

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 191/JPR/2024
निर्धारण वर्ष / Assessment Year : 2018-19

Mohan Singh Shop No. 17-18, Vidhyadhar Enclave- 1, Central Spine, Vidhyadhar Nagar, Jaipur.	बनाम Vs.	Income Tax Officer, NCRB, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: FQFPS4394H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri S.K. Gogra (C.A.)
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 26/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 13/09/2024

आदेश / ORDER

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

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 21.12.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "CIT(A)/NFAC"] for the assessment year 2018-19, which in turn arise from the order dated 22.04.2021 passed under section 143(3) read with section 144B of the Income Tax Act,1961 (hereinafter "Act") by the AO.

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

"1. That Ld. AO has grossly erred in facts & in law and all the allegations as made out in the assessment order are not accepted to the appellant and are denied outright and further Ld. CIT(A) has further erred in confirming same without any basis.

2. That Ld. AO has erred in passing of ex-parte assessment u/s 143(3) r.w.s. 144B of I.T. whereas entire details have been furnished by assessment and thus passing of ex-parte assessment may please be declared as illegal and be quashed.

3. That Ld. AO has grossly erred while doing addition of purchase made from agriculturist URD purchase of Rs. 266591095/- of food grains etc. and thus without looking to the facts of the case entire URD purchase is wrongly treated as unverifiable purchase and added to total income and such action of Ld. AO is absolutely illegal and unjustified in the facts of the case and may please be deleted.

4. That Ld. AO has grossly erred while doing addition of purchase made from agriculturist URD purchase of Rs. 266591095/- of food grains etc. and thus without looking to the facts of the case entire URD purchase is wrongly treated as unverifiable purchase and added to total income and such action of Ld. AO is absolutely illegal and unjustified in the facts of the case and may please be deleted.

5. That Ld. AO has erred in levying of interest u/s 234A, 234B, 234C which being consequential in nature and may please be deleted.

6. That the appellant craves leave to add, amend or alter any of the grounds of this petition and further request to allow to submit the written submission at time of hearing of appeal."

3. During the course of hearing, the Bench noted that there is delay of one day in filing the appeal. For which assessee has not filed any application for condonation of delay. But since the delay is only for one day, we are condoning the delay and dispose the appeal on its merit.

4. Brief facts of the case are that the assessee has filed return of income for AY 2018-19 electronically on 10.10.2018 declaring total income of Rs. 10,38,940/-. The assessee case was selected for complete scrutiny under CASS and notice u/s 143(2) dated 22/09/2019 was issued, calling it to produce certain details/explanations/materials on which relied or support of the income admitted in the return filed which was selected for scrutiny, through e filing portal. The notice issued has duly been served upon the assessee. Thereafter, notice u/s 142(1) of the Act was issued on 22.03.2021. In response to the notice issued the assessee furnished the details as called for in the annexure to the notice issued under section 142(1) dated above and verified.

4.1 The ld. AO noted that the assessee is in the business of trading of agricultural goods. During the FY 2017-18, the assessee has made purchases of Rs. 1,72,21,00,752/- from suppliers who are either non-filer(s) or have filed non-business ITR. The assessee was requested to substantiate this purchases including purchase from unregistered parties. The assessee has furnished ledger accounts for purchases to the extent of Rs. 1,45,55,09,657/- along with GST Return. The assessee was requested to submit name of the person from whom purchases made, Pan no. and quantity purchases etc. to verify the genuineness of purchase made from unregistered parties. No proof/evidence submitted by the assessee for the

purchase of goods from unregistered parties. In view of this fact, assessee's purchase stands unverifiable to the tune of Rs. 26,65,91,095/-(172,21,00,752-145,55,09,657), therefore, ld. AO made addition on account of unexplained purchase of Rs. 26,65,91,095/-.

5. 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 and 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 order. The extract of the finding of the ld. CIT(A) is reproduced as under:-

“5.4 As brought out above, the appellant did not file any submissions during the appellate proceedings, and as such, the verification process undertaken by the AO which could not be completed due to the appellant not filing relevant details cannot be undertaken. The appellant has not brought on record the identity and other details of the parties from whom he made purchases. No evidence of purchases being actually made was filed. In fact, no document was filed at all by the appellant to establish that the purchases in question did indeed take place. As such, it is clear that the appellant has nothing to submit in support of his contention made in the grounds of appeal and statement of facts, and therefore, I do not find any basis to interfere with the findings of the AO.

5.5 Though the appellant did admittedly receive the order passed u/s 143(3) r.w.s. 144B of the Act and duly filed the present appeal, he, however, after filing the appeal, chose not to respond to any of the notices listed above issued by this office. It has been held by several courts that the law assists those who are vigilant and not those who sleep over their rights as found in the Maxim "Vigilantibus Non Dormientibus Jura Subveniunt. The maxim refers to the obligation of individuals to not only be aware of their rights under the law, but also to be vigilant while exercising or using the same. Hence, as an aware citizen, it was incumbent upon the appellant to be aware of the statutory provisions, to

simultaneously comply with the requirements of law, and that it should pursue the legal remedies available diligently.

5.6 The Hon'ble High Court of Delhi, in the case of Moddus Media Pvt. Ltd. vs. M/s Scone Exhibition Pvt. Ltd. (RFA 497/201 dated 18 May, 2017), while holding that the appellant ought to be vigilant and pursue the appeal filed by it, had observed as under: "11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance..... After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants....."

5.7 By his own act, the appellant has failed to remain vigilant and did not avail the opportunity to submit his point of view/contention, as he did not respond to various notices issued. The fact that the appellant did receive the order and filed the present appeal, but chose not to respond to any notices issued by this office clearly establish total disregard to the due process of law. Therefore, the conclusion that the appellant could not controvert the findings given by the AO on merits of the issue either is inescapable.

5.8 In view of the above, I am of the considered view that the Assessing Officer was justified in making addition of Rs. 26,65,91,095/- in his order passed u/s 143(3) r.w.s. 1448 of the Act, and accordingly, the grounds of appeal no. 1 and 2 of the appellant are "Dismissed".

GROUND OF Appeal No. 3

6. In this ground of appeal, the appellant has challenged the action of the AO to suo-moto pass a rectification order, subsequently, and increasing the demand without giving any opportunity of being heard to the appellant. It is pointed out that the said rectification order passed u/s 154 of the Act is an appealable order in itself, distinct from the impugned assessment order under challenge in the present appeal. If the appellant has any grievance against the same, he is free to file an appeal before the CIT (A) against that rectification order.

As such, the ground of appeal no. 3, being not related to the assessment order dated 22.04.2021, is dismissed.

7. In the result, the appeal is "Dismissed".

6. As the assessee did not receive any relief from the order of the Id. CIT(A), assessee preferred the present appeal before us. The Id. AR for the assessee has filed a detailed written submissions in support of the grounds so raised and is reproduced hereinbelow:-

“That the appellant is a wholesale trader of food grains and wherein he used to purchase goods i.e. food grains from various registered dealers and from Agriculturists also. That Ld AO while passing the assessment under faceless mechanism has added purchase of Rs.26,65,91,095/ by treating them as unexplained purchase whereas all these purchase are from Unregistered dealer i.e. from Agriculturists. That during the course of assessment the Trading Account was submitted and which is reproduced as below:-

TRADING ACCOUNT (AUDITED)
For the financial year: 2017-18 (1.4.2017 to 31.3.2018)

Particulars	Amount	Particulars	Amount
Opening Stock	194216495.02	Sales	1918271041.89
Purchases	1722100757.87		
Gross Profit	1953789.00		
Total	1918271041.89	Total	1918271041.89

That bifurcation of purchase were given as below:-

Particulars	Purchase Amount	VAT/GST	Total
Purchase VAT 14.5%	122183725.00	17716640.00	139900365.00
Purchase VAT 3%	89146.00	2674.00	91820.00
Purchase GST 5%	1099070913.00	54953548.00	1154024461.00
Purchase GST 5.5%	153139121.00	8422651.00	161561772.00

Total:	1374482905.00	81095513.00	1455578418.00

Purchase from Unregistered

dealers/Purchase from Agriculturists	347617852.87	0.00
	
Total Purchase:	1722100757.87	81095513.00

That while passing the assessment order Ld AO has grossly erred in computing the purchase amount and that is erroneously computed for Rs. 145,55,09,657.00 and which is sum total of Taxable Purchase VAT/GST amount whereas tax amount paid on purchase is debited to VAT/GST Purchase Account and only purchase are recorded for as purchase. Ld AO while computing the amount of undisclosed purchase as difference of total purchase and taxable purchase + VAT/GST i.e.

(a) Purchase as per Trading Account 1722100757.87

(b) Purchase as computed by AO during assessment proceedings

Total Taxable Purchase	1374482905.00
VAT/GST paid on purchase	81095513.00
Total	1455578418.00

Difference (1722100757.87-1455578418.00)= Rs.26,65,22,339.87

This difference computed is an erroneous calculation of purchase difference whereas difference of Rs.34,76,17,852.87 is a difference of Purchase made from Agriculturist/ Unregistered dealers (URD Purchase). That complete details purchase were filed before Ld AO during the course of assessment proceedings and before appellate authority and apart from same the details VAT/GST return as submitted before VAT/GST Authorities were also filed before Ld AO during the course of assessment and during course of appellate proceedings. Thus Ld AO without looking for of all these facts has made addition of Rs. 266522339/- to total income by treating the entire purchase as bogus purchase. It is here to submit that Ld AO has not quoted under which provision of Income tax Act he has made such addition to total income and thus merely on his whims & fancies the purchase of Rs. 266591095/- is treated as unverifiable purchase and added to total income and further CIT (A) on the ground of non submission of any documents has also confirmed same and is added to total income and thus being aggrieved from order of Ld AO and from CIT(A).”

7. During the course of hearing, the ld. AR for the assessee prayed that the Id. CIT(A) and the AO both have passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided

one more opportunity to advance his arguments/submissions before the ld. AO on merits. In the interest of equity and natural justice the assessee praying for the one chance before the ld. AO to advance the argument on the merits of the case.

8. Per contra, ld. DR objected to the prayer of the assessee and submitted that even the assessee did not represent case before the ld. AO and CIT(A) both stage. Now assessee pray for equity and justice is not fair. Ld. DR therefore, relied on the order of the lower authorities.

9. We have heard both the parties and perused the materials available on record. The bench noted from the order of Ld. CIT(A) that the appeal of the assessee was dismissed by the ld. CIT (A) for want of non-prosecution of the appeal as the assessee did not respond to the 4 notices issued by the Ld. CIT(A). Before the Ld. AO also the assessee did not appear or filed any reply to the notices which were issued by the ld. AO during the assessment proceedings, finally the assessment completed ex-parte assessment u/s 143(3) r.w.s. 144B of the Act on 22.04.2021 because the assessee has not submitted any evidence pertaining to genuineness of purchase from unregistered parties. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that *“That Ld. AO has erred in passing of ex-parte assessment u/s 143(3) r.w.s. 144B of I.T. whereas*

entire details have been furnished by assessment and thus passing of ex-parte assessment may please be declared as illegal and be quashed.”

Looking to these aspect of the matter the Bench feels that the assessee could not advance their arguments / submissions to contest the case before the ld. CIT(A) and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing. Considering that aspect of the matter we hold to remand back the matter to the file of the ld. AO as the order of assessment is also ex-parte. Thus, the ld. AO will decide the issue on merits after examine the facts and materials based on evidence and submission of the assessee. At this stage we note that the assessee has purchased the agricultural food items which ultimately sold and that being not disputed the whole purchase cannot be added. Thus, looking to these overall aspect we remand the matter back to the file of ld. Ao. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO.

10. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection

or expression on the merits of the dispute, which shall be adjudicated by the Id. AO 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 13/09/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 13/09/2024

*Santosh

आदेश की प्रति लिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Mohan Singh, Jaipur.
2. प्रत्यर्था / The Respondent- ITO, NCRB, Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 191/JPR/2024)

Sd/-

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

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar