

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 1189/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Krishan Kumar 332, Shivaji Nagar Shastri Nagar, Jaipur	बनाम Vs.	Income Tax Officer, Ward 1(1), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BPXPK 7335 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rohan Sogani, CA
राजस्व की ओर से / Revenue by: Sh. Gautam Singh Choudhary (JCIT)
(through VC.)

सुनवाई की तारीख / Date of Hearing : 02/12/2024
उदघोषणा की तारीख / Date of Pronouncement: 09/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way this appeal, the assessee has challenged order dated 19/08/2024 passed by CIT(A), National Faceless Appeal Centre, Delhi [in short "CIT(A)/NFAC"]. t

The assessee had challenged before NFAC, the order of assessment dated 15.12.2019, passed by the Income Tax Officer, Ward 1(5), Jaipur [

for short AO] under section 143(3) of the Income Tax Act [for short “ the Act”]. The dispute relates to the Assessment Year 2017-18.

2. Impugned order passed by CIT(A), NFAC has been challenged raising following grounds of appeal:

“1. In the facts and circumstances of the case and in law, Id. CIT(A)/National Faceless Appeal Centre ("NFAC") has erred in passing the order, in the first appellate proceedings, ex-parte, without providing adequate opportunity to the assessee, to present his case and make appropriate submissions. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may be please be granted by quashing the entire order passed by the Id. CIT(A)/NFAC, being passed against the principles of natural justice.

2. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in confirming the action of the Id. AO, in making addition amounting to Rs. 35,45,000 u/s 69A of the ITA. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by Id. AO and confirmed by Id. CIT(A).

3. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in confirming the action of the Id. AO, in invoking provisions of Section 115BBE of the ITA. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of Section 115BBE, as being not in accordance with the relevant law.

4. The assessee craves his right to add, amend or alter any of the grounds on or before the hearing.

3. Brief facts, as emerge from the record, are that the assessee e-filed his return of income in ITR-1 on 27.10.2017 declaring total income of Rs. 3,86,040/- after claiming deduction under chapter VI-A amounting to Rs.

14,096/-. The case was selected under Scrutiny through CASS. A notice u/s 143(2) of the Act issued to the assessee on 13.08.2018 was served upon the assessee calling upon him to submit the evidence/information in support of return of income filed through electronically or before 29.08.2018. But, no compliance was made by the assessee.

There was continuous failure / non compliance of statutory notices by the assessee. The AO noted that assessee is not co-operating to complete the assessment proceedings. However, in the interest of natural justice, again notice u/s 142(1) dated 06.11.2019 was issued along with show cause notice for making the assessment proceedings u/s 144 as an ex parte assessment in view of the material available on record.

In compliance of show cause/notice u/s 142(1) issued the AR of the assessee sent required details.

It was found that during the period from 09.11.2016 to 30.12.2016 (demonization period), the assessee had deposited cash of Rs.33,00,000/- in his current account No.40301000000223 with Malviya Urban Co-op Bank, Jaipur and Rs.2,45,500/- in saving bank account No.9160100531398 with Axis Bank Ltd. Jaipur.

The assessee put forth his claim that he was engaged in business of Jewellery and bullion since 2013 and deposits arose from his business activities.

On verification of trading account, it was found that during the year opening stock was shown "Nil"; Purchases to the tune of Rs.1,33,45,306/- were shown; sales of Rs. 1,37,55,319/- were found to have been recorded.

On verification of the returns of income for the assessment year 2015-16, 2016-17, 2018-19 and 2019-20 uploaded from the system, it was noticed that during said years, the assessee had shown income from salary only.

The assessee was found to have declared business income in assessment year 2017-18 only. Business was stated to have commenced from 4.11.2016.

To verify the claim of the assessee, the Assessing Officer directed Inspector Shri V.S.Palawat to make enquiry of business premises of the assessee. The Inspector reported that no business activity was found being carried out at the given address. In this regard, Assessing Officer took into consideration photograph of the premises of the assessee produced by the the Inspector.

On verification of bank account statement of Malviya Urban Co-op Bank, it was found that first entry of 31.03.2014 pertained to opening balance amounting to Rs. 40,191/- and next entry of 24.11.2016 was of cash deposit (SBN) amounting to Rs. 30 lakh and next to that was entry of 30.11.2016 about cash deposits (SBN) amounting to Rs. 3 lakh.

To verify the source of said deposits, summon u/s 131 of the IT. Act, 1961 was issued to the assessee on 03.12.2019. The assessee attended the proceedings on 6.12.2019. Statements on oath were recorded by the Assessing Officer.

In reply to Q.No. 8, the assessee admitted to have deposited in cash Rs.33,00,000/- after demonetization, and stated that the amount was from cash sales in the months of September & October, 2016. However, no opening stock was made available by the assessee.

As stated in statements recorded u/s 131, the assessee claimed to have purchased gold/silver on credit basis. However, he did not furnish details of payments to the persons/parties as regards said purchases.

During the proceedings, the assessee produced ledger account of purchases and sales and copies of bills. On verification of same, it was noticed that assessee had sold gold ornaments on 11.10.2016 and

15.10.2016 without purchases as no opening stock was available with the assessee.

It was noticed that first bill regarding purchase of gold bar was of 04.11.2016. The assessee was found to have furnished bogus sales bill, as complete address of the buyer was not mentioned therein.

When the above facts were brought to the notice of the assessee for his explanation, in answer to Question No. 13 he sought time to furnish clarification on 07.12.2019, after examination of his books of account . However, no clarification was furnished by the assessee till the date of passing of order. No complete books of account were produced by the assessee. As noticed above, he produced purchase/sales bills and cash book only.

So, AO was of the view that the entire edifice of the claim of the assessee was basically a colourable device to give the colour of genuineness to assessee's unexplained cash deposits during demonetization period.

Since the assessee failed to explain with supporting documentary evidence nature and source of cash deposited total at Rs. 33,00,000/- in his bank account with Malviya Urban Co-operative Bank Ltd. during demonetization period, said amount was added to the income of the

assessee and charged to income tax as unexplained money u/s 69A r.w.s 115BBE treading undisclosed income under the head other sources.

4. Aggrieved by the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A).

Apropos to the grounds raised, the relevant findings of the Id. CIT(A) are reproduced below:

“4. During the course of appeal proceedings, hearing notices were sent on several dates. From March, 2021, this case was posted for hearing. On every occasion, the appellant filed adjournment letters only. He did not make any attempt to disprove the facts recorded in the assessment order. I have perused the order passed by the AO. In this case, the AO conducted all the enquiries that are deemed to be carried out and concluded that the cash deposited into the bank account was unexplained money of the appellant. It is to be mentioned here that the AO verified all the returns of income filed by the appellant from AY 2015-16 and recorded that the appellant admitted only Salary Income. In the AY 2017-18 alone, the appellant claimed that he is engaged in business activity whereas that claim was also verified and found incorrect. As the assessment order is speaking and the appellant is not willing to respond to the notices issued, the addition made by the AO is upheld and the grounds taken are dismissed.”

5. Ld. AR for the assessee has submitted that Id. CIT(A) has dismissed the appeal of the assessee without giving proper opportunities to the assessee.

Vide affidavit dated 19.11.2024, the assessee has submitted that none of the last mentioned 3 notices at Sr. No. 5 of the affidavit read with

the screen-shot of e-mail, was served upon the assessee on his registered email address provided in Form 35 and on the Income Tax Portal, and therefore, the assessee remained non compliant.

The assessee admits that on earlier occasions he had sought adjournment. In this situation, it is submitted on behalf of the appellant that the observations recorded by CIT(A) that on every occasion, the appellant filed adjournment are incorrect. To support this contention the Id. AR of the assessee has relied upon the said affidavit .

The affidavit reads as under:-

AFFIDAVIT

KRISHAN KUMAR, s/o Shri Chothmal Sharma, aged 33 years, r/o 332, Shivaji Nagar, Shastri Nagar, Jaipur – 302016 Rajasthan, do hereby solemnly affirm and declare as under:

1. That I am an individual engaged in the business of jewellery during the year under consideration, i.e. Financial Year 2016-17, relevant to Assessment Year 2017-18.


2. That assessment order passed under Section 143(3) of the Income-tax Act, 1961, dated 15.12.2019, wherein addition of Rs. 35,45,000 was made to my total income for the year under consideration.

3. That against the said order, I preferred an appeal before the National Faceless Appeal Centre (“NFAC”) by filing Form 35 dated 25.12.2019 on the Income Tax Portal.

4. That while filing Form 35 and for all communication/intimation, I had provided my email address – kkomsharma1991@yahoo.com.

5. That prior to the passing of order by the NFAC, three notices were issued to me on the below-mentioned dates, and the notices as mentioned above are enclosed herewith from pages [Pg. No. 1 to 6].

S.No.	Date of Notice
1.	16.07.2024
2.	03.07.2024
3.	14.06.2024

ATTESTED

B. S. MAURYA
 Notary (Govt. Of Rajasthan)
 Sodala, Ajmer Road


29 NOV

6. That the aforementioned notices, which were issued by the NFAC, were not sent to my registered email address, as provided by me in Form 35 and on the Income Tax portal.
7. That since the notices were not served on my registered email address, I was not aware of the fixation of my case before the NFAC.
8. That the notices were not sent to my registered email address can be substantiated from the screenshots of my email account. The screenshots clearly show that on the dates when the notices were issued to me, no emails were received on my registered email address. A screenshot of the relevant extract of my email account is enclosed herewith from pages [Pg. No. 7 to 8].
9. That the mobile number – 7014484332, as provided on my Income Tax portal and in Form 35, did not belong to me and instead belonged to a staff member of my earlier chartered accountant. As a result, I did not receive any SMS communication on the said mobile number in relation to the notices served on me by the NFAC.
10. That thereafter, upon enquiring with the staff member of my earlier chartered accountant, I came to know about the order having been passed in my case by the NFAC *ex-parte* on 19.08.2024.
11. That the present appeal has been preferred by me before the Hon'ble ITAT Jaipur Bench against the *ex parte* order passed by the NFAC for the relevant year.

I solemnly affirm and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief. No part of it is false, and nothing material has been concealed therein.

Place: Jaipur

Date: 29-11-2024

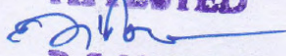

DEPONENT

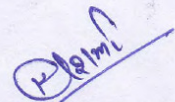
VERIFICATION

I, KRISHAN KUMAR, do hereby verify on oath that the contents of the affidavit above are true to my personal knowledge and nothing material has been concealed or falsely stated.

Place: Jaipur

Date: 29-11-2024

ATTESTED

B. S. MAURYA
Notary (Govt. Of India)
Sodala, Ajmer Road, Jaipur


DEPONENT

6. Per contra, Ld. DR has relied upon the findings recorded in the order of Id. CIT(A) submitted that the assessee remained non compliant before Id. CIT(A) as well as before AO.

Ld. DR also submitted that when the assessee remained a salaried person throughout last year and this year, it remains unexplained as to how he indulged in business activities. In this regard, reference has been made to the observations made by AO in disbelieving the story of doing business activities not supported from the verification done by the Inspector.

Further it has been submitted that when the assessee did not bring on record anything to rebut the findings of lower authorities that the assessee had no opening stock in hand, this appeal is to be dismissed having no merits.

7. We have considered the rival contentions and perused the material on record. Based on the evidences in the form of affidavit and screen-shot e-mail ID the assessee, we find Ld. CIT(A) has made observations about seeking of adjournment by the assessee before him on every occasion, which are general in nature. Revenue has not controverted the deposition on affidavit of the assessee.

Thus, we find that before passing the impugned order, appellant was not given an opportunity of being heard, and that principles of natural justice were violated.

8. Ld. AR of the assessee has also argued that the report of the Inspector was not confronted to the assessee and that same was relied on without allowing the assessee an opportunity to cross examine the inspector.

As is evident, the assessee was not provided any chance to controvert what was reported by the Inspector.

Having regard to all this, we deem it fit case to remand the matter to the files of Assessing Officer to examine the evidence and the contentions of the assessee afresh after providing sufficient opportunity of being heard to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes, and while setting aside the impugned order and the impugned assessment, the matter is remanded to the files of Assessing Officer to decide the matter afresh after providing sufficient opportunity of being heard to the assessee.

Order pronounced in the open court on 09/12/2024

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 09/12/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Krishan Kumar, Jaipur
2. प्रत्यर्धी / The Respondent- Income Tax Officer, Ward-1(1), Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 1189/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar