

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA

BEFORE SHRI SONJOY SARMA, JM
AND
SHRI RAKESH MISHRA, AM

ITA No. 508/Kol/2024

(Assessment Year: 2011-12)

Jagdish Singh, Durgapur
A/7, Abanindra Bithi,
City Centre,
West Bengal -713216

(Appellant)

Commissioner of Income Tax
(Appeals), Delhi

Vs.

(Respondent)

PAN No. AIZPS4580N

Assessee by : None
Revenue by : Kallol Mistry, DR

Date of hearing: 02.08.2024
Date of pronouncement : 09.08.2024

ORDER

PER SONJOY SARMA, JM:

01. The caption appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 8th January, 2024 arising out of the Assessment order dated 28th December, 2018, passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act).
02. At the time of hearing no one turned up before the Bench, although, notices were issued from the registry time to time to the assessee on such address provided in form no. 36 of the appeal and in the order sheet also reflected that on 20th May, 2024, no one appeared before the Bench.

However, on 25th June, 2024, an adjournment was sought on the request of the Authorized Representative of the assessee. However, on 1st August, 2024, no one turned up, although notice was sent and on 2nd August, also, none appeared on behalf of the assessee. Therefore, the Bench has no other alternative but to hear the matter with the assistance of the learned Departmental Representative.

03. Brief facts of the case are that the assessee is an individual and deposited cash of ₹33,75,000/- in saving bank account during the F.Y. 2010-11, but the assessee did not file his return of income therefore, the case of the assessee was reopened under Section 147 of the Income-tax Act, 1961 (the Act) followed by notice issued under Section 142(1) of the Act.
04. After considering the reply of the assessee, an open enquiry was made under Section 133(6) of the Act. The learned Assessing Officer passed an assessment order under Section 143(3) read with section 147 of the Act on 28th December, 2018, wherein an addition of ₹38,54,809/- was made in the hands of the assessee under following heads:-

"(i) Unexplained cash credit under Section 68 of the Act of ₹33,75,000/-.

(ii) Undisclosed income on fixed deposits of ₹1,67,997/-.

(iii) *Undisclosed income on savings bank account of ₹4,735/-.*

(iv) *Undisclosed contractual receipt of ₹3,13,077/-.*

05. Dissatisfaction with the above order the assessee went in appeal before the learned Commissioner of Income-tax (Appeals) [in short CIT (A)] where the appeal of the assessee was partly allowed confirming the addition made by the learned Assessing Officer in respect of issue of cash credit sum of ₹33,75,000/- and undisclosed interest income on saving bank account of ₹4,735/-. However, on the other two issues, the undisclosed interest income on fixed deposit sum of ₹1,61,997/- and undisclosed contractual receipt sum of ₹3,13,077/-, the learned Commissioner of Income-tax (Appeals) [CIT (A)] set aside the issue to the file of the learned Assessing Officer with a direction to re-examine the issue afresh.
06. Aggrieved by the above order, the assessee is in appeal before this Tribunal, raising nine grounds of appeal.
07. The learned Departmental Representative stated that the assessee has raised multiple grounds before the Bench, however, the assessee did not file any paper book or written submission before the Bench in order to substantiate its grounds of appeal. Therefore, the Tribunal may set aside whole issue to the file of the learned Assessing Officer with a direction to re-examine the issue afresh after affording reasonable opportunity of being heard to the assessee.

08. We after hearing the submission of the learned Departmental Representative and perusing the material available on record, we find that while passing the impugned order the learned CIT (A) set aside the two issues to the file of the Assessing Officer with a direction to re-examine the issue afresh. However, on other issues, he sustained the order of the Assessing Officer. From the perusal of the order of the learned CIT (A), we find that learned CIT (A) has no power to set aside any issue to the file of the Assessing Officer as per the Provisions of law. Therefore, considering the facts of the case and in the interest of justice, we feel it necessary to remand back all the issues in the instant appeal to the file of the learned Assessing Officer with a direction to re-examine the issue afresh after affording reasonable opportunity of being heard to the assessee. In terms of the above, the appeal of the assessee is allowed for statistical purposes.
09. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 9th August, 2024.

Sd/-
(RAKESH MISHRA)
(ACCOUNTANT MEMBER)

Sd/-
(SONJOY SARMA)
(JUDICIAL MEMBER)

Kolkata, Dated: 09.08.2024
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Kolkata
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata