

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 548/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Mohammed Ali Prop: M/s. M.A. Building Material N.H. 11, Fatehpur Shekhawati, Sikar	बनाम Vs.	The ITO Ward -2 Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AUHPA 3223 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta, Adv.
राजस्व की ओर से / Revenue by: Shri Rajesh Kumar Meena, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 04/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 07/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. Addl. CIT(A)-2, Mumbai dated 12-03-2024 for the assessment year 2017-18 raising therein following grounds of appeal.

“1.1 The impugned assessment order u/s 143(3) dated 09.12.2019 as well as the notice issued are bad in law and on facts of the case, for want of jurisdiction, barred by limitation, without proper approval or satisfaction and various other reasons and hence the same may kindly be quashed.

1.2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in passing ex-parte order without providing adequate and reasonable opportunity of being heard in the gross breach of law. Hence the additions so made by the Id. AO may kindly be quashed and delete.

2. Rs. 1,45,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.1,45,000/- made by the Id. AO on account of alleged of cash deposit in the bank account as alleged unexplained money u/s 69A. The Ld. AO and CIT(A) both have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

3. The Id. AO has also grossly erred in law as well as on the facts of the case invoking the provisions of Sec. 115BBE for taxing the income at the higher rate, without issue any show cause notice and also not applicable in the present case. The Ld. AO has also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the provisions of Sec. 115BBE so invoked are also being contrary to the real facts of the case and not according to the provision of law, hence the same is illegal, bad in law, against the principle of natural justice the same may kindly be deleted in full.

4. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B.C. The interest so charged is being totally contrary to the provision of law and facts of the case and hence same may kindly be deleted in full.

2.1 Brief facts of the case are that the assessee is a Prop: of M/s. M.A. Building Material and deals in the business of trading of building materials. During the course of assessment proceedings, it came to the notice of the AO that the assessee

has maintained two bank accounts in Canara Bank and out of that the assessee had deposited a sum of Rs.1,48,93,621/- in a/c no. 2467201000450 and the source of cash deposit according to the assessee was out of business transaction i.e. cash sale or cash receipts from the debtors. In this regard, according to the Id.AR, the assessee had furnished all the relevant documents which were accepted by the AO. Apart from this, the AO also noticed that the assessee had deposited a sum of Rs.2.45 lacs in another bank account No. 2467101033721 on various dates and in this regard the explanation furnished by the assessee was to the effect that he had deposited Rs.1.00 lac out of cash withdrawal from the bank account and remaining Rs.1.45 lacs was out of personal savings of earlier years. However, the AO partly accepted the reply and added a sum of Rs.1.45 lacs u/s 69A of the Act as unexplained money as the assessee has failed to produce the documentary evidence to validate its claim.

2.2 Aggrieved by the said order of the AO, the assessee preferred appeal before the Id CIT(A) who upheld the order passed by the AO by dismissing the appeal of the assessee as he had not pursued the appeal before the Id. CIT(A) by giving following narration.

“7. During appellate proceedings also no details was submitted by the appellant to substantiate the source of Rs.1,45,000/-. In view of no evidence to the contrary, no

interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.

8. Thus, in view of the facts and circumstances of the case and the material on record, the order dated 19-12-2019 passed u/s 143(3) of the Act by the AO is upheld.

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

2.3 Now the ld. AR of the assessee is before this Bench who reiterated the same arguments as were raised by him before the Revenue Authorities but the facts remains that the assessee has not produced any documentary evidence before the Bench to substantiate the claim of deposit of Rs.1.45 lacs out of his personal savings of earlier years. It is noted that the assessee has not placed on record any paper book or documentary evidence to substantiate or to validate his claim except the written submission. Therefore, the Bench has no other option except to uphold the addition made by the AO. However, the Bench also noticed that the ld.CIT(A) passed the ex-parte order as the assessee has not appeared before him and moreover no justifiable reasons have been put forth by the ld.AR of the assessee before the Bench with regard to non-appearance before the ld. CIT(A).

2.4 On the other hand, the ld.DR supported the order of the ld. CIT(A)

2.5 After hearing both the parties and perusing the materials available on record, the Bench noted that the ld. CIT(A) upheld the order of the AO being

non-appearance of the assessee before him in spite of providing various opportunities as mentioned at para 4.1 of his order. Be that as it may since it is an admitted fact that the assessee is ex-parte before the Id. CIT(A). Therefore, he could not put forth his defence. It was the bounded duty of the assessee to appear before the statutory authorities as and when called for. It is noticed that various opportunities were provided to the assessee for settling the issue but the assessee remained lethargic and unserious in pursuing his case for which a cost of Rs.1,000/- is imposed upon the assessee which will be deposited by the assessee in the Prime Minister Relief Fund. However, I am of the view that the dispute between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing opportunity of being heard to the assessee. Hence, the matter is restored to the file of the Id. CIT(A) to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

2.6 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by Id. CIT(A) independently in accordance with law.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes

Order pronounced in the open court on 07/08/2024.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/08/2024

*Mishra

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

1. The Appellant- Shri Mohammed Ali, Sikar
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2, Sikar
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 548/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar