

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.84 to 86/RJT/2024

Assessment Year: (2011-12)

Shyam Bihari Room No.90, Survey No.143, Village Meghpar Borichi, Taluka Anjar (Kutch)-370 110	Vs.	Income Tax Officer, Ward-1, Bhuj, Near Leuva Patel Hospital, Mundra Road, Bhuj-370 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ASKPB 8630 R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी ओर से/ Appellant by	Ms. Astha Maniar, AR
प्रत्यर्थी की ओर से/Respondent by	Shri Ashish Kumar Pandey, Sr. DR
सुनवाई की तारीख/Date of Hearing	29/08/2024
घोषणा की तारीख /Date of Pronouncement	30/08/2024

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned three appeals filed by the assessee, pertaining to same Assessment Year i.e., (AY) 2011-12, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short “the Id. CIT(A)/NFAC”] all dated 14.12.2023, which in turn arise out of an assessment order passed by Assessing Officer u/s 144 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 24.12.2018. In ITA No.84/Rjt/2024 assessee has challenged the addition in quantum assessment, *whereas* in ITA Nos. 85-86/Rjt/2024 the assessee has challenged the validity of penalty levied u/s 271(1)(b) of

the Act and 271(1)(c) of the Act respectively. As certain facts in all the appeals are common, thus, all the appeals were clubbed and heard together. Appeal in quantum assessment in ITA No.84/Rjt/2024 is treated as “lead” case.

2. The assessee has raised the following grounds of appeal in ITA No.84/Rjt/2024:

“1. The CIT(A) NFAC has erred in law in holding that the ex-parte reassessment order u/s 144 of the Act is valid without appreciating that there was not the valid service of notice u/s 148 or 142(1) or 143(2) of the Act.

2. The CIT(A) NFAC further erred in law and on facts in not appreciating that without there being valid order u/s 127 transferring the jurisdiction from Gandhidham to Bhuj, the impugned order is bad in law.

3. The CIT(A) NFAC further erred in law in not appreciating that continuation and completion of such invalid proceedings by the AO is bad in law as there is no valid service of notice u/s 142(1) and 143(2) of the Act within the meaning of section 282 of the Act.

4. The CIT(A) NFAC further erred in law and on facts upholding the action of the AO of treating the whole amount of Rs.1,28,07,734/- found deposited in bank accounts as deemed income u/s 69A of the Act ignoring the whole amount of payment/withdrawal appearing in such bank accounts.

5. The appellant craves leave to add, amend, delete or alter one or more grounds of appeal.”

3. At the outset itself, the Id. Counsel for the assessee argued that in case of these three appeals, assessee did not get the notices of hearings during the appellate proceedings. Therefore, assessee could not attend before the appellate proceedings, and as a result, the Ld.CIT(A) has passed the *ex parte* order in *limine*. The Ld. Counsel also pointed out that since the assessment order is also framed u/s 144 r.w.s. 147 of the Act and during the assessment proceedings, there was non-compliance by the assessee, hence, Assessing Officer had framed assessment order u/s 144 r.w.s. 147 of the Act. The Learned Counsel stated that one more

opportunity should be granted to the assessee to represent his case before Assessing Officer, therefore after set aside the order of Ld. CIT(A), the matter may be remitted back to the file of the Assessing Officer for fresh assessment.

4. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) submitted that despite of providing several opportunities of hearings, the assessee did not appear before Ld. CIT(A) during the appellate proceedings as well as assessment proceedings before Assessing Officer. The assessee was negligent in his approach; therefore assessee's appeals may be dismissed. In alternatively, Ld. Sr-DR for the Revenue also argued that if the Bench wants to remit these three appeals back to the file of lower authorities then proper cost may be imposed on the assessee.

5. We have heard both the sides and gone through the relevant material on record. We note that during the appellate proceedings, the assessee did not receive notices of hearing therefore assessee could not appear before the Ld. CIT(A). We also note that Ld. CIT(A) has not passed the order as per the mandate of provisions of section 250(6) of the Act. That is, Ld. CIT(A) did not pass order on merit based on the material available on record. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Assessing Officer instead of Ld.CIT(A) to avoid long drawn process in obtaining remand report on

the submission of Ld.AR of the assessee for the reasons that Assessing Officer in his order has mentioned that required details were not furnished, during assessment proceedings. Looking to the facts and circumstances of the present case a cost of Rs.5,000/- (Rupees Five thousand only) is to be imposed upon the assessee for non-compliance/negligence on the part of the assessee to respond to the notices and the same is to be deposited in the account of “**Prime Minister Relief Fund**”. Therefore, we deem it fit and proper to set aside the order of the Ld. CIT(A) and remit the matter back to the file of Assessing Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

6. In the result, assessee’s appeal ITA No.84/Rjt/2024 is allowed for statistical purposes.

7. Now, we shall adjudicate assessee’s appeals in ITA No.85 and 86/Rjt/2024.

8. Considering the facts that we have restored the grounds of appeal raised in quantum assessment to the file of Assessing Officer, therefore, the penalty(ies) imposed u/s 271(1)(b) and . 271(1)(c) of the Act will not survive when the matter in quantum proceedings have restored to the file of Assessing Officer, these penalties do not have leg to stand. However, the Assessing Officer is given liberty to initiate fresh penalty(ies) in accordance with law. In the result, both appeals are also allowed for statistical purposes.

9. In the combined result, all three appeals of the assessee are allowed for statistical purposes. A copy of the instant common order be placed in the respective case file(s)

Order is pronounced on 30/08/2024 in the open court.

Sd/-
DINESH MOHAN SINHA
JUDICIAL MEMBER

Sd/-
DR. A. L. SAINI
ACCOUNTNAT MEMBER

Rajkot

दिनांक/ Date: 30/08/2024

Dkp, Outsourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot