

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" 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 No. 480/JP/2023
निर्धारण वर्ष/Assessment Year : 2011-12.

Oriental Bank of Commerce, RUHS Branch, Jaipur. C/o M/s. VAY & Associates, G1 Aastha Square, R-18 Yudhishter Marg, C-Scheme, Jaipur.	बनाम Vs.	Jt. Commissioner of Income Tax (TDS), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. JPRO01979F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Sharma

राजस्व की ओर से / Revenue by : Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 18/10/2023

उदघोषणा की तारीख / Date of Pronouncement: 30/10/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 29.05.2023 of Id. CIT (A), National Faceless Appeal Centre, Delhi passed under section 250 of the IT Act for the assessment year 2011-12. The assessee has raised the following grounds :-

1. Under the facts and circumstances of the case, the Id. CIT (Appeals) NFAC has erred in not allowing relief to the assessee against penalty imposed under section 271C amounting to Rs. 2,67,763/- being equivalent to the amount of tax.
2. Under the facts and circumstances of the case, the Id. CIT (Appeals) NFAC has erred in not allowing relief against penalty order passed by AO imposing the penalty amounting to Rs.

2,67,763/- without waiting of speaking order of Hon'ble CIT Appeals.

3. The assessee craves right to add, alter or amend any of the grounds of appeal.

2. The brief facts of the case are that the assessee is a government bank engaged in banking activities. The AO passed order dated 23/03/2018 u/s 201(1) & 201(1A) treating the assessee in default for non/short deduction of TDS u/s 194A of the Income Tax Act, 1961 and raised demand of Rs.2,67,763/- u/s 201(1) and interest of Rs.2,24,921/- u/s 201(1A) totaling Rs.4,92,684/-. Thereafter, the AO vide letter no.ITO/TDS-3/2017-18/5574 dated 30/03/2018 referred the case for initiation of proceedings u/s 271C for the AY 2011-12. In response to the show cause notice the assessee vide reply dated 08/10/2018 submitted that an Appeal has been filed by the assessee against the order passed u/s 201(1) & 201(1A) along with condonation of delay request in clause no.15 of Form 35. The assessee was asked to submit delay condonation order vide letter no 1249 dated 10/10/2018 since the appeal was filed with a delay of 30 days. The case was fixed for hearing on 22/10/2018 but no information/ details was furnished by the assessee, thereafter Jt. Commissioner of Income Tax (TDS) Jaipur imposed penalty amounting to Rs.2,67,763/-vide order dated 23/10/2018 for the AY 2011-12 being equivalent to the amount of tax which the assessee failed to deduct. Being aggrieved, the assessee preferred appeal before Id. CIT (A) against penalty order u/s 271C passed by Jt. Commissioner of Income Tax (TDS) Jaipur. Notice for hearing u/s 250 were issued to the appellant on 12/03/2020, 20/12/2021, 19/01/2022, 18/02/2022,02/11/2022 and 04/05/2023. The assessee neither respond to the above notices issued u/s 250 of

the IT Act nor filed any written submission, thus the Id. CIT (Appeals) passed ex parte order by confirming the penalty order.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R for the assessee filed ground-wise written submissions which are reproduced as under :-

Ground 1. Under the facts and circumstances of the case, the Ld. CIT (Appeals)-NFAC, has erred in not allowing relief to the assessee against penalty imposed under section 271C amounting to Rs. 2,67,763/- being equivalent to the amount of tax.

“ The learned CIT(A)-NFAC passed an ex-parte order due to the non-appearance of/on behalf of the assessee. In this regard we would like to submit that the assessee could not responded to the hearing notices since the assessee, Oriental Bank of Commerce was merged with Punjab National Bank w.e.f. 01/04/2020 by Govt of India after this merger email id also changed and the assessee did not receive hearing notices as these notices were being sent on old email id. Therefore, there is no willful default by the assessee in not attending the hearings. Copy of Amalgamation order issued by Reserve Bank of India is being attached herewith for your kind consideration.

Similar findings are given by **The ITAT Chandigarh in the case of Sh. Iqbal Singh HUF Vs DCIT (ITAT Chandigarh) HELD THAT** - We note that the NFAC has passed the ex-parte order as according to it, the assessee was non-compliant during the whole proceedings before it. However, we feel that one more opportunity should be given to the assessee as the NFAC has not decided the appeal on merits. We, therefore, in the

interest of justice, set aside the order of NFAC and restore the appeal to the file of the NFAC with the direction that the NFAC shall decide the appeal afresh after giving proper and sufficient opportunity to the assessee.

The AP High Court in the case of **Thakur V. Hariprasad v. CIT [1987] 32 Taxman 196** has held that where the principles of natural justice are not followed, the order is only voidable and it can be cured with a direction to afford opportunity to the assessee of being heard. The decision in the case of **Grindlays Bank Ltd. v. ITO [1980] 3 Taxman 38 (SC)** is also to the same effect.

The order passed in violation of the principles of natural justice is of no value as held by the Supreme Court in **R. B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission [1989] 43 Taxman 34 (SC)**.

Ground 2. Under the facts and circumstances of the case, the Ld. CIT (Appeals)-NFAC, has erred in not allowing the relief against penalty order passed by AO imposing the penalty amounting to Rs. 2,67,763/- without waiting of speaking order of Hon'ble CIT Appeals.

The AO passed penalty order under section 271C without waiting for speaking order of Honble CIT Appeals. The penalty proceedings was with respect to order passed under section 201/201(1A) and the order passed under section 201/201(1A) was subject matter of Appeal before CIT(A) at the time of passing order under section 271C. The assessee requested to keep the penalty proceedings in abeyance till the time order of Hon'ble CIT(A) is

passed. The Id. CIT(A)- NFAC did not consider this fact while passing the order u/s 250, therefore, the order of Id. CIT(A)-NFAC is illegal, unjustified, arbitrary and against the facts of case.

In view of above legal position and the facts of the case, Id. CIT (A) is not justified in not allowing relief to the assessee against penalty imposed under section 271C."

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard the rival contentions, perused the material on record and gone through the orders of the lower authorities. On perusal of the records, we find that the assessee was issued notice under section 271C on 05.04.2018 fixing the case for hearing on 23.04.2018 but in compliance none attended on the date of hearing. Thereafter, notices were issued on 30.07.2018 and 27.08.2018, in response, the assessee filed reply dated 05.09.2018 which the AO reproduced as under :-

"in this submit we informed you that we take-up this matter with our higher authority and also our CA who filed our branch ITR during that year. We also collect the old challan which we deposit. As matter belong 2010-11 we faced many problem to collect old record, because old record send to vendor. But we try our best for resolved this matter the tds activity done by our central office now. We assure you we would resolve this issue soon "

Again, a show cause notice dated 27.09.2018 was issued to the assessee. In response the assessee filed incomplete information. The assessee was again requested vide letter dated 10.10.2018 to furnish the relevant document/information and the case was fixed for hearing on 22.10.2018. But on this date neither any one

attended on behalf of the assessee nor furnished the required information/details. The AO, therefore, on the basis of material available with him, passed the order under section 271C imposing penalty of Rs. 2,67,763/-.

5.1 At the appellate proceedings also, the Id. CIT (A) issued various hearing notices for providing written submissions vide notices dated 12.03.2020, 20.12.2021, 19.01.2022, 18.02.2022, 02.11.2022 and 04.05.2023. But neither any of the above notices were responded to by the assessee nor filed written submission. Thereafter, the Id. CIT (A) decided the appeal of the assessee on the basis of material available on record by confirming the penalty order vide his ex-parte order dated 29.05.2023 by observing in para 5.7 & 5.8 as under :-

" 5.7 By its own act, the appellant failed to remain vigilant and did not avail the opportunity to submit its point of view/contention as it failed to respond to various notices issued. The fact that the appellant did receive the penalty order and filed the present appeal, but chose not to respond to any notices issued by this office clearly establish total disregard to the due process of law.

5.8 In view of the above discussion, I do not find any reasons to interfere with the findings given by the AO in his order. The appeal is dismissed."

6. Since the impugned order of the Id. CIT (A) was passed ex parte by upholding the penalty order passed under section 271C of the IT Act and thereby sustained the levy of penalty under section 271C of the IT Act of Rs. 2,67,763/- being equivalent to the amount of tax which the appellant failed to deduct, therefore, in the totality of facts and circumstances of the case and in the interest of justice, we set aside the ex-parte order of the Id. CIT (A) and remand the matter back to the file of the A.O. 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 A.O. and directed to file necessary documents/evidences as required by the AO. In case the assessee fails to appear before the AO, the AO may decide the appeal on the basis of the material available on record.

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

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

Sd/-

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

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
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- Oriental Bank of Commerce, Jaipur.
2. प्रत्यर्थी / The Respondent- The Jt. CIT (TDS), Jaipur.
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. 480/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

