

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 578/JPR/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Mahaveer Prasad and Sons (HUF) Mahavir Bhawan, Mori Ke Hanuman Ji Ki Gali, Behind Rampura, Kotwali, Old Dhanmandi, Kota.	बनाम Vs.	Income Tax Officer Ward-2(1), Kota.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAIHM7006G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh (Adv.)  
राजस्व की ओरसे / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 02/07/2024  
उदघोषणा की तारीख / Date of Pronouncement: 11/09/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Kota dated 28.02.2024 [herein after referred to as "CIT(A)"] for the assessment year 2017-18, which in turn arise from the order dated 07.12.2019 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter "Act") by the ITO, Ward-2(1), Kota.

2. The assessee has raised the following grounds of appeal:-

"1. That in the law and in the facts and circumstances of the case the Id. CIT(A) grossly erred in passing the ex-parte order and confirming the addition made by the Id. Assessing Officer.

2. That in the law and in the facts and circumstances of the case the Id. AO has grossly erred in treating the cash deposited of Rs. 9,20,000/- during the period of demonetization from undisclosed sources as against the income from genuine and bonafide sources of the assessee.

3. That in the law and in the facts and circumstances of the case the Id. AO grossly erred in misinterpreted and twisted the facts of the case and evidences adduced and without application of mind help in his assessment order that assessee has recovered cash from parties soon after the demonetization and on that very basis held that explanation officered by assessee is not satisfactory.

4. That the appellant craves leave to add, amend or alter any ground at/before at the time of appeal."

3. Brief facts of the case are that the return of income was filed declaring total income at Rs.3,59,710/- on 18.08.2017. The case of the assessee was selected for limited scrutiny under CASS to examine source of cash deposit during demonetization period. Therefore, notice u/s 143(2) was issued to the assessee on 13.08.2018 which was duly served upon the assessee by e-mail "bestsince1993@gmail.com". Notice u/s 142(1) alongwith questionnaire was issued on 22.02.2019, 19/09/2019, 26/09/2019, 04/10/2019, 19/10/2019, 04/11/2019, 11/11/2019 and same were duly served upon the assessee, for calling certain information/documents required to finalize assessment proceedings. In

response to these notices the assessee filed reply/clarification on 13.11.2019. A further questionnaire was issued on 15.11.2019 and date was fixed for reply on 15.11.2019. Again notice u/s 142(1) issued on 20.11.2011 and fixed for 22.11.2019. In response to the notice the assessee filed reply on 22.11.2019.

3.1 The Id. AO noted that the assessee was requested to explain the source of cash deposits of Rs. 10,70,000/- made by him in his Bank Account No.662010100011154 in Bank of India during demonetization period. The assessee explained that he had given loans in small amounts to "Petty labourers etc. Which includes Rikshaw Pullers, Construction Labourers and House hold maids etc. The assessee further explained that soon after demonetization, the amounts were returned by these "petty labourers and he deposited the amount received by him in his Bank account, The assessee has provided a list of 46 persons from whom he received back an amount of Rs. 9,03,037/-. In this way, the assessee has put up his explanation for the source of cash deposits of Rs. 10,70,000/-. The assessee was requested to provide certain details regarding the petty debtors like confirmation, address, contact no. ledger a/c etc. so that the genuineness of the amount received from debtors may be verified. The assessee was also requested to produce some debtors with their identify proofs like Aadhar Card/ Voter ID for

verification. The assessee did not provide any details, rather, questioned the jurisdiction of the assessing officer in doing so.

3.2 The Id. AO further noted that the assessee has not been able to substantiate his claim of receiving money from her debtors. He has not been able to provide even the most basic of documents like confirmation, address, identity proof etc. The basic onus is on the assessee to provide these details so that the veracity and genuineness of the claim may be examined. By not providing these details, the assessee has failed to discharge his onus. Apart from this, there is one more issue that arises out of the assessee's explanation. According to the assessee, his debtors are "petty labourers" which shows that they are men of no means and are earning their livelihood through manual labour. In the list of 46 persons from whom cash has been shown to have been received, the receipts range from 18,344/- to 21,432/- and from most of them, the receipts are above Rs. 19,000/- but below Rs. 22,000/- when all these persons are petty labourers then it is not possible that immediately after demonetization, they would be in a position to pay back the amounts to the tune of Rs. 18,344/- to Rs. 21,432/- in one go. A labour class person can not be expected to provide this much amount at one go and that too immediately.

3.3 Further Id. AO noted that the assessee has not been able to discharge his onus of proving the genuineness of the source of cash deposited by him. Looking

to the return of the assessee, a amount of Rs. 1,50,000/- is accepted to be available in the form of domestic savings. The remaining amount of Rs. 9,20,000/- is hereby added in his total income u/s 69A.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The Ld. CIT(A) observed that various notices were issued to the assessee on requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued, the ld. CIT(A) dismissed the appeal of the assessee ex-parte. The extract of the finding of the ld. CIT(A) is reproduced as under:-

“Ground No. 1:

Upon perusal of the ground raised by the appellant and reasoning given by the AO in the assessment order, it is held that in the circumstances of the case and the evidence adduced, the order of the AO is neither against the law nor against the facts of the case.

Therefore the ground No. 1 is dismissed.

Ground No. 2:

Upon perusal of the ground raised by the appellant and reasoning given by the AO in the assessment order, it is found that the appellant had not been able to substantiate the claim of receiving money from the appellant's debtors. The appellant had not been able to provide even the most basic of documents like confirmation, address, identity proof etc. The basic onus was on the appellant to provide those details so that the veracity and genuineness of the claim might be examined. By not providing those details, the appellant had failed to discharge the appellant's onus. Therefore, it was proved that the appellant had not been able to discharge the onus of proving the genuineness of the source of cash deposited by the appellant. Looking to the return of the appellant, an amount of Rs. 1,50,000/- was accepted to be available in the form of domestic savings. The remaining amount of Rs. 9,20,000/- was rightly added by the AO to the total income

of the appellant u/s 69A as there had been failure on the part of the appellant in submitting the required information and no further satisfactory explanation has been filed during the appellate proceedings.

Therefore the Ground No. 2 raised by the appellant is dismissed.

Ground No.s 3, 4 & 5:

Upon perusal of the ground raised by the appellant and reasoning given by the AO in the assessment order, it is found that according to the appellant, the appellant's debtors were "petty labourers" which showed that they were men of no means and were earning their livelihood through manual labour. In the list of 46 persons from whom cash had been shown to have been received, the receipts ranged from 18,344/- to 21,432/- and from most of them, the receipts were above Rs. 19,000/- but below Rs. 22,000/- when all those persons were petty labourers then it was not possible that immediately after demonetization, they would be in a position to pay back the amounts to the tune of Rs. 18,344/- to Rs. 21,432/- in one go. A labour class person could not be expected to provide that much amount at one go and that too immediately after demonetization. Hence, considering the above facts, it is held that the claim of the appellant that the AO had misinterpreted and twisted the facts of the case and evidences adduced and without application of mind held in his assessment order, is rejected. Upon perusal of the ground and reasoning of the AO, it is held that there has been failure on the part of the appellant in submitting the required information and no further satisfactory explanation backed by any supportive evidence has been filed during the appellate proceedings. Therefore, the demand to quash or modify the order on this ground is also rejected.

Therefore the ground No.s 3, 4 & 5 are dismissed.

Ground No. 6 upon perusal of the ground raised by the appellant it is held that the appeal ground is general in nature and no adjudication is required in this ground."

5. Aggrieved by the order of the Id. CIT(A), the assessee preferred before us. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. He further pointed out from the order that the order of

Ld. CIT(A) is silent about the notices issued and there is no reference as such. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. CIT(A) in the interest of equity and justice.

6. Per contra, the ld. DR relied on the order of the ld. CIT(A) and submitted that the assessee is not serious about pursuing his case and therefore, the order should be sustained.

7. After hearing both the parties and perusing the materials available on record, the Bench noted that the AO and the ld. CIT(A) have passed the ex-parte order after giving several opportunities to the assessee and the assessee has not filed any submissions and evidences relating to the above case before the ld. CIT(A) also confirmed the action of the AO. It is also noted that 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 order of the ld. CIT(A). The Bench feels that one more chance to be given to the assessee to contest the case before the ld. CIT(A) as there is no mention by the ld. CIT(A) that how many notices were issued to the assessee before passing an order. Based on that we restore the matter to the file of ld. CIT(A) for afresh adjudication and the assessee will submit the necessary documents / evidences concerning the above mentioned appeal. 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.

8. 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 reflection or expression on the merits of the dispute, which shall be adjudicated by Id. CIT(A) independently in accordance with law.

In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11/09/2024.

Sd/-  
(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-  
(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/09/2024

\*Santosh

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

1. The Appellant- Mahaveer Prasad and Sons (HUF), Kota.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 2(1), Kota.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 578/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar