

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

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

आयकर अपील सं./ITA No. 1197/JP/2024
निर्धारण वर्ष/Assessment Year: 2011-12

Shri Dashrath Singh S/o Shri Nathu Singh, Dhani Birju Singh Ki, Khori, Shahpura, Jaipur 303 103	बनाम Vs.	The ITO Ward- Behror Behror
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: CUPPS 9136 Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 1198/JP/2024
निर्धारण वर्ष/Assessment Year: 2011-12

Shri Dashrath Singh S/o Shri Nathu Singh, Dhani Birju Singh Ki, Khori, Shahpura, Jaipur303 103	बनाम Vs.	The ITO Ward- Behror Behror
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अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assessee by : Shri Ravi Kumar Bansal, CA
राजस्व की ओरसे/ Revenue by: Shri Gautam Singh Choudhary (JCIT), DR.

सुनवाई की तारीख/Date of Hearing : 04/12/2024
उदघोषणा की तारीख/Date of Pronouncement : 04 /12/2024

आदेश/ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

Both the above captioned appeals pertain to the assessment year 2011-12.
As requested, both the appeals have been taken up and heard together, and are
being disposed of vide common judgment.

2. First mentioned appeal has been filed challenging the order dated 25-07-2024 passed by Learned CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)], u/s 250 of the Income Tax Act, 1961, [hereinafter referred to as ‘‘the Act’’], as thereby, the impugned assessment order dated 27-11-2018 passed by Assessing Officer, u/s 147 r.w.s. 144 of the Act, making two additions, has been upheld.

Additions Made

Following two additions were made vide assessment order passed by the AO while computing the total income of the assessee for the assessment year 2011-12 :

Addition on account of unexplained cash deposited in Bank	Rs.8,03,200/-
Addition on account of interest from Bank	<u>Rs. 791/-</u>
Total	Rs.8,03,991/-
Rounded off	Rs.8,03,900/-

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3. This second mentioned appeal has been filed feeling dissatisfied with order dated 29-07-2024 passed by Learned CIT(A), NFAC, Delhi, as thereby penalty order dated 15-05-2019 passed by the Assessing Officer levying penalty of Rs.98,053/- u/s 271(1)(c) of the Act has been upheld on account of concealment of income relating to F.Y. 2010-11 corresponding to the Assessment Year 2011-12.

4. Arguments heard. Files perused.

Discussion

5. As noticed above, **first mentioned addition** to the tune of Rs.8,03,200/- was made by the AO on account of **unexplained cash deposited** by the assessee in his bank account.

Admittedly, the assessee did not appear before the AO, even after service of various notices. Accordingly, the AO took into consideration whatever material was available with him, and made additions while passing the assessment order u/s 144 of the Act.

6. When the assessee was in appeal before the ld. CIT(A), it was found that the appeal was barred by limitation and the assessee had failed to furnish any 'sufficient cause' to explain the delay. Accordingly, the prayer for condonation of delay in filing the appeal was rejected.

Although as mentioned above, the request for condonation of delay in filing the appeal was rejected, Learned CIT(A) proceeded to dispose of the appeal on merits.

7. Learned CIT(A) observed that notice u/s 148 of the Act was issued by the AO for the purpose of reopening of the matter, after getting prior approval of the higher authorities. Accordingly, Ground No.1 raised in the appeal there, was dismissed.

8. Ground of appeal No. 2 raised by the assessee before the ld.CIT(A) was that the AO had grossly erred in making addition of Rs.8,03,900/, deeming the amount of cash deposited to be the income of the assessee.

On behalf of the assessee, it was submitted before the ld.CIT(A) that the assessee had received in cash a loan of Rs.6,95,400/- from his brother-in-law (BAHNOI) for the treatment, and further that said amount was ultimately returned by the assessee to his brother-in-law.

Ld.CIT(A) rejected this claim of the assessee while observing that the assessee had failed to submit documents regarding creditworthiness, genuineness and capacity of the lender and further that the assessee even failed to submit details regarding source of payment for repayment of the said loan to his relative.

9. The only submission put forth by Ld. AR for the assessee before us in the course of arguments is that the assessee be given another opportunity to submit all the relevant documents before the AO as regards his claim that he had borrowed a sum of Rs.6,95,400/- for medical treatment and also as regards the source of repayment of the said amount.

10. It may be mentioned here that as regards the balance amount of Rs.1,07,800/- out of total cash of Rs.8,03,200/- deposited by the assessee in the Bank, the assessee claimed before Ld. CIT(A) that the said amount was from Scholarship and savings of the assessee. This claim of the assessee was also

rejected by the ld. CIT(A) while observing that the assessee did not submit there in appeal any documentary evidence in proof thereof .

11. Learned DR for the Revenue has no objection to the submission put forth on behalf of the appellant for another opportunity to produce relevant documents before the Assessing Officer, as regards the first addition made vide the impugned quantum assessment order.

Conclusion

12. Having regard to the facts and circumstances of the claim put forth by the assessee for the first time before the ld. CIT(A), we find that the assessee deserves another opportunity of being heard before the AO to produce all the relevant documents to explain cash deposit of Rs.8,03,200/-, which according to the authorities below remained unexplained for want of any documentary evidence.

Since the assessee, despite notices did not participate in the assessment proceedings, we find it a fit case where the assessee is required to be burdened with costs.

Result

13. As a result, this appeal No. 1197/JPR/2024 is disposed of for statistical purposes and matter is remanded back for adjudication afresh, after providing an opportunity of being heard to the assessee, as regards the cash deposit of Rs.8,03,200/-.

The assessee is burdened with costs of Rs.3,000/- to deposited in Prime Minister's National Relief Fund. The assessee to produce receipt in this regard before the AO. The AO to satisfy regarding deposit of cost of Rs.3,000/- before commencement of proceedings.

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14. As noticed above, vide order dated 27-11-2018, assessment was framed u/s 144 r.w.s. 147 of the Act in relating to A.Y. 2011-12, thereby computing total income of the assessee at Rs.8,03,990/- on account of two additions referred to above.

At the same time, the AO has observed that penalty proceedings were going to be initiated separately. That is how, penalty order is stated to have been passed levying penalty on the assessee, which he firstly challenged before Learned CIT(A), and having not got any respite come up before this Appellate Tribunal.

15. A perusal of the penalty order passed by the AO on 15-05-2019 would reveal that the same does not contain any facts or reasons, whatsoever, for levying of penalty of Rs,98,053/-. Assessing Officer is required to note all relevant facts as to the allegations levelled against the assessee, reply, if any, furnished by the assessee in response to any notice(s), about the material produced on record, and then furnish reasons for levying penalty on account of breach of any provision of Income Tax Act.

It is only from the reasons that Appellate Authority is able to appreciate as to what weighed with the AO while levying penalty on account of violation of any provision of law. That is why, it is said that reasons are the soul of an order. We find that the penalty order passed by the Assessing Officer does not comply with this requirement of law.

16. Coming to the impugned order passed by Learned CIT(A), its perusal would reveal that he dismissed the appeal by simply observing that quantum appeal filed by the assessee challenging the assessment order dated 27-11-2018 passed u/s 144 r.w.s. 147 of the Act stood dismissed, and further that assessment order having survived, penalty shall be levied.

Conclusion

17. As mentioned above, the order u/s 250 of the Act passed by the Id.CIT(A), NFAC, Delhi upholding the quantum addition, has been set aside by us in past, and the matter remanded to the AO for adjudication afresh as regards first addition of Rs.8,03,200/- made on account of unexplained cash deposited by the assessee in the bank. Consequently, the impugned order passed by the Id.CIT(A), NFAC, Delhi deserves to be set aside.

Result

18. As a result, this second mentioned appeal- ITA No. 1198/JPR/2024- is allowed, and levy of penalty by the AO, and as upheld by Learned CIT(A), is also set aside.

19. However, it is made clear that in case the Assessing Officer finds that the assessee violated any provision of the Act, like Section 271(1)(c) of the Act, the AO shall be at liberty to proceed in accordance with law against the assessee.

Copy of order be also placed in connected appeal file.

Files be consigned to record room after the needful is done by the office.

Order pronounced in the open court on 04/12/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 04 /12/2024

*Mishra, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Dashrath Singh, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Behror
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 1197 & 1198/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar

