee about the impugned order dated 29.11.2023, vide which the appeal came to be dismissed by Learned CIT(A).

No material has been placed before us to suggest that the impugned order was not being displayed on the portal of the department at any time prior to 29.3.2024.

In order to substantiate said averment, the assessee-applicant should have filed affidavit of the Advocate earlier engaged by her. But, no such affidavit of the said Advocate has been filed. Only from such an affidavit, it could be gathered as to on which date said previously engaged Advocate happened to view said order and that the portal was not displaying the order at any time prior thereto. In absence of any such affidavit, it cannot be said as to on which date, the previously engaged Advocate viewed the impugned order on the portal and further as to whether he had apprised the assessee-applicant of the impugned order, and if so, on which date.

10. On going through the impugned order, we find that Learned CIT(A) issued and served 5 notices to the assessee-applicant i.e. on 10.01.2021, 10.12.2021, 06.11.2023, 15.11.2023 and 20.11.2023, but, as further observed therein, there was no response from the assessee to any of the said notices.

In absence of any affidavit of the previously engaged Advocate, it cannot be said if he ever communicated receipt of the said notices at the given e-mail ID or contacted the assessee for preparations or submission of response thereto and also to participate in the proceedings.

11. When we refer to para 6 of the affidavit dated 09.05.2024 i.e. of the assessee-applicant, the only explanation as to why the assessee-applicant came to be proceeded against ex-parte in proceedings before Learned CIT(A), is that she being an old aged widow could neither submit proper details to her Advocate/ Tax Practitioner nor she could file reply to any such notices from Learned CIT(A).

Department has not taken any step to subject the applicant to any cross examination as regards the above said testimony in the form of affidavit.

In the course of arguments, at no point of time, it has been disputed that the assessee-applicant is an old aged widow. Ld. AR for the assessee-applicant has submitted that on account of death of her husband, the assessee took over the business earlier being run by her husband.

12. This is a case of assessment of Rs. 1,40,94,680/- framed against an old aged widow who took over the business from her husband. Having regard to this fact and also the averment that there was lack of communication between her and Tax practicenor/Advocate earlier engaged by her, for the purpose of appeal before Learned CIT(A), we deem it a fit case to entertain the appeal, while condoning the delay in filing of the same.

The applicant has not brought on record any thing to suggest that from time to time she was making queries from her Advocate about the appeal filed before CIT(A). Therefore, when she was not so diligent enough, we also deem it just to impose cost of Rs. 8000/- on the assessee-appellant. The assessee-applicant to deposit said cost in "Prime Minister Relief Fund".

13. Arguments have also been heard on merits, as requested.

As noticed above, the appeal came to be dismissed by Learned CIT(A), NFAC as there was non appearance of the assessee in the said appeal. The version of the assessee for her non appearance/participation in the appeal proceedings has already been discussed above. For the same reasons, we find that had there been proper appearance on behalf of the assessee before Learned CIT(A), the material produced by her before the Assessing Officer would have been specifically referred to, for being considered for disposal of the appeal on merits. But the fact remains that said material was neither referred to, on behalf of the assessee, and also not considered by CIT(A) while disposing of the said appeal.

14. As is available from the impugned order, no point for determination has been stated therein. Under sub-section (6) of section 250 of the Act, CIT(A) is required to state all points for determination and give decision on

each point or issue involved in the appeal, and then to pass order. From the impugned order, it can safely be said that the points raised by the assessee-appellant that she was having income by way of commission, was not considered, before dismissing the appeal on merits. It required serious consideration, but was not considered at all.

15. On going through the assessment order, it transpires that the assessee produced before him copy of Trading and P & L Account, Computation of income, copy of bank account statements, online monthly summary of commission received by her and monthly summary regarding sale and purchase. However, the Assessing Officer was of the view that in absence of cash book, cash flow statements and other related documents, cash deposit of Rs. 1,36,34,920/- remained unexplained, and accordingly, the same was treated as unaccounted income of the assessee.

It is true that no reply was furnished by the assessee to the aforesaid show cause notice, and as observed by the Assessing Officer, no books of account or bills/vouchers were produced before him, but, the Assessing Officer nowhere discussed the claim of the assessee as regards the income received by way of commission, while framing assessment and recomputing her total income.

16. In this situation, Ld. AR for the assessee submits that in case one more opportunity is granted to the assessee-appellant to appear before the Assessing Officer, by way remand of the matter, same would be in the interest of justice, as she would be able to establish her case regarding the income from commission received by her from time to time.

With the written submissions before this Appellate Tribunal, Ld. AR for the assessee has submitted copies of certain documents in the form of a paper book with an index. Its perusal reveals that paging of the paper book as shown in the last column is not in order. Due care is required to be taken, while paging the documents/papers for submission of the paper book before competent authorities.

17. From column No. 2 of said paper book, it appears that the assessee is said to have submitted before the Assessing Officer copy of Krishi Mandi licence; copies from the ledger pertaining to commission received; and copy of ledger accounts of some consignors in connection with consignment of fruits for sale of commission. All the documents are stated to be necessary for adjudication of the issue involved, but subject to their verification. Only the Assessing Officer would be in a position to verify the genuineness of the said documents and then adjudicate the matter, while

framing assessment afresh, of course, after providing another opportunity to the assessee of being heard.

18. For the foregoing reasons and our findings, this appeal is hereby disposed off for statistical purposes, and while setting aside the impugned order passed by Learned CIT(A),NFAC, the matter is restored to the files of the Assessing Officer. The Assessing Officer to afford an opportunity to the assessee of being heard, and then to frame assessment order, in accordance with law.

Order pronounced in the open court on 25/07/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 25/07/2024

*Santosh

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Premi Bai Uderani, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Ajmer.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 692/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar