

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 16/JP/2021
निर्धारण वर्ष/Assessment Year : 2011-12

Ramesh Chand Saini 502 Luhadia Tower V Ashok Marge, C-Scheme, Jaipur-302034.	बनाम Vs.	The ITO, Ward -5(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CKAPS 9331 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pallavi Joshi (Adv.) &
Shri S.K. Sharma (C.A.)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27/10/2021
उदघोषणा की तारीख / Date of Pronouncement: 27/10/2021

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated
09.01.2020 of Id. CIT(A)-2, Jaipur for the assessment year 2011-12.

The assessee has raised the following grounds:-

"1. The Ld. CIT(A) erred in not providing an appropriate
opportunity of being heard which is against law of natural justice.

- 2. On the facts and in the circumstances of the case the Id. AO was erred in issuing the notice u/s 148 of the Income Tax Act, 1961 and the same was confirmed by the Ld. CIT(A).*
- 3. On the facts and in the circumstances of the case the Id. AO was erred in making addition of cash deposit of Rs. 14,36,393/- in Axis Bank and Rs. 1,09,000/- in ICICI Bank as undisclosed income*
- 4. The assessee reserves the right to add, alter, amend and delete any of the grounds of appeal on or before hearing.”*

2. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference.

3. At the outset, we note that the present has been filed by the assessee after a gap of more than one year from the date of impugned order however, the assessee has stated in form no. 36 that the impugned order has been served on the assessee only 25.03.2021. We have heard both the parties on the issue of delay if any in filing the present appeal. Since there was an order of the Department relaxing the limitation during period of COVID-19 pandemic as well as decision of the Hon'ble Supreme Court extending the limitation provided under general statute i.e. limitation Act under as well as under special statute during this period ending up to mid October, 2021. Accordingly in the

facts and circumstances of the case the present appeal filed by the assessee is treated as within a period of limitation.

4. The assessee is an individual and did not file any return of income U/s 139 of the Income Tax Act. The AO issued a notice U/s 148 of the Act on 30.03.2018 but there was no return of income filed by the assessee in response to the notice issued U/s 148 of the Act. The Assessing Officer has also issued show cause notice U/s 142(1) of the IT Act asking the assessee to furnish explanation regarding the income from the activity of trading in commodity as well as source of deposits made in the bank account of the assessee. The Assessing Officer made addition for various deposits in the bank accounts of the assessee with Axis bank and ICICI Bank including interest as well as commission/brokerage income of Rs. 2,612/- total amounting to Rs. 15,69,474/-. Thus, the Assessing Officer has determined the total income of the assessee at Rs. 15,69,470/- while passing the order U/s 147/144 of the Act. The assessee challenged the ex-parte order passed by the AO before the Id. CIT(A) but the assessee could not attend the proceedings before the Id. CIT(A) and consequently the appeal of the assessee was dismissed by the Id. CIT(A) summarily.

5. Now before the Tribunal, the Id. AR of the assessee has submitted that the Assessing Officer has passed an ex-parte order without serving a notice on the assessee and further, the Id. CIT(A) has also dismissed the appeal of the assessee while passing an ex-parte order without giving sufficient opportunity of hearing to the assessee. Thus the Id. AR of the assessee has submitted that the assessee may be granted one more opportunity to present its case before the Id. CIT(A) and to file supporting evidence to explain the source of deposits in the bank account.

6. On the other hand the Id. DR has vehemently objected to grant of one more opportunity to the assessee and submitted that despite sufficient opportunities granted by the AO as well as Id. CIT(A) the assessee did not appear before the authority below and therefore, the conduct of the assessee shows that the assessee is not serious about the proceedings but has adopted delaying tactics.

7. We have considered the rival contentions and perused the material available on record. The Id. CIT(A) dismissed the appeal of the assessee in para 2.2 to 3 which reads as under:-

"2.2 I have perused the facts of the case and the assessment order. In this case, the ample number of opportunities given to the appellant are tabulated below:-

<i>Date of hearing fixed</i>	<i>Remarks</i>
<i>25.09.2019</i>	<i>Filed adjournment letter. Adjourn to 22.10.2019</i>
<i>22.10.2019</i>	<i>Filed adjournment letter. Adjourn to 20.11.2019</i>
<i>20.11.2019</i>	<i>Filed adjournment letter. Adjourn to 12.12.2019</i>
<i>11.12..2019</i>	<i>Filed adjournment letter. Adjourn to 07.01.2019</i>
<i>07.01.2019</i>	<i>None attended</i>

2.2.1 In view of the above, it is clear that the appellant and the Authorized Representative are not interested in contesting the appeal and in spite of sufficient opportunity and time have not submitted any detail what so ever. On merits it seems that assessee has nothing to say in support of grounds of appeal taken. After careful consideration of the order, I find that Assessing Officer has rightly made the addition, hence ground of appeal is dismissed.

3. In the result, the appeal is dismissed”

Thus it is clear that the Id. CIT(A) has confirmed the addition made by the AO on the ground that the assessee is not interested in contesting the appeal in spite of sufficient time granted to him. It is pertinent to note that the Assessing Officer has made additions on account of

unexplained deposits in the bank accounts of the assessee for want of any explanation on behalf of the assessee. The Id. CIT(A) has not decided the issue by considering any explanation or record to be furnished by the assessee but the appeal of the assessee is summarily dismissed due to non appearance. Except on the last date of hearing i.e. 07.01.2020 which is wrongly mention in the impugned order as 07.01.2019 on all other occasions the Id. CIT(A) accepted the request for adjournment of hearing therefore, the default of appearing before the Id. CIT(A) on the last date of hearing has resulted ex-parte order. The issue involved in this case is regarding source of deposits made in bank account and the AO accepted the activity of the assessee in commodity trading therefore, in the facts and circumstances of the case we are of the considered view that the assessee may be granted one more opportunity to explain the source of deposits by producing the relevant document/evidence. Accordingly we set aside to the impugned order of the Id. CIT(A) and the matter is remanded to the record of the Id. CIT(A) for deciding the same afresh after granting one more opportunity of hearing to the assessee to explain the source of deposits with supporting evidence.

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

Order pronounced in the open court on 27/10/2021.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27/10/2021.

*Santosh.

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

1. अपीलार्थी / The Appellant- Ramesh Chand Saini, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(4), 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. 16/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar