

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

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

आयकर अपील सं./ITA No. 1102/JPR/2024  
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Aas Mohammad 60K14, Village: Tizaral, Distt. Alwar, (Raj)	बनाम VS.	ITO, Ward-Bhiwadi Bhiwadi
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: CEZPM 4332 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri S.L. Poddar, Advocate  
राजस्व की ओरसे / Revenue by: Shri Gautam Singh Choudhary Addl.CIT

सुनवाई की तारीख / Date of Hearing : 10/10/2024  
उदघोषणा की तारीख / Date of Pronouncement: 02 /12/2024

आदेश / ORDER

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

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 30-04-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2014-15 raising therein following grounds of appeal.

“1. Under the facts and circumstances of the case and in law, the order passed by the AO is void ab-initio as the same has been passed without quoting DIN and PAN on the assessment order.

2. Under the facts and circumstances of the case and in law, the ld. CIT(A) has erred in passing the ex-parte order as no notice has been received by the assessee for hearing.

3. Under the facts and circumstances of the case and in law, the ld. CIT(A) has erred in confirming the addition of Rs.11,55,500/- on account of cash deposited by the assessee without considering the submission of the assessee attached at the time of filing of appeal.

2.1 At the outset of hearing of the appeal, the Bench noticed that there is delay of 56 days in filing the appeal by the assessee for which the assessee has filed an application for condonation of delay with following prayer.

“In this case the Learned CIT(A) has passed the order u/s 250 of the Income Tax Act 1961 on 30/04/2024 which was served to the assessee online on ITBA Portal. The assessee has filed online appeal on 29/06/2024 (within 60 days as prescribed under the Income Tax Act/Income Tax Rules) after depositing the challan fees of Rs. 10,000/- on the same day i.e. on 29/06/2024 and form no. 36 was also filed in ITAT portal on same day and thereafter print of form no. 36 was sent to the assessee at his Tijara Address and assessee has returned the signed form by courier on 02/07/2024 but that was misplaced and again the same was received in counsel's office on 27/08/2024 and the signed form was uploaded and physical copy of appeal has been submitted before the Hon'ble ITAT on the same day i.e. on 27/08/2024. If we take the date of filing of appeal as 27/08/2024 then there is delay of 56 days which is due to lost of documents in post and there is no intention of the assessee to file the appeal delayed, as the fees was deposited well within time and the form was also filled up before expiry of time limit. Therefore, you are requested to condone the delay of 56 days which was bonafide and not intentional and only technical.”

To this effect, the assessee has filed an affidavit deposing the above facts.

2.2 On the other hand, the Id. DR submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 The Bench heard both the parties and perused the materials available on record. From the submissions of the Id.AR of the assessee, it appears that the delay in filing the appeal by the assessee is bonafide and it does not appear as intentional delay by the assessee. The assessee had filed online appeal on 29-06-2024 i.e. within 60 days as prescribed under the Act and deposited the prescribed challan fees. The delay took place in filing the appeal was on account of loss of documents in post. In this situation, it appears that the submission as raised by the assessee (supra) has merit and thus the delay so made in filing the appeal by the assessee is allowed.

3.1 Brief facts of the case are that the AO noticed from the information available with the Department that the assessee had deposited cash amounting to Rs.11,55,500/- in Bank Account. The AO further noted that the assessee did not file any return of income for the year under consideration. Therefore, after recording reasons in writing that assessee's income to the extent of Rs.11,55,500/- which is chargeable to tax had escaped assessment and the AO issued notice u/s 148 of the Act dated 19-03-2020 after obtaining approval from u/s 151(1) of the Act from competent authority. The AO noted that the notices issued by him to the

assessee remained uncomplished with. Therefore, final opportunity was given to the assessee by issuing a notice u/s 142(1) dated 15-09-2021 requiring the assessee to show cause as to why the case should not be completed ex-parte u/s 144 of the Act but this notice too remained uncomplished with. The AO noticed that in spite of various opportunities, the assessee did not come forward to advance his submission and thus he had no option except to complete the assessment proceedings ex-parte u/s 144 of the Act. From the details made available before the AO, the AO observed that it is quite clear that assessee's bank deposits are to the tune of Rs.11,55,500/- but the assessee failed to furnish the documentary evidences in respect of the source of the deposits of the amount and thus the AO made an addition of Rs.11,55,500/- in the hands of the assessee as an unexplained money u/s 69A r.w.s. 115BBE.

3.2 In first appeal the ld.CIT(A) has confirmed the action of the AO by observing as under:-

“6.9 In view of the above, in the pertaining and circumstances of the case, I find no infirmity in the action of the AO for adding Rs.11,55,500/- as unexplained money u/s 69A of the Act. In this view of the matter, the decision of the AO is upheld. Consequently, the Ground of appellant is dismissed.

6.10 Before parting, it is trite that the appellate authority is essentially called upon to balance the two sides of an argument

presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr. No. 3791 of 2013 (O&M) dated 01-05-2014] and in the absence of any reasonable, cogent and valid arguments/ contentions advance by the appellant in the instant appeal to counter the AO's decision as contained in the assessment order, as mentioned earlier, the additions/ disallowances made by the AO is sustained in terms of the observations hereinabove.

7. In the result, the appeal of the appellant is dismissed.

3.3 During the course of hearing, the ld. AR of the assessee requested to remit back the matter to the file of the AO with the direction to give opportunity to file evidence regarding source of deposit in the bank account and the assessee will make compliance without any fail.

3.4 On the other hand, the ld.DR supported the order of the lower authorities.

3.5 We have heard both the parties and perused the materials available on record. In this case, it is noticed that the AO made an addition of Rs.11,55,500/- in the hands of the assessee as the assessee in spite of various opportunities by the AO could not furnish the documentary evidences in respect of source of deposits in the bank. He treated the amount of Rs.11,55,500/- as unexplained money u/s 69A r.w.s. 115BBE of the Act. In first appeal, the ld. CIT(A) has confirmed the action of the AO. It is noticed by the Bench from the orders of the AO as well as ld.CIT(A) that it was ex-parte orders as the notices were not served upon the

assessee and the assessee was not a regular income tax assessee. The ld. AR of the assessee requested the Bench to remit the matter back to the file of the AO to settle the issue in question. The Bench noticed that it is an admitted fact that the assessee is ex-parte before the AO and also before the ld. CIT(A). Therefore, he could not put forth his proper 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. However, the Bench is 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 AO 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.

3.5 Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

4.0 In the result, the appeal of the assessee is allowed for statistical purposes

Order pronounced in the open court on 02/12/2024.

Sd/-

Sd/-

(राठोड कमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 02/12/2024

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Aas Mohammad, Tizara, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO, Ward Bhiwadi, Alwar
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 1102/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar