

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. 105/JP/2024
निर्धारण वर्ष / Assessment Year : 2007-08

Shri Pawan Kumar Baj D-146, Chand Bhawan, Savitri Path Bapu Nagar, Jaipur	बनाम Vs.	The ITO Ward 4 (3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGGPB 9050 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 08/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 02/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 05-12-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2007-08 raising therein following grounds of appeal.

"1. THE APPEALLETTE AUTHORITY HAS ERRED BY NOT PROVIDING PROPER OPPORTUNITY OF BEING HEARD.

2 THE APPEALLETTE AUTHORITY HAS ERRED BY NOT CONSIDERING THE FACT THAT THE SOURCE OF PURCHASING THE PROPERTY IS JOINTLY CONTRIBUTED BY THE ASSESSEE & HIS WIFE.

3 THE APPEALLETTE AUTHORITY HAS ERRED BY NOT CONSIDERING THE WRONG ADDITION OF Rs. 28,96,000/- U/S 69 OF INCOME TAX ACT, 1961.

4 THE APPEALLETTE AUTHORITY HAS ERRED BY NOT CONSIDERING THE WRONG ADDITION OF RS. 2,45,700/-ON ACCOUNT OF REGISTRATION EXPENSES OF THE PROPERTY PURCHASED.

5 THE APPEALLETTE AUTHORITY HAS ERRED BY NOT CONSIDERING THE WRONG ADDITION OF RS. 1,20,000/- ON ACCOUNT OF PERSONAL EXPENSES.’’

2.1 Apropos Ground No. 1 to 5, it is noticed that the ld. CIT(A) has dismissed the appeal of the assessee on account of non-prosecuting the appeal and the observations made by the ld. CIT(A) in his order is reproduced as under:-

“4.1.....Again two more opportunities were given on 14.11.2023 and 04.12.2023. Against all these opportunities, assessee is not interested in filing any details during the appellate proceedings and avail the opportunity under the principle of natural justice. In such situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal.

4.2 It has been held by the Hon'ble Supreme Court in the case of B.N.Bhattacharjee and another (118 ITR 461) that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non- prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the observations of Hidayatullah, Chief Justice (as His Lordship then was) in Sunderlal Mannalal Vs. Nandramdas Dwarakadas AIR 1958 MP 260 wherein it was observed:

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not

appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses.....”

4.3 This appeal has been filed by the appellant with a prayer to this office that the additions made u/s 69C of the Act be deleted. In such situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who has made the claim by filing the appeal. Further, if the appellant claims that the addition made should be deleted, the burden is on the appellant to prove it why it should be deleted. Same is the position in case of all allowances, deduction, exemptions, claims or loss etc. Since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed or levied fee/interest, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

From the conduct of the appellant as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. Even otherwise on the merits of it also, I do not see any reason to differ with the findings of the AO since no attempt has been made by the assessee to discharge its onus. Hence, respectfully following the above mentioned Judicial pronouncements and in view of the facts of the case, the appeal is hereby dismissed.

5. In the result, the appeal is DISMISSED.”

2.2 During the course of hearing, none attended on behalf of the assessee when the case was called out for hearing nor any written submission was filed by the assessee.

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

2.4 The Bench heard the ld. DR and perused the materials available on record. Brief facts of the case are that the assessee made cash deposit of Rs.28.96 lacs in

his saving bank account of Bank of Baroda and immediately purchased a immovable property for a total consideration of Rs.59,65,989/-. It is noticed from the assessment order that no return of income was filed by the assessee and thus the assessment u/s 144/147 of the Act was completed by the AO. Since the assessee had not filed his return of income, the proceedings u/s 148 of the Act were initiated by the AO making the total addition of Rs.32,61,860/-. Aggrieved by the order of the AO, the assessee carried the matter before the Id. CIT(A) who dismissed the appeal of the assessee because of non-prosecution. During the course of hearing, it is noticed neither the assessee nor his representative argued the case but on the contrary moved an adjournment application. The Bench considering the said application of the assessee, the adjournment application was rejected. The Bench noticed that the Id. CIT(A) had provided various opportunities to the assessee to advance his submission with a view to settling the dispute in question (supra) but the assessee was really lethargic and unserious in pursuing its case in spite of providing various opportunities by the Id. CIT(A). It is undisputed fact that the assessee was granted several opportunities by the lower authorities to argue the case but the assessee remained non-cooperative and negligent in pursuing its case on the dates of hearing of the appeal for which the Bench imposes cost of Rs.2,000/- and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the AO for proof and thus the appeal of the

assessee is restored to the file of the AO 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.

2.5 Before parting, the Bench makes it clear e may make it clear that its decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes with no orders as to costs.

Order pronounced in the open court on 02 /08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02 /08/2024

*Mishra

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

1. The Appellant- Shri Pawan Kumar Baj, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.105/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar