

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

श्रीसंदीपगोसाई, न्यायिकसदस्य एवं श्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 878/JP/2024  
निर्धारण वर्ष/Assessment Year : 2017-18

Shri Raj Kumar Kalwani D-23, Shashtri Nagar Jodhpur	बनाम Vs.	The DCIT (Intl.Tax) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIKPK 5511 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None  
राजस्व की ओर से / Revenue by: Shri Sanjay Nagar, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 11/09/2024  
उदघोषणा की तारीख / Date of Pronouncement: 17/09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A), Delhi-42 dated 28-03-2024 for the assessment year 2021-22 raising therein following grounds of appeal.

“1. That the ld. CIT(A) grossly erred in upholding the order of DCIT for levying penalty of Rs.6,07,072/- u/s 270A(1) r.w.s. 270(A)(8) of the Act.

2. The ld. CIT(A) grossly erred in not considering evidences and explanation submitted during the course of hearing.”

2.2 Although notice of hearing was served upon the appellant through mail, which was communicated on 11. 07.2024 at 13:41:30. Even before this mail another intimation regarding communicating of defects in the present appeal was also sent on 25.06.2024 on the same mail provided to the registry of ITAT. However, still the assessee or his representative didn't appear when the case was called out for hearing. Therefore in the absence of assessee or his representative and in the absence of any adjournment application, it is presumed that the Assessee is not interested in pursuing the present appeal. Therefore we have decided to proceed with the hearing of the appeal.

2.3 On the other hand, the ld. DR present in the court is also ready with the arguments. Hence, we have decided to dispose of the appeal of the assessee ex-parte.

2.4 We have heard the ld. DR and also perused the entire facts of the present case and also the documents placed on record as well as orders passed by the revenue authorities. From the records, we noticed that Assessee had claimed excess LTC loss, amounting to Rs.15,97,874/- which was denied by the AO and ld. CIT(A) upheld the said disallowance by holding as under:-

“6. I have carefully considered the facts of the case, penalty order and written submissions of the appellant.

7 The grounds of appeal raised by the appellant are interrelated and challenge the imposition of penalty of Rs. 6,07,072/- u/s 270A of the IT Act, 1961

8. The appellant has stated in his written submissions that the appellant sold house no. 29A shastri nagar and claimed cost of acquisition of Rs. 3 Crores, claimed stamp duty of Rs 13 Lacs and claimed registration charges of Rs 61 710/- totaling to Rs 3,13,61,710/- under the head capital gain, in return of income filed but the AO considered only 3.03 Crores and not considered remaining charges of Rs.10,61,710/- (Rs 10,00,000/- out of e-stamp duty and Rs. 61,710/- registration charges).

9. As stated by the AO, during the course of assessment proceedings appellant has submitted the copy of sale deed and purchase deed only No explanation was provided on the issue of excess deduction claimed while calculating indexed cost of acquisition of Rs. 15,97,874/-. On perusal of the purchase deed it was noticed by the AO that the alleged property was purchased at a consideration of Rs. 3,00,00,000/- (Three Crore) and stamp duty of Rs. 3,00,000/- (Three Lac) was paid. Indexation of both the amounts was provided to the appellant. Accordingly draft assessment order was passed on 30.12.2022 by proposing addition/ disallowance of Long-Term Capital Loss worth Rs 15,97,874/- In respect of draft assessment order passed by AO u/s 144C (1) of the Income Tax Act, 1961, no objection was filed by the appellant. In absence of any reply the claimed Long Term Capital Loss on sale of property was restricted upto Rs 1,10,51,500/- (12649374 -1597874) by disallowing the loss worth Rs. 15,97,874/-

10. During the course of penalty proceedings, appellant was asked to submit explanation in respect of show cause notice dated 28.02. 2023 as to why an order imposing a penalty may not be passed u/s 270A of the Act. In response to the show cause notice dated 28.02.2023, appellant has submitted that he has incurred Rs. 14,64,910/- on the purchase of property of Rs. 3,00,00,000/- but assessed in the asstt. Year 2013-14 of Rs. 13,61,710/- in the year of purchase on the basis of available payment proof, therefore Rs 3,13,61,710/- was claimed in

the return of income filed as cost of acquisition but taken only Rs 3,03,00,000/- in the assessment order passed by the AO

11. During the course of penalty proceedings appellant has stated that purchase cost is Rs 3,00,00,000/- e-stamp duty paid on 07.08.2012 of Rs 13,00,000/- and registration charges of Rs. 61,710/-paid on 08.08.2012. The appellant has submitted only sale deed and purchase deed of the property. Onus to prove that the payment was made for the above transaction lies with the appellant. It is pertinent to mention here that neither the appellant has submitted proper reply along with supporting documents during the course of assessment proceedings with respect to LTCL nor he has objected with respect to the show cause notice that as to why the indexed cost of acquisition of the property should not be restricted to Rs. 4,56,01,500/- in place of Rs. 4,71,99,374/- Moreover, appellant has also not filed any reply or objected to the draft assessment order passed by AO on 30.12.2022

12. During the course of appellate proceedings appellant has filed similar submissions which have already been filed before the AO during the course of assessment proceedings and during the course of penalty proceedings which was already considered by the AO while passing assessment order and penalty order. Based on the detailed discussion held above, it can be safely inferred that the appellant has no explanation or is not in possession of any document/supporting evidence to prove his contention with respect to the addition made by the AO amounting to Rs 15,97,874/- and the penalty imposed by the AO u/s 270A of the IT Act amounting to Rs 6,07,072/-

13 Based on the above facts, it can be safely concluded that this is a clear case of under reporting of income in consequence of misreporting u/s 270A(1) rws 270A(8) of The Income Tax Act, 1967 Therefore, the penalty imposed by the AO u/s 270A(1) rws 270A(8) of the Income Tax Act, 1961 amounting to Rs 6,07,072/- is hereby upheld Thus, ground no 1 and 2 raised by the appellant are dismissed

14. As a result, the appeal is dismissed.’’

After going through the same and hearing ld. DR, we found that ld. CIT(A) has recorded well reasoned findings, which has not been rebutted by the appellant

either by filing any written submission or placing on record any documents or judgements to controvert or rebut the findings so recorded by Ld CIT (A). Hence, we have no other option except to concur with the findings of the ld. CIT(A). Accordingly, the appeal filed by the appellant stands dismissed.

3.0 In the result, the appeal of the appellant is dismissed with no orders as to cost

Order pronounced in the open court 17/09/2024.

Sd/-

(राठोडकमलेशजयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 17/09/2024

**\*Mishra**

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

1. The Appellant- Shri Raj Kumar Kalwani, Jodhpur
2. प्रत्यर्था / The Respondent- The DCIT, (Intl. Tax), Jaipur
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.878 /JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar