

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. 521 to 524//JPR/2024  
निर्धारण वर्ष/Assessment Year :2012-13

Shri Beekau Bhardwaj 315, DDA Flats, PKT IInd, Dwarkadhis Apptt., Sector-12, New Delhi-110048.	बनाम Vs.	Income Tax Officer, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AJVPB1894K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assessee by : Shri Yogesh Sharma, Adv.  
राजस्व की ओरसे/ Revenue by: Shri Anoop Singh (Addl. CIT)

सुनवाई की तारीख/Date of Hearing : 01/08/2024  
उदघोषणा की तारीख/Date of Pronouncement : 01/08/2024

आदेश / ORDER

PER BENCH :

This common judgment is to dispose of all the above captioned four appeals, which relate to the assessment year 2012-13, and have been argued together.

One appeal challenges the assessment pertaining to quantum whereas in the remaining 3 appeals, there is challenge to three separate

penalties levied under different sub-clauses of section 271(1) and Section 271F of the Act.

**ITA No. 521/JPR/2024**

2. This appeal has been filed challenging order dated 07.03.2024. Vide impugned order Learned CIT(A) has partly allowed the appeal filed by the assessee challenging assessment order dated 25.11.2019 and the AO has been directed to take into consideration cash deposit of Rs. 11,67,800/-only, for the purposes of applicability of Section 69A of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

3. Vide impugned assessment, the Assessing Officer made addition of a sum of Rs. 55,18,678/-, on account of unexplained money, applying provisions of section 69A of the Act.

The assessment proceedings were initiated on the basis of information available or received on record that the assessee was found to have deposited cash to the tune of Rs. 11,67,800/- in his bank account being maintained with Allahabad Bank, during the financial year 2011-12, and further that the assessee had not filed any return of income, which led to the escapement of income from assessment.

4. It may be mentioned here that as observed in the assessment order, notices u/s 148 and 142(1) of the Act were issued by the Assessing Officer,

but, the assessee did not comply with any notices. Accordingly, the Assessing Officer proceeded to pass the assessment order computing total income of the assessee as Rs. 55,18,680/-.

At the same time, the Assessing Officer deemed it to be a fit case for initiation of penalty proceedings u/s 271(1)(c), due to concealment of income by the assessee; for initiation of penalty proceedings u/s 271F of the Act of the Act, the assessee having failed to furnish his return of income before the end of the relevant assessment order; for initiation of proceedings u/s 271(1)(b) of the Act, due to non compliance with the notices issued to the assessee by the Assessing Officer.

#### **ITA No. 522/JPR/2024**

5. Assessee-appellant has challenged, by way of this appeal, order dated 07.03.2024, passed by Learned CIT(A), NFAC whereby his appeal challenging order dated 09.2. 2022 passed by the Assessing Officer levying penalty of Rs. 5,000/- u/s 271F of the Act, due to non filing of return, has been dismissed.

#### **ITA No. 523/JPR/2024**

6. Coming to this third mentioned appeal, same has been filed challenging impugned order dated 07.03.2024 passed by the Learned CIT(A), NFAC, whereby the appeal filed by the assessee challenging levy of

penalty of Rs. 30,000/- by the Assessing Officer on 09.02.2022, u/s 271(1)(b), has been dismissed.

Learned CIT(A), NFAC has observed the appeal pertaining to quantum for the same year stood upheld and further that the assessee-appellant having not furnished any reasonable cause for non compliance with the statutory notices issued by the Assessing Officer.

**ITA No. 524/JPR/2024**

7. The assessee-appellant has filed this appeal, feeling aggrieved by the order dated 11.03.2024 passed by Learned CIT(A), NFAC, whereby his appeal challenging levy of penalty of Rs. 15,52,832/- u/s 271(1)(c) has been dismissed.

Learned CIT(A), NFAC has observed that since the assessee concealed income to the tune of Rs. 55,18,680/-, the Assessing Officer was justified in levying the penalty.

8. Arguments heard. File perused.

**ITA No. 521/JPR/2024**

9. Vide impugned order dated 07.03.2024, Learned CIT(A), NFAC partly allowed the appeal filed by the assessee, while directing the Assessing Officer to take into consideration cash deposit of Rs. 11,67,800/-only, which

the assessee failed to explain as per assessment order dated 25.11.2019, and which led to making of addition u/s 69A of the Act.

10. Section 69A of the Act needs to be reproduced for ready reference and convenience. Same reads as under:-

*“69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.]”*

11. Admittedly, the Assessing Officer issued to the assessee notices by, u/s 148 and 142(1) of the Act, but, he did not comply with the same, what to say of his appearance in the assessment proceedings.

12. Ld. AR for the assessee submits that the assessee could not appear or participate in the assessment proceeding for want of service of notices, at the given address, the reason being that the assessee was not residing at the given address on the dates of issuance of the said notices.

On 30.07.2024, during the pendency of these appeals before us, the assessee has submitted an application under rule 29 of the Income Tax

Rules seeking permission to place on record copies of 5 documents, shown in the list of additional documents as Annexures-3,3A, 4, 5 and 6.

Ld. AR for the assessee has submitted that these documents, now sought to be produced, are relevant for adjudication of the subject matter and that the assessee-appellant could not produce the same earlier due to lack of acknowledge regarding their existence.

13. As is available from the list of additional documents dated 30.07.2024 referred to above, copies of following additional documents are sought to be produced:-

- Cash ledgers for the financial year 2010-11 and 2011-12.
- Bank ledger for the financial year 2010-11 and 2011-12;
- Copy of agreement to sale of residential property dt. 08.05.2010;
- Copy of the bank statement, and;
- Copy of the fixed deposit certificate.

Copies of the application and those of annexures have been supplied to Ld. DR for the department. There is no objection from the side of the department to allow the prayer of the assessee-appellant to produce said documents on record.

Even otherwise, we find that these documents are relevant and necessary for effective adjudication of the matter in dispute, which pertains to deposit of

cash by the assessee in his bank account with Allahabad Bank, in the financial year 2011-12.

Learned CIT(A) clearly observed in the impugned order that the assessee-appellant had not furnished any evidence to substantiate his claim, and as such, the claim put forth by the assessee-appellant was not acceptable.

At the same time, Learned CIT(A) reduced the unexplained amount from Rs. 55,18,678/- to Rs. 11,67,800/-.

14. As is available from the impugned order, multiple notices are stated to have been issued by the Learned CIT(A), NFAC to the assessee-appellant, and it was only on 01.01.2021 that he filed written submissions there.

It was for the assessee-appellant to produce before Learned CIT(A), NFAC, entire relevant material available, but he failed to do so.

As already observed, the documents now sought to be reproduced are relevant and necessary for effective adjudication of the matter in dispute. Therefore, we deem it a fit case to allow the application filed for production of said documents, but with costs, the reason being that had the assessee-appellant produced the same earlier before Learned CIT(A), the same would have led to effective adjudication of the matter there itself, but he failed to do

so. Therefore, the assessee-applicant is burdened with cost of Rs. 5000/- to be deposited in "Prime Minister Relief Fund".

15. Having regard to the fact that material documents, now sought to be produced, were not produced by the assessee before Learned CIT(A), NFAC, we deem it a fit case to remand the matter to Learned CIT(A), NFAC for decision afresh, after providing reasonable opportunity of being heard to the assessee, in accordance with law.

Assessee-appellant to produce before Learned CIT(A), receipt in proof of deposit of costs imposed, and thereupon Learned CIT(A) shall commence the proceedings in the appeal, on remand

**ITA No. 524/JPR/2024**

16. Penalty of Rs.15,52,832/-under challenge in this appeal came to be levied u/s 271(1)(c) of the Act due to concealment of income.

As noticed above, the appeal challenging quantum assessment i.e. due to addition made u/s 69A of the Act, has been disposed off for statistical purposes, and the matter has been remanded to Learned CIT(A) for decision afresh.

In the given situation, present penalty cannot be sustained. Rather, the matter needs to be considered by the Assessing Officer afresh.

**Result**

17. As a result, this appeal is disposed of, for statistical purpose and the matter is remanded to Assessing Officer for decision afresh, after providing reasonable opportunity of being heard, to the appellant-assessee.

**ITA No. 522/JPR/2024**

18. By way of this appeal, appellant has challenged order dated 07.03.2024, passed by Learned CIT(A), NFAC whereby his appeal challenging order dated 09.02.2022 passed by the Assessing Officer levying penalty of Rs. 5,000/- u/s 271 F of the Act, due to non filing of return, has been dismissed.

19. Learned AR submitted that since the matter has been remanded to Assessing Officer for decision afresh as regards assessment under section 144 read with section 147 of the Act, penalty levied cannot be sustained.

20. As noticed above, as regards assessment pertaining to quantum under section 144 read with section 147 of the Act, has been remanded to the Assessing Officer for decision above. Only when fresh decision is taken by the Assessing Officer, it would transpire if the assessee was required to furnish any return of income, and consequently, whether he committed any

default by not furnishing the requisite return of income pertaining to the relevant Assessment Year.

### **Result**

21. As a result, the appeal is disposed of for statistical purposes, and matter is remanded to Learned Assessing Officer for decision afresh after providing reasonable opportunity of being heard, to the assessee.

### **ITA No. 523/JPR/2024**

22. Coming to this third mentioned appeal, same has been filed challenging impugned order dated 07.03.2024 passed by the Learned CIT(A), NFAC, whereby the appeal filed by the assessee challenging levy of penalty of Rs. 30,000/- by the Assessing Officer on 09.02.2022, u/s 271(1)(b), has been dismissed.

Learned CIT(A), NFAC has observed that the appeal pertaining to quantum for the same year stood upheld and further that the assessee-appellant had not furnished any reasonable cause for non compliance with the statutory notices issued by the Assessing Officer.

23. In the course of arguments, Learned AR for the assessee has submitted that during the relevant period the assessee was not residing at the given address, and as such, he was not served with even single notice.

Therefore, the contention is that the impugned order passed in appeal and the impugned order passed by the Assessing Officer deserve to be set aside.

In support of his contention, Ld. AR has submitted affidavit of the assessee wherein he has testified as to the place of his residence during the relevant period, and also copies of certain documents.

24. As is available from the assessment order, notices dated 29.03.2019 under section 148 of the Act; notice dated 31.5.2019 under section 142(1) of the Act accompanied by a questionarrie; notices dated 3.7.2019 and 5.9.2019 u/s 142(1) were issued by the Assessing Officer to the assessee, but, as further observed, the assessee neither appeared nor furnished any reply to the said notices.

In the affidavit, the assessee has testified about his address, place of residence or stay in the years 2005 and 2006. He has furnished copies of documents pertaining to said years. Notices pertain to the year 2019. Therefore, the affidavit and the copies of documents pertaining to the year 2005 and year 2006 do not help the assessee to justify his non appearance before, or non compliance of the notices issued by, the Assessing Officer.

He has also placed on record copies of two documents said to have been issued in November and December, 2021, to show that at that time he was residing in Dehradun.

Since the notices were issued by the Assessing Officer in the year 2019, even the documents as to his residence in the year 2021 do not help the assessee to justify his non appearance before, or non compliance of the notices issued by, the Assessing Officer.

Admittedly, no justification was put forth before Learned CIT(A) for non compliance with the abovesaid notices issued by the Assessing Officer.

In the given situation, we do not find any merit in the contention raised by learned AR that the assessee was not served with any of these notices, or that he had sufficient reason for non compliance with the said notices issued by the Assessing Officer.

Having regard to the provisions of section 271(1)(b) and that the assessee failed to comply with notices issued even under section 142(1) of the Act, no ground for any leniency on the amount of penalty is made out.

## **Result**

25. In view of the above discussion and findings, this appeal No.523/2024 is without any merit. Same is hereby dismissed.

Original judgment to be made part of ITA No.521/JPR/24, whereas copy of this common judgment be placed on the record of each of the other 3 appeals.

Order pronounced in the open court on 01/08/2024.

Sd/-

Sd/-

(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 01/08/2024  
\*Santosh

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

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Beekau Bhardwaj, New Delhi.
2. प्रत्यर्थी / The Respondent- ITO, jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 521 to 524/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar