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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 445 & 436/JP/2023
निर्धारण वर्ष/Assessment Years : 2011-12 & 2016-17.

Shiv Edibles Limited 237-A, Saboo Sadan, Talwandi, Kota.	बनाम Vs.	The ACIT, Circle-1, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAICS 0274 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Debang Gargieya, Advocate

राजस्व की ओर से/ Revenue by : Shri Ajey Malik, CIT

सुनवाई की तारीख/ Date of Hearing : 11/10/2023
उदघोषणा की तारीख/Date of Pronouncement: 30/10/2023

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

These two appeals by the assessee are directed against two separate orders both dated 16.05.2023 of ld. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act, 1961 for the assessment years 2011-12 and 2016-17. Since identical grounds are raised in both the appeals, for the sake of convenience, both these appeals are being disposed off by this combined order. We first take up appeal in ITA No. 445/JP/2023 for adjudication. The assessee has raised the following grounds :-

1.1 The very action taken u/s 147 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently, the impugned assessment framed u/s 147 r.w.s. 143 dated 16.05.2023 also kindly be quashed.

1.2 The impugned notice issued u/s 148 dated 30.03.2018 is barred by limitation under the proviso to section 147 as was issued after lapse of 4 years from AY 2011-12. Hence the same may kindly be quashed.

2.1 The ld. CIT (A) erred in law as well as in facts of the case in passing the impugned order ex-parte, in a haste without affording adequate and reasonable opportunity of being heard. The impugned order having been framed in gross breach of natural justice, kindly be quashed or alternatively be restored to the file of the ld. CIT (A).

2.2 The ld. CIT (A) also erred in law as well as in facts of the case in not deciding the appeal on merits, which is in violation of mandate of statutory provisions. Thus, the impugned order having been framed in gross breach of statutory provisions, kindly be quashed or alternatively be restored to the file of the ld. CIT (A).

3. Rs. 21,25,945/- The ld. CIT (A) erred in law as well as in facts of the case in confirming the addition made u/s 68 of the Act on account of alleged unexplained amount received from M/s. Shree Ram Trading Company (Shri Vipin Garg). The addition so made and the confirmation thereof by the ld. CIT (A) being contrary to the provisions of law and facts of the case, the same kindly be allowed in full.

4. The ld. AO erred in law as well as in facts of the case in charging the levy of interest u/s 234B Rs. 75,518/- and 234C Rs. 3,43,229/-. The levy interest being charged, is contrary to the provisions of law and facts, kindly be deleted in full.

5. The appellant prays your honor indulgences to add, amend or alter or any of the grounds of the appeal on or before the date of hearing.

2. The appeal filed by the assessee is delayed by 2 (two) days. The assessee has filed an application for condonation of delay. The assessee has explained that the Director Shri Bajrang Kumar Saboo of the assessee company who has to file the appeal/sign the appeal memo was out of station

and for this reason the delay of 2 (two) days is caused. The assessee submitted that the delay was not intentional and assessee was not going to gain any benefit by filing the appeal delayed. Therefore, it was prayed that taking a liberal view of the matter, the delay of two days may be condoned as the delay was not intentional. In this regard reliance is placed on the Hon'ble Supreme Court decision in the case of Collector, Land & Acquisition vs. Mst. Katiji & Others (1987)167 ITR 471 (SC).

3. Having considered the rival submissions as well as going through the contents of the application of the assessee, we are satisfied that the assessee has explained a reasonable cause for not filing the appeal within the period of limitation. Accordingly, we condone the delay of 2 days in filing the present appeal.

4. The brief facts of the case are that the assessee company is running business under the name and style of M/s. Shiv Edibles Limited. The assessee e-filed its return of income for the assessment year 2011-12 on 30.09.2011 declaring total income of Rs. 8,25,44,182/-. The case of the assessee was selected for scrutiny and therefore, notice under section 148 was issued on 30.03.2018. In response, assessee filed return of income on 13.06.2018 declaring total income of Rs. 8,25,44,190/-. Notice under section 143(2) was issued to the assessee on 31.08.2018. Vide notice under section 142(1) dated 04.09.2018, the assessee was asked to furnish (1) copy of account statement of Account No. 51024597453 of PNB for AY 2011-12 and (2) Party-wise break up of sales receipts of Rs. 262.40 crores. The assessee furnished the relevant documents including copy of ledger account of Shree Ram Trading Co. in the books of Shiv Edible Ltd. etc. on 16.11.2018 and

further filed explanation on 27.11.2018. The AO considered the submissions of the assessee but could not find it acceptable. Accordingly, the AO completed the assessment under section 143(3) read with section 147 of the IT Act, 1961 at a total income of Rs. 8,57,58,820/- by making an addition of Rs. 21,25,945/- under section 68 of the Act on account of alleged unexplained amount received from M/s. Shree Ram Trading Company. Aggrieved by the order of AO, the assessee preferred appeal before ld. CIT (A). In absence of compliance to the various notices issued by the ld. CIT (A) requiring the assessee to furnish detailed written submissions in support of the grounds raised by it, and non furnishing of the documents/submission, the ld. CIT (A) decided the appeal of the assessee ex-parte vide his order dated 16.05.2023 confirming the assessment order.

Now the assessee is in appeal before us.

5. We have considered the rival submissions as well as the material on record. On perusal of the records, we find that at the time of appellate proceedings the assessee was issued various notices dated 05.01.2021, 24.08.2022 & 17.04.2023 which were duly served on the assessee and thereby the assessee was required to furnish detailed documents/evidences in support of its claim. But these notices were not complied with by the assessee. Accordingly, after recording his findings, the ld. CIT (A) decided the appeal of the assessee by observing in para 5.6 of his order as under :-

> " *5.6. It is pertinent to note that the appellant was issued various notices u/s 250 of the I.T. Act by the First Appellate Authority to make submissions and file documentary evidences in support of*

grounds of appeal, but the appellant has not responded to these notices during the appellate proceedings. The appellant did not produce the purchase and sales register, the details of transaction with Shree Ram Trading Company, Bank statements, etc before the AO during the assessment proceedings. The appellant has not produced the relevant details in support of its grounds of appeal during the appellate proceedings also. The appellant has not been able to disclose the identity, creditworthiness and the genuineness of the transaction with Shree Ram Trading Company before the AO or before the First Appellate Authority during the appellate proceedings. Therefore, in view of the above facts, the AO has rightly invoked the provisions of section 68 of the I.T. Act. Hence, this ground of appeal is dismissed."

5.1 Since the impugned order of the ld. CIT (A) was passed ex parte for non compliance of the notices issued and not furnishing the documentary evidences, by upholding the assessment order passed under section 143(3) read with section 147 of the IT Act, whereby the AO made addition of Rs. 21,25,945/- on account of unexplained credits under section 68, therefore, in the totality of facts and circumstances of the case and in the interest of justice, we are of the view that it will be reasonable to provide one more opportunity to the assessee. We, thus, set aside the ex-parte order of the ld. CIT (A) and restore the matter back to the file of the ld. CIT (A) for fresh adjudication after providing a reasonable opportunity of being heard to the assessee. The assessee is granted one more opportunity to represent his case before the ld. CIT (A) and directed to file necessary documents/evidences as required by the ld. CIT (A). In case the assessee fails to appear before the ld. CIT (A), he may decide the appeal on the basis of the material available on record.

6. In the result, this appeal of the assessee is allowed for statistical purposes.

ITA NO. 436/JP/2023 AY 2016-17 :

1.1 The ld. CIT (A) erred in law as well as on facts of the case in passing the impugned order ex-parte, in a haste without affording adequate and reasonable opportunity of being heard. The impugned order having been framed in gross breach of natural justice, kindly be quashed or alternatively be restored to the file of the ld. CIT (A).

1.2 The ld. CIT (A) also erred in law as well as on facts of the case in not deciding the appeal on merits, which is in violation of mandate of statutory provisions. Thus, the impugned order having been framed in gross breach of statutory provisions, kindly be quashed or alternatively be restored to the file of the ld. CIT (A).

2. Rs. 20,30,190/- The ld. CIT (A) erred in law as well as in facts of the case in conferring the disallowance made by the AO out of various expenses as under :

- Interest expenses pertaining to interest fee advance of Rs.3,94,102/-.
- Unverified freight expenses of Rs. 13,46,778/-.
- Freight expenses not covered by ledger of Rs. 2,39,310/-.
- Sponsorship expenses to Oil Technology Association of India of Rs. 50,000/-

The disallowances so made and the confirmation thereof by the ld. CIT (A) being contrary to the provisions of law and facts of the case, the same kindly be allowed in full.

3. Rs. 60,408/- The ld. AO erred in law as well as in facts of the case in confirming the levy of interest u/s 234D. The levy interest being charged, is contrary to the provisions of law and facts, kindly be deleted in full.

4. The appellant prays your honor indulgences to add, amend or alter or any of the grounds of the appeal on or before the date of hearing.

7. The grounds mentioned in this appeal are similar to the grounds raised in ITA No. 445/JP/2023. In that case, after considering the totality of facts and circumstances of the case, and in absence of proper representation from the side of the assessee, we have set aside the ex-parte order of the ld. CIT (A) and restored the matter back to his file for adjudication afresh after providing reasonable opportunity to the assessee. Since the facts and circumstances in ITA No. 436/JP/2023 are exactly similar and the ld. CIT (A) has dismissed the appeal of the assessee for non compliance of notices and non submission of the documents as well written submissions, we set aside the ex-parte order of the ld. CIT (A) and restore the matter back to the file of the ld. CIT (A) for decision afresh after affording a reasonable opportunity to the assessee. The assessee is granted one more opportunity to represent his case before the ld. CIT (A) and directed to file necessary documents/evidences as required by the ld. CIT (A). In case the assessee fails to appear before the ld. CIT (A), he may decide the appeal on the basis of the material available on record.

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

Order pronounced in the open court on 30/10/2023.

Sd/-	Sd/-
(राठौड़ कमलेश जयंतभाई)	(संदीप गोसाई)
(RATHOD KAMLESH JAYANTBHAI)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/10/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s. Shiv Edible Ltd., Kota.
2. प्रत्यर्थी/ The Respondent- The ACIT, Circle-1,Kota.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 445 & 436/JP/2023}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar