

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 747/JPR/2023
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Kalu Jat Village-Kutri Via Bhagwant Pura, Sarwar, Ajmer.	बनाम Vs.	ITO, Ward-2(2), Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BAAPJ9716M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri R.S.Poonia (C.A.) &
Shri Rajat Chaudhary (Adv.)
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 02/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 29/07/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of National Faceless Appeal Centre, Delhi [herein after referred to as "CIT(A)/NFAC"] dated 07.09.2023 for the assessment year 2015-16, which in turn arise from the order dated 20.03.2023 passed under section 147 r.w.s. 144 read with section 144B of the Income Tax Act, 1961 (hereinafter "Act") by the AO.

2.1 At the outset of hearing, the Bench observed that there is delay of 31 days in filing of the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers:-

“1. That the present appeal was filed before Hon,ble ITAT, Jaipur Bench on 07.12.2023 against the ex-parte order passed by Ld. CIT(Appeals) NFAC, New Delhi, order dated 07.09.2023. The appeal No. is ITA no. 747/JPR/2023.

2. The present appeal was filed with a delay of 31 days.

3. That the delay in filing of appeal was due to mistake of earlier local counsel of appellant, as he did not filed the appeal well within the specified time.

4. Then, on 06.12.2023, appellant engaged a new counsel of Jaipur, CA Raghuvveer Singh Poonia and on the very next day the new counsel filed the appeal before Hon’ble ITAT, Jaipur Bench.

5. Therefore, the delay in filing of appeal was due to mistake of earlier counsel of appellant, which can be treated as reasonable cause and bonafide mistake of appellant in good faith in filing the appeal before Hon’ble ITAT, Jaipur Bench.

In view of above submission your good self are request that kindly consider this as reasonable cause to condone the delay and kindly admit the appeal. So the substantial justice may be delivered to the appellant.”

2.2 The ld. AR of the assessee appearing in this appeals submitted that the delay of 31 days is on account of due to mistake of earlier local counsel of the assessee, as he did not inform the assessee in proper time and subsequently the assessee engaged a new counsel on the very next day and filed the appeal. Considering the various judicial precedent where in the courts has considered that change of the new counsel is a reasonable reason and has considered the delay. Even the Hon’ble

Apex Court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liberal approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

2.3 During the course of hearing, the ld. DR fairly not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

2.4 We have heard both the parties and perused the materials available on record. The Bench noted that the assessee prayed for condonation of delay of 31 days has merit and we concur with the submission of the assessee, thus the delay of 31 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. The assessee has raised the following grounds of appeal:-

"1. That under the facts and in the circumstances of the case the Ld. CIT (Appeals) NFAC has erred in law and facts in confirming the addition made by Ld. A.O. on account of unexplained investment u/s. 69 r.w.s. 115BBE of the I.T. Act, 1961 amounting to Rs. 54,00,000/- to the income of the appellant on this count is wrong, unwarranted and bad in law. Kindly delete the addition.

2. That under the facts and in the circumstances of the case the Ld. CIT (Appeals) NFAC has erred in law and facts in confirming the addition made by Ld. A.O. on account of unexplained investment u/s. 69 r.w.s. 115BBE of the

I.T. Act, 1961 amounting to Rs. 83,898/- to the income of the appellant on this count is wrong, unwarranted and bad in law. Kindly delete the addition.

3. That under the facts and in the circumstances of the case the Ld. CIT (Appeals) NFAC has erred in law and facts in confirming the addition made by Ld. A.O. on account of income from other sources u/s. 56(2)(i)(d) of the I.T. Act, 1961 amounting to Rs. 4,33,628/- to the income of the appellant on this count is wrong, unwarranted and bad in law. Kindly delete the addition

4. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

4. Brief facts of the case are that no return of income for the assessment year 2015-16 was filed by the assessee. The assessee has made time deposits of Rs. 1,10,00,000/- with Baroda Rajasthan Kshetriya Gramin Bank during the F.Y. 2014-15 relevant to assessment year 2015-16. Further, the assessee failed to file any response to show cause notice issued under clause b of section 148A of the Act on 19.03.2022 fixing for 26.03.2022. Various notices issued to the assessee but the assessee has failed to file any response to show cause notices.

Conclusively, the AO made addition in the hands of the assessee by holding as under:-

”7. Conclusion drawn

(i) In view of the above facts and in absence of any explanation offered by the assessee regarding source of deposits of Rs. 54,00,000/- made on 01.05.2014 which further converted into FDR of Rs. 55,00,000/- has been treated as unexplained investment u/s 69 r.w.s. 115BBE and the amount of Rs. 54,00,000/- has been added to the total income of the assessee. Apart from this penalty proceedings u/s 271(1)(c) has also been initiated separately for concealment of particulars of above income.

(Addition Made: Rs.54,00,000/-)

(ii) Further, from the bank statement it has been observed that there are unexplained credit entries to the tune of Rs. Rs. 83,898/-, which has been treated as unexplained investment u/s 69 r.w.s. 115BBE and the amount of Rs. 54,00,000/- has been added to the total income of the assessee. Apart from this penalty proceedings u/s 271(1)(c) has also been initiated separately for concealment of particulars of above income.

(Addition Made: Rs. 83,898/-)

(iii) During the year the assessee had also accrued interest income to the tune Rs. 4,33,628/- which has been treated as unexplained income and added to the total income as income from other sources u/s 56(2)(i)(d) of the Income Tax Act, 1961. Apart from this penalty proceedings u/s 271(1)(c) has also been initiated separately for concealment of particulars of above income.

(Addition Made: Rs. 4,33,628/-)”

5. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Ld. CIT(A) observed that various notices were issued to the assessee requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued, the Id. CIT(A) dismissed the appeal of the assessee ex-parte. The extract of the finding of the Id. CIT(A) is reproduced as under:-

“4. Decision:

4.1 The statement facts, ground of ppeal and assessment order passed u/s 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961dated 20.03.2023have been perused carefully. At the outset it is worth mentioning that during the pendency of the appeal, appellant was issued various notices of hearing u/s. 250 of theAct dated 06.07.2023, 18.07.2023, 26.07.2023, 04.08,2023 &21.08.2023. For all these hearing notices, appellant could not make any submission in spite of availing sufficient time and opportunities. From the fact of appellant's non-response to various notices, it is clear that apparently, appellant has no specific submissions to file to pursue the pending appeal and accordingly, appellant's

appeal needs to be considered as per the facts available on record and on merits. As appellant failed to avail the opportunities offered on various occasions from time to time, it is understood that appellant is not keen to pursue the appeal as per law and accordingly, appeal filed by the appellant is liable to be dismissed for non-prosecution by the appellant. The following citations/decisions of Hon'ble Adjudicating Authorities clearly envisage for dismissal of appellant's appeal for appellant's failure to prosecute/pursue the pending appeal in spite of availing sufficient time and opportunities and accordingly, is not maintainable. The relevant citations are briefed as under for placing reliance to adduce appellant's non-prosecution of appeal as not maintainable.

1. In the case of CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 and 478) wherein their Lordships have held that "the appeal does not mean merely filing of appeal but effectively pursuing it".

2. In the case of Estate of Late Tukoji Rao Holker Vs. CWT 223 IR 480 (MP) while dismissing the reference made at the instance of assessee in default made following observations in their order. "if the party at whose instance the reference is made fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference".

3. In the case of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del). The appeal filed by the revenue before the Tribunal which was fixed for hearing but on the date of hearing nobody represented neither the revenue applicant nor any communication for adjournment was received. There was no communication or information as to why revenue choose to remain absent on that date. The Hon'ble Tribunal laid down the principle that on the basis of inherent power the appeal filed by the appellant can be treated as un-admitted.

4.1.1 Keeping in view the above facts of appellant's non-prosecution of this pending appeal and also placing reliance on above citations, appellant's appeal is to be treated as not maintainable.

4.1.2 However, notwithstanding its dismissal for want of prosecution, even on merits of facts as available on record as brought out by the Assessing Officer in the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act dated 20.03.2023, it is observed that appellant could not produce relevant details/documents in spite of several opportunities provided by the AO, as mentioned in the assessment order.

4.2 The only Ground of appeal raised by the appellantis against the addition of Rs.59,23,320/- on account of unexplained money. Brief facts of the case are that the assessee had not filed return of income for A.Y 2015-16. The AO noted that the assessee

had made time deposits of Rs. 1,10,00,000/- with Baroda Rajasthan Kshetriya Gramin Bank during the FY 2014-15 relevant to AY. 2015-16. As the assessee failed to response to show cause notice issued under clause b of section 148A of the Act, the case was selected for scrutiny u/s 147 of the Act.

4.2.1 The Assessing Officer noted that to verify the transaction, information u/s 133(6) was called from Baroda Rajasthan Kshetriya Gramin Bank, which revealed that an amount of Rs. 54,00,000/- deposited on 01.05.2014 and the assessee made withdrawal of Rs. 55,00,000/- on 03.06.2014, remaining balance was shown at Rs. 3,92,349/-. The AO further found that as per another bank statement of the assessee, fixed deposit of Rs.55,00,000/- was made on 03.06.2014. The AO held that no variation was made in respect of amount of Rs.55,00,000/-. The AO further held that the assessee has not responded to the various notice issued to him. The Assessing Officer noted that the assessee has not offered explanation regarding source of deposits of Rs.54,00,000/- made on 01.05.2014 which further converted into FDR of Rs.55,00,000/-; credit entries amounting to Rs.83,898/- and accrued interest income amounting to Rs.4,33,628/- totaling to Rs.59,23,320/-. The relevant extract from the assessment order is as under:-----

4.2.2 It is clear from the assessment order that the appellant failed to discharge his onus to explain the source of deposits. It is clear that on account of non-compliance by the assessee, the AO was compelled to pass best judgement assessment order on the materials available on record. The assessee not only failed to make compliance before the AO, he could not submit any reply during the appellate proceedings. In fact, the appellant has failed to comply with as many as five notices issued by this office.

4.2.3 In view of overall facts and circumstances of the case, it is clearly visible that the appellant has no justifiable reasons for relief. Accordingly, ground of appeal raised by the assessee is dismissed and entire addition of Rs. 59,23,320/- made by the Assessing Officer is confirmed.

5. In the result, the appeal is dismissed.”

6. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) and the AO both have passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the Id. AO on

merits as the orders of the both the authorities are ex parte, and the assessee prayed to grant one chance to provide the details in connection with the merits of his case. Therefore, in the interest of equity and natural justice the assessee praying for one chance before the ld. AO to advance the argument on the merits of the case.

7. Per contra, ld. DR vehemently objected to the prayer of the assessee and submitted that even the assessee did not represent case before the ld. AO and CIT(A) both stage and now he is praying for equity and justice and the ld. DR vehemently contended, if at all, if the Bench feels the matter may be restored to the file of the Assessing Officer, then with fine may be sent back to the file of the ld. AO.

8. We have heard both the parties and perused the materials available on record. We observed that the various notices issued to the assessee i.e. on 06.07.2023, 18.07.2023, 26.07.2023, 04.08.2023 & 21.08.2023 but the assessee has not filed any submission on ITBA Portal. The bench noted from the submissions made by the ld. AR for the assessee that before the Ld. Assessing Officer, the assessee could not furnish any documentary evidences and the assessment proceedings was completed as ex-parte u/s 144 of the Act and the assessee has failed to make compliance before the AO, he could not submit any

reply during the assessment proceedings as well as appellant proceedings. We also observed that the Id. Counsel has given wrong e-mail ID and the e-mail ID was not operated by the assessee. Therefore, the assessee unaware about the e-mail ID on which notices were communicated and the mail ID does not operated by the assessee which was explained by the new counsel and in support of the affidavit and the submission of the Id. AR for the assessee has produced screen short of Income Tax portal which is reproduced as under:-

Notice/Letter pdf

Notice/ Communication Reference ID
100065969269
Date
21-Aug-2023
From
donotreply@incometax.gov.in

To
munna20080@gmail.com
CC
-
Subject
[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.


Dear KALU JAT,

Please find attached the Notice u/s 250 for PAN BAAPJ9716M and A.Y. 2015-16.

Please quote your PAN in all future correspondences.

Note :

- This communication is computer generated and may not contain signature.
- This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.
- Signed copy may be sent separately if not already digitally signed.
- Please quote your PAN in all communications.
- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

 7000000045658565_60159293_2023_APL_BAAPJ971
Notice us 250_1055287497(1)_21082023.pdf [Download](#)

[Back](#)

We note that the Ld. CIT(A) inspite of five notices were issued to the assessee but the same was not served to the assessee. Looking to these aspect of the matter the Bench feels that the assessee could not advance their arguments / submissions to contest the case before the ld. CIT(A) and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing. Considering that aspect of the matter we hold to remand back the matter to the file of the ld. AO as the order of assessment is also ex-parte. Thus, the ld. AO will decide the issue based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO.

9. In our considered view, we remit back the matter to the ld. AO for further adjudication de novo. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceeding. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

10. Assessee is burdened with costs of Rs. 2500/- to be deposited in Prime Minister's National Relief Fund. He shall produce receipt in proof of deposit of the costs, with the Assessing Officer, before commencement of the assessment proceedings in set aside proceeding.

In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29/07/2024.

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-
(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/07/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Kalu Jat, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 2(2), Ajmer.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 747/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar