

IN THE INCOME TAX APPELLATE TRIBUNAL

JODHPUR BENCH, JODHPUR

BEFORE: DR MITHA LAL MEENA, AM & DR. S. SEETHALAKSHMI, JM

ITA No. 125/JODH/2025
Assessment Year : 2017-18

Shri Naresh Kumar Sewak 1, Village: Devla, Post: Ramgadh, Tehsil: Aspur, Distt. Dungarpur 314 034	बनाम Vs.	The ITO Ward- Dungarpur Dungarpur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: DEIPS 1615 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Shrawan Kumar, Advocate
राजस्व की ओरसे / Revenue by: Shri Karni Dan, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 06/05/2025
उदघोषणा की तारीख / Date of Pronouncement: 28 /05 /2025

आदेश / ORDER

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

This appeal filed by the assessee is directed against the order of the ld. CIT(A) dated 13-12-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 raising therein following grounds of appeal.

“1.1 The impugned order u/s 147 of the ITAct. 1961 dated 24.03.2022 as well as the action taken and notices u/s 144/144B or other notices are legal, bad in law and on the facts of the case for want of jurisdiction and various other reasons or bared by limitation and further contrary to the real facts of the case, hence the same may kindly be quashed.

1.2 The AO has grossly erred in law as well as on the facts of the case in passing the Ex parte assessment order without providing the adequate and reasonable opportunity of being heard in gross breach of law hence the order may kindly be quashed and entire addition liable to be deleted

2. The Ld. CIT(A) has grossly erred in law as well as on the facts of the case in passing the Ex parte order without providing the adequate and reasonable opportunity of being heard in gross breach of law, and also erred in law in passing the order without considering the material and details available on record, hence the order may kindly be quashed and entire addition liable to be deleted.

2.1 Rs.1,40,05,100/-: The ld. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining/confirming the addition of Rs. 1,40,05,100/- made by the AO u/s 69A an account of deposited/credited into the assessee's bank account(s) as alleged Unexplained Money under Section 69A, also erred ignoring the other material, evidence and facts of record also erred. Hence the addition so made by the AO and confirmed by the ld. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same may kindly be deleted in full.

2.2. The AO has also grossly erred in law as well as on the facts of the case in invoking the provisions of Sec. 115BBE for taxing the income at the higher rate, also erred in invoking the provisions without have any show cause notice and also not applicable in the present case. Hence provisions of Sec. 115BBE so invoked are also being contrary to the real facts of the case and not according to the provision of law, hence the same is illegal, bad in law, against the principle of natural justice the same may kindly be deleted in full.

3. Rs.41,835/: The ld. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining/confirming the addition of Rs.41,835/-made by the AO on account of contract income as alleged Undisclosed income, also erred ignoring the other material, evidence and facts of record also erred. Hence the addition so made by the AO and confirmed by the ld. CIT(A) is also contrary to the real facts of

the case and not according to the provision of law, hence the same may kindly be deleted in full.

4. Rs.5,226/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining/confirming the addition of Rs.5,226/-made by the AO on account of commission income as alleged Undisclosed income, also erred ignoring the other material, evidence and facts of record also erred. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is also contrary to the real facts of the case and not according to the provision of law. Hence the same may kindly be deleted in full.

5. The AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B & C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.”

2.1 Apropos grounds of appeal of the assessee, the Bench noted that the assessee was ex-parte before the AO as the assessee did not furnish any reply before the AO in spite of providing various opportunities and thus the AO passed the assessment order u/s 147 r.w.s. 144 of the Act by making addition of Rs.1,40,52,160/- and giving bifurcation of the addition as under:-

Total income as per return (Since no return of income filed)	0
Addition on account of unexplained money (cash deposited in the bank)	1,40,05,100/-
Addition on account of undisclosed income (Contract receipts u/s 194C)	41,835/-
Addition on account of undisclosed income(Commission/ Brokerage u/s 194H)	5,226/-
Total assessed income u/s 144	1,40,52,161
(rounded off)	1,40,52,160

It is also pertinent to mention that the assessee had not filed his Income Tax Return for the assessment year under consideration as observed by the AO in his assessment order dated 24-03-2022.

2.2 It is noticed that the Id.CIT(A) has passed an ex-parte order by dismissing the appeal of the assessee with following observations.

“7. However, in the interest of natural justice, the case of appellant was examined on merit in the light of grounds of appeal and Statement of Facts filed. It is seen from the record that the as appellant was non-compliant throughout the assessment proceedings, assessment was completed u/s 144. Further, the additions made by the A.O could not be contested or rebutted during the present appellate proceedings in view of the fact that the appellant has failed to avail of the opportunities provided. In the absence of any substantiation or any documentary evidence filed in support of grounds of appeal, it can only be concluded that the appellant has no evidence or explanation to offer in respect of the additions made in the assessment order that is the subject matter of appeal. Accordingly, being thus found to be without substance, all the grounds of appeal are dismissed.

8. In the result, the appeal is dismissed.

2.3 During the course of hearing, the Id. AR of the assessee submitted that the assessee is ex-parte before both the lower authorities and he may be given one more chance to advance the documents before the AO to settle the dispute in question.

2.4 On the other hand, the Id. DR supported the order of the Id.CIT(A).

2.5 The Bench has heard both the parties and perused the materials available on record. The Bench noted that it is an admitted fact that the assessee is ex-parte before the AO and also before the Id. Addl. CIT(A). Therefore, the assessee could not put forth his defence. It was the bounded duty of the assessee to appear before the statutory authorities as and when called for. It is also noticed that various opportunities were provided to the assessee for settling the issue but the assessee remained lethargic and unserious in pursuing his case for which a cost of Rs.2.000/- is imposed upon the assessee which will be deposited by the assessee in the Prime Minister Relief Fund. However, we are 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.

2.5 Before parting, the Bench makes it clear that its 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.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

Sd/-

(MITHA LAL MEENA)
ACCOUNTANT MEMBER

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

जयपुर / Jodhpur

दिनांक / Dated:- 28 / 05 /2025

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Naresh Kumar Sewak, Dungarpur
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Dungarpur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 125/JODH/2025)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar