

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 Nos.. 415 & 416/JP/2024
निर्धारण वर्ष / Assessment Year : 2011-12

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| M/s.Agarwal Associates 34, Kalpatru Shopping Centre, Shastri Nagar, Jaipur 302 016 | बनाम Vs. | The ITO Ward 4(5) Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARFA 9546 J | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारित की ओर से / Assessee by : Shri G.N. Sharma, Advocate
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 11/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 07 /08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals have been filed by the assessee against two different orders of the ld. CIT(A) dated 15-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 in the matter of Section 271A and 271B of the Act respectively, raising ground of appeal as mentioned at Form No. 36 in respective appeals.

2.1 At the outset of hearing of the appeals, it is noticed that the assessee was ex- parte before the ld. CIT(A) in respect of both the appeals i.e. Section 271A and

271B of the Act. It is further noticed that the Id. CIT(A) while deciding the appeals of the assessee has rejected the claims of the assessee on merit in view of the materials available before him. The narration as made by the Id. CIT(A) in respect of the above appeals are as under:-

‘Appeal u/s 271A

“5.6 Keeping in view the facts of the case, the decision of CIT(A) in quantum appeal order dated 19.01.2024 upholding that the appellant was engaged in business activities of construction and development of real estate and had Business receipts of Rs. 69,31,000 during the year chargeable under the head Profits & Gains tom Business & Profession', and the provisions of Sec 44AA coupled with Sec 44AB, and the fact that the appellant had failed to keep, maintain and retain regular books of account despite having Income from business as required within the meaning of Sec 44AA of the Act as no books could be produced by the appellant-neither during assessment nor during penalty nor during appeal proceedings, I find no infirmity in the action of the AO in levying Penalty of Rs.25,000/- u/s 271A of the Act and the penalty of Rs.25,000/- imposed is hereby upheld. Consequently, the ground of appeal no. 1,2 and 3 are hereby dismissed.”

‘Appeal u/s 271B

“5.5 Keeping in view the facts of the case, the decision of CIT (A) in quantum appeal order dated 19.01.2024

upholding that the appellant was engaged in business activities of construction and development of real estate and had Business receipts of Rs. 69,31,000 during the year chargeable under the head 'Profits & Gains from Business & Profession', further decision of the CIT(A) in appeal against penalty order u/s 271A vide order u/s 250 dated 15.02.2024 confirming that the appellant was liable to maintain regular books of accounts u/s 44AA, the provisions of Sec 44AB, the above discussed judicial pronouncements which are squarely applicable in the instant case, and the fact that the appellant had failed to comply with the provisions of Sec 44AB of the Act, I find no infirmity in the action of the AO in levying Penalty of Rs.34,655/- u/s 271B of the Act and, therefore, the penalty of Rs.34,655/- Imposed is hereby upheld. Consequently, the grounds of appeal no 1, 2 and 3 are hereby dismissed.”

2.2 During the course of hearing, the Id. AR of the assessee submitted that he could not argue the case before the Id. CIT(A) for want of following documents.

1. Certified copy of order sheet beginning of this case for approval for notice u/s 148 of the I.T. Act, 1961.
2. Certified copy of the covering letter alongwith proposal sent to higher authority to get approval u/s 151 of the I.T. Act, 1961.
3. Certified copy of the covering letter alongwith approval granted by higher authority u/s 151 of the I.T. Act, 1961.

Hence, the assessee may be given one more opportunity to contest the case before the ld. CIT(A) in connection with both the appeals.

2.3 On the other hand, the ld. DR relied upon the orders of the ld. CIT(A).

2.4 After hearing both the parties and perusing the materials available on record, it is noted that the ld. CIT(A) passed ex-parte orders in respect of appeals of Section 271A and 271B for which the ld. AR of the assessee prayed for one more chance to contest the case before the ld. CIT(A) while as the ld. DR relied on the orders of the ld. CIT(A). The Bench feels that one more chance may be given to the Assessee to contest the case before the ld. CIT(A) for afresh adjudication and the assessee will submit the necessary documents / evidences concerning the above mentioned appeals. Hence the appeals of the assessee are restored to the file of the ld. 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 and the appeals of the assessee are allowed for statistical purposes.

2.3 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the ld. 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 ld. CIT(A) independently in accordance with law.

3.0 In the result, the appeals of the assessee are 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- M/s. Agarwal Associates, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 4(5), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 415/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar