

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. 586/JPR/2024
निर्धारण वर्ष / Assessment Years : 2018-19

Shri Sumer Prakash Khandaka 171 Haldiyon Ka Rasta, Johari Bazar, Jaipur.	बनाम Vs.	ACIT, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAUPK1949E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh (Adv.)
राजस्व की ओर से / Revenue by : Shri Anil Dhaka (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 04/07/2024
उदघोषणा की तारीख / Date of Pronouncement : 29/07/2024

आदेश / ORDER

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

This appeal is filed by the assessee aggrieved from the order of the Ld. CIT(A), NFAC, Delhi dated 09.03.2024 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2018-19, which in turn arise from the order dated 06.03.2023 passed under section 147 r.w.s. 144 read with section 144B of the Income Tax Act, [Here in after referred as "Act"] by the AO.

2. The assessee has raised following grounds:-

“1. That the learned Commissioner and learned AO has not considered the income tax return filed by the assessee on 09.02.2023 vide acknowledgment No. 951726541090223.

2. That the learned Commissioner and learned AO not considered that the assessee was not aware about the income tax portal and Commissioner and AO not sent the notice of proceeding physical. CIT Appeals (faceless also not sent notice physically to the assessee.

3. Due to financial position which is very bad, assessee not filed his return of income in time.

4. That the AO as well as CIT Appeal (faceless) not given proper opportunity to submit the reply due to that assessee not filed any reply.

5. That the Learned Commissioner has grossly erred in law as well as in facts while not considering financial situation of the assessee and considering cash deposit of Rs. 30723900.00 as unexplained money u/s 69 of the Act and added to the total income of the assessee and imposed tax liability u/s 115BBE of the Act without any reason and basis.

6. That the learned Commissioner has grossly erred in law as well as in facts while considering investment of Rs. 116733334.00 in immovable property and Rs. 3492868.00 in motor car as unexplained investment u/s 69 and added to the total income of the assessee and imposed tax liability u/s 115BBE of the Act without any reason and basis.”

3. The brief facts of the case are that the assessee has not filed his return of income for the assessment year 2018-19. The assessee had carried out certain financial transactions of Rs. 15,23,89,024/- due to which the AO issued notice u/s 148A(B) and 148 of the Act. The ld. AO issued notice u/s 142(1) of the Act and after that the ld. AO also issued show cause notice to the assessee to file the return of income for the A.Y. 2018-19 but the assessee could not reply to the notices issued by the ld. AO due to adverse financial condition of the assessee, he was not able to pay income tax and therefore, could not file the income tax return without

payment of tax. Due to this assessee sold his assets/property and paid due income tax and filed his income tax return and upload the same in response to notice issued u/s 148 of the Act on 09.02.2023. Thereafter filed reply to show cause notice dated 06.02.2023 to file the reply of notice upto 09.02.2023 for which very short period was available. On 09.02.2023 the AO closed the proceedings portal in morning, due to this assessee filed reply by e-mail on 10.02.2023 to DCIT, Circle-2, Jaipur. However the Ld. AO completed assessment on 06.03.2023 after the 27 days after the close of the portal on the income of Rs. 15,23,89,024/- as the AO in his assessment order assessed all the financial transaction of Rs. 15,23,89,024/- as income of the assessee. Finally, the AO completed the assessment u/s 144 r.w.s. 147 r.w.s. 144B of the Act vide order dated 06.03.2023 at a total income of Rs. 15,23,89,024/- in the manner as under:-

S. No.	Description	Amount(Rs.)
1.	Income as per return of income filed
2.	Income as computed u/s 143(1)(a)
3.	Add: Unexplained money u/s 69A of the Act	3,07,23,900/-
4.	Add: Interest income	3,67,694/-
5.	Add: Income from House property	10,71,228/-
6.	Add: Unexplained investment u/s 69 of the Act	12,02,26,202/-
7.	Total assessed income	15,23,89,024/-

8.	Rounded off u/s 288A of the Act	15,23,89,020/-
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4. Being aggrieved, from the said order of assessment, the assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“7.5 Accordingly, applying the judicial principles outlined in the earlier paragraphs to the facts of the case it is seen that the primary onus to prove the source of the money and necessary evidences to support credit entries u/s 68 or section 69 of the Act is on the appellant. The Hon'ble Supreme Court has further held that explanation offered by the appellant should be carefully examined by the AO to ascertain whether all the ingredients of the onus are proved by the appellant or not. The appellant is required to discharge the onus by producing evidence and an explanation that are comprehensive and accurate. In this case it is seen that no explanation has been provided by the appellant either during the assessment proceedings or during the appellate proceedings. The contentions of the appellant raised in the ground of appeal is not supported by any evidence or documents.

7.6 In spite of numerous opportunities given, the appellant has not responded to any of the notices issued in the appellate proceedings. Accordingly, it is clear that the appellant has not discharged the burden of proof as required under the respective provisions to explain the source of the credit in the bank account. Hence the Grounds of Appeal are Not Allowed.

7.7 In view of the discussion in the preceding paragraphs, I am constrained to concur with the AO's findings of fact and decisions thereof, more particularly in the absence of any meaningful and worthwhile submissions/documentations even during the instant appellate proceedings, to counter effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order. It is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before

him as held in *Nirmal Singh and Others* of the Hon'ble Punjab and Haryana High Court (Cr No. 3791 of 2013 (O&M) dated 01.05.2014] and in the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant in the instant appeal to counter the AO's decision, the order passed u/s 147 r.w.s. 144 of the Act dated 06.03.2023 is upheld.

8. In the result, the appeal of the assessee is dismissed.”

5. Aggrieved from the order of the ld. CIT (A) the assessee has preferred the present appeal before us on the grounds as reiterated in para 2 above. During the course of hearing, the ld. AR for the assessee prayed that the Ld. CIT(A) and the AO both have passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Therefore, looking, to this aspect of the matter the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. AO on merits as the orders of the both the authority are ex-parte and the assessee prayed to grant one chance to submit the correct details in connection with the merits of his case.

6. 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.

7. We have heard both the parties and perused the materials available on record. The bench noted from the submission of Ld. AR of the assessee that the Ld. CIT(A) has not decided the appeal of the assessee on merits and the order of the Ld. Assessing Officer is also ex-parte. Considering the arguments advanced before us praying that the Ld. AO did not consider the submission made by the assessee even the Ld. CIT(A) did not give sufficient time to the assessee. Based on these set of facts, we are of the considered view that the matter is required to be remanded back to the file of the Ld. Assessing Officer in the interest of justice, who will examine the issue afresh after considering the submissions of the assessee. Thus, prayer of the assessee is considered and is provided one more chance to represent the facts before the ld. AO. The object of the Bench is to provide justice. Thus, the matter is restored to the file of the ld. AO for afresh adjudication of the case.

8. 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.

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

In the result, the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 29/07/2024

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

*Santosh

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

1. अपीलार्थी / The Appellant- Sh. Sumer Prakash Khandaka, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 586/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar