

(2024) 05 ITAT CK 0052

Income Tax Appellate Tribunal (Delhi E Bench)**Case No:** Income Tax Appeal No. 2967/DEL/2023, 1032, 1033/DEL/2024

Mohammad Junaid

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision: May 29, 2024**Acts Referred:**

- Income Tax Act, 1961 - Section 69, 144, 144B, 250, 272A(1)(d), 271AAC(1)

Hon'ble Judges: S. Rifaur Rahman, (AM); Madhumita Roy, J**Bench:** Division Bench**Advocate:** Ramsha, Subhra Jyoti Chakroborty**Final Decision:** Allowed/Dismissed/Dismissed

Judgement

1. The instant bunch of appeals filed by the assessee are directed against the different orders dated 16.02.2023 (ITA No.2967/Del/2023) and 07.12.2023 (ITA Nos.1032 & 1033/Del/2024) passed by the Commissioner of Income Tax (Appeals) – NFAC, Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the different orders dated 14.09.2021 [assessment order passed by the NFAC, Delhi under Section 144 read with Section 144B of the Act], 25.01.2022 [penalty order passed by the NFAC, Delhi under Section 272A(1)(d) of the Act] and 03.02.2022 [penalty order passed by the NFAC, Delhi under Section 271AAC (1) of the Act] for A.Ys. 2012-13, 2013-14 & 2014-15 respectively.

2. Since all the appeals relate to the same assessee, these are heard analogously and are being disposed of by a common order.

3. ITA No.2967/Del/2023 relates to an order passed under Section 144 read with Section 144B of the Act. ITA No. 1033/Del/2024 and ITA No.1032/Del/2024 relate to the order passed by the Learned CIT(A) are arising out of the penalty order passed by the

AO under Section 271AAC(1) and 272A(1)(d) of the Act respectively. Both the appeals filed before the First Appellate Authority barred by limitation for 615 days, since not condoned, the appeals stood dismissed. 4. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record. In ITA No.2967/Del/2024, the assessee went up in appeal before the CIT(A) challenging the order passed by the Learned AO in making addition of Rs.50,97,53,033/- under Section 69 of the Act. Relevant to mention, notices galore though served upon the assessee, no one represented before the Learned AO and ex parte order was therefore, passed upon making addition in the assessment proceedings under Section 144 of the Act.

5. During the course of assessment proceedings, though the assessee issued notices including show cause, he did not respond. The Income-tax Inspector of the designated verification unit took an attempt to serve the notice physically upon the assessee, which was refused to be accepted. Thereafter, the Inspector of Income-tax affixed the notice on the shop of the assessee on 07.06.2021, the photographs whereof are appearing at pages 5, 6 & 7 of the assessment order dated 14.09.2021. Needless to mention, that assessee did not appear in spite of such notice being affixed on the shop of the assessee as stated hereinbefore and having no other alternative, the Assessing Officer proceeded with and finalized the assessment upon making addition to the total income of the assessee under Section 69 of the Act. The order was passed under Section 144 read with Section 144B of the Act. Before the First Appellate Authority, fixing the date of hearing, furnishing submission on 13.07.2022 notice was issued on 27.06.2022 followed by another four notices issued on 29.12.2022, 13.01.2023 & 27.01.2023 and 03.02.2023. However, no response was made, neither any submission was furnished by the assessee even before the First Appellate Authority. Having no other alternative, the First Appellate Authority decided the appeal on the basis of the documents submitted by the appellant as part of the appeal memo i.e. the ground of appeal, statement of facts and assessment order only. The Learned CIT(A) confirmed the addition made by the Learned AO passed under Section 144 of the Act.

6. At the time of the hearing of the matter, the assessee's Counsel submitted before us that no notice was served upon the assessee and only on recovery proceeding the assessee could come to know about the order impugned passed by the Learned CIT(A). As the assessee could not represent his case before the authorities below, a further opportunity of being heard may be given to the assessee as the crux of the submission made by the Learned AR.

7. On the other hand, the Learned DR drew our attention to Pages 5, 6 & 7 of the order passed by the Assessing Officer, the proof of service whereof being affixture on the shop of the assessee is reflecting. Further, non-appearance before the CIT(A) shows total disregard to both the Revenue's authority by the assessee was also assertively

placed. Under these facts and circumstances of the matter, the Learned DR vehemently opposed such prayer for remitting the issue to the file of any of the authorities below for fresh adjudication of the same.

8. We have heard the respective parties and also perused the relevant materials available on record including the orders passed by authorities below. We find that from the very inspection of the assessment proceedings the assessee did not co-operate with the Revenue Officer which is an established fact having regard to several dates given by the Learned AO and notices affixed on the shop of the assessee intimating the date of hearing as reflecting in the order passed by the Learned AO. Further that, even before the First Appellate Authority, though on five occasions, the assessee were given notices to furnish documents/ to appear before the Learned CIT(A) for hearing, the assessee is found to be non-cooperative and having no other alternative, the Learned CIT(A) ultimately finalized the appellate proceedings, confirming the addition passed by the Learned AO. We are also not impressed on the assessee's conduct, particularly, the approach of the assessee throughout the proceedings which is not found to be bonafide. However, having regard to the facts and circumstances of the matter, we find that the orders passed by the authorities below are since ex parte, the assessee be given a further opportunity of being heard in order to prevent the miscarriage of justice. We therefore, with the aforesaid observation, set aside the issue to the file of the Learned AO with the direction upon him to finalize the issue involved in the matter afresh upon giving hearing to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that in the event, the assessee does not cooperate with the Learned Assessing Officer, he is at liberty to proceed and pass the order strictly in accordance with law.

9. In the result, appeal of the assessee in ITA No.2967/Del/2023 allowed for statistical purposes.

10. As the main matter relating to the merit of the issue involved in this appeal is remitted to the file of the Learned AO for fresh adjudication of the same, the other two appeals arising out of the order passed by the Learned AO under Section 271AAC(1) and 272A(1)(d) of the Act becomes infructuous and hence, dismissed.

11. In the combined result, ITA No.2967/Del/2023 is allowed for statistical purposes and ITA Nos.1032 & 1033/Del/2024 are dismissed.