

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 650/JP/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Mohan Ballabh Sharma Thru' L/h: Shri Kanhiya Lal Sharma ABSM & Associates,CA 2 nd Floor,Plot No. 314, Above HDFC Bank, Shree Gopal Nagar, Jaipur-302 019	बनाम Vs.	The ITO Ward-1 Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ATCPS 8378 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anoop Bhatia,CA
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 21/08/2024
उदघोषणा की तारीख / Date of Pronouncement: 24/09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 25-10-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 raising therein following grounds of appeal.

“1.’ The Id CIT appeals has erred in disposing off the ground for initiation of proceeding u/s 147 and issuance of the notice u/s 148 which is void and bad-in- law without adjudication. Under the facts and circumstances of the case the initiation of the proceeding u/s 147

MOHAN BALLABH SHARMA THRU' L/H SHRI KANHIYA LAL SHARMA VS ITO, WARD-1, BHARATPUR

and issuance of the notice u/s 148 which is bad in law and void, is liable to be quashed.

2. The Id CIT appeals has erred in confirming the addition of Rs.71,11,800/ on account of unexplained cash credits of Rs.71,11,800/- u/s 68 on account of cash depositing bank account. Under the facts and circumstances of the case the confirmation of the action of Ld CIT appeals for upholding the addition of Rs. 71,11,800/- may kindly be deleted.

3. The Id CIT appeals has erred in confirming the addition of Rs.24,66,380/- being the receipts of Brij trust registered outside India in which the assessee is beneficiary. Under the facts and circumstances of the case the confirmation of the action of Ld CIT appeals for upholding the addition of Rs.24,66,380/ may kindly be deleted.”

2.1 Apropos Ground No. 1 to 3, it is noticed that the Id. CIT(A) has dismissed the appeal of the assessee by observing as under:-

“6.4.4) In the instant case the AO has clearly established that the appellant has not been able to prove the credits in his saving bank account. In fact the AO has given enough opportunity to the assessee. Even during the course of present appeal proceedings in response to various notices issued fixing the case for hearing, the appellant apart from seeking adjournments, has not furnished any cogent evidence in support of the grounds raised against the above addition. The appellant could not furnish any satisfactory evidence to contradict the findings of the AO. Even details with regard to the formation of the Brij Trust, its objectives, details of transfers from the Trust to appellant, date of transfer etc., were not furnished in course of appellate proceedings in spite of several opportunities given to the appellant. It is noticed that the appellant time and again has been seeking adjournments without submitting corroborative evidences.

6.4.5) The appellant has not made any valid submissions both at the time of assessment proceedings and also at the time of appellate proceedings. It is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions.

6.4.6) In the absence of necessary documentary evidence from appellant, relief cannot be granted without supporting explanation or evidence. In my considered view, as the appellant could not bring on record any cogent explanation/evidence to rebut the findings of AO, the addition made in the assessment order cannot be deleted. Thus, addition made of Rs.71,11,800/- under Section 68 in the hands of assessee is sustained and the relevant grounds are dismissed.

6.5) Ground no.3 is raised against addition of Rs.24,66,380/-. The AO in course of assessment proceedings has observed that the appellant sought exemption of receipts from the Brij Trust u/s 56(2)(vii) being, gift from relative. Since the appellant himself was the beneficiary of the Trust, the AO held that exemption is not sustainable. Further, as the Trust was situated in USA and the benefit being received in India, the same comes into the scope of total income as per section 5(1)(c) of the I.T.Act. It was held by the AO that the agreement made between India and USA for avoidance of double taxation of income with USA vide Notification No.GSR 990(E), Dated 20.12.1990 was also perused and there was no provision in the agreement regarding the non taxability of beneficiary residing in India, if the benefit was received in India based on the Trust located in USA. In my considered view, as the appellant could not bring on record any cogent explanation/evidence to rebut the findings of AO in course of present appellate proceedings, the addition made by the AO treating the gift amount of Rs.24,66,380/- as income from other sources is upheld and the relevant ground is dismissed.

7.0) In the result, the appeal is dismissed.’’

2.2 During the course of hearing, the ld. AR of the assessee submitted that the assessee was ex-parte before the ld. CIT(A) for the reason that earlier ld. AR engaged by the assessee could not properly follow up the matter and thus could not advance the arguments / written submission before the Revenue Authorities and thus he prayed to restore the matter back to the file of the ld. CIT(A) for afresh adjudication and justice to the assessee.

2.3 On the other hand, the ld. DR strongly relied upon the orders of the lower authorities and objected to the request of the ld. AR now arguing the case of the assessee.

2.4 We have heard both the parties and perused the materials available on record. During the course of arguments, we noticed that the ld. CIT(A) has categorically mentioned in his order that the assessee could not prove the credit in his saving bank account in spite of the fact that several opportunities were given to the assessee. We also noticed that the ld. AR of the assessee could not furnish cogent evidences in support of the grounds raised against the above additions. Although the ld. AR has placed on record the copy of the paper book containing pages 1 to 95 and submitted that all these documents were placed before the Revenue Authorities yet the same were ignored and not appreciated. Whereas on the contrary, the Revenue Authority as to the respective orders have mentioned that the assessee could not furnish any satisfactory evidences to contradict the

findings of the AO and details with regard to the formation of Brij Trust, its objective, details of transfer from trust to the assessee, date of transfer were not furnished during the course of assessment as well as appellate proceedings. From the entire conspectus of the case, the Bench feels that 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.2.000/- is imposed upon the assessee which will be deposited by the assessee in the Prime Minister Relief Fund. However, we are of the view that lis 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.

2.5 Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any

MOHAN BALLABH SHARMA THRU' L/H SHRI KANHIYA LAL SHARMA VS ITO, WARD-1, BHARATPUR
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 appeal of the assessee is allowed for statistical purposes
with no orders as to costs.

Order pronounced in the open court on 24 /09/2024.

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 24 /09/2024

*Mishra

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

1. The Appellant- Shri Mohan Lal Sharma, Thru' L/h Shri Kanhiya Lal Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle -3, Jaipur
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.650/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar