

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 471 & 472/JP/2014
निर्धारण वर्ष/Assessment Years : 2005-06 & 06-07.

Shri Dharmendra Pandey, Prop. M/s. Art Avenue, 1996, A-1, Khejron Ka Rasta, Chandpole Bazar, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Central Circle, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADDPP 3452 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 15.09.2017.
घोषणा की तारीख / Date of Pronouncement : 18/09/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

These appeals by the assessee are directed against two separate orders of Id. CIT (A), Alwar dated 01.05.2014 pertaining to assessment years 2005-06 & 06-07. We first take up assessee's appeal for the assessment year 2005-06. The assessee has raised the following grounds of appeal :-

" 1. That under the facts and circumstances of the case the order passed by the learned Assessing Officer/Learned CIT (A) u/s 144/153A is void-ab-initio.

2. Under the facts and circumstances of the case the learned CIT (A) has erred in sustained the disallowance of Rs. 72,635/- on account of trading expenses.
3. Under the facts and circumstances of the case the learned CIT (A) has erred in sustained the disallowance of Rs. 92,919/- on account of expenses claimed by the assessee in profit & loss accounts @ 10% of total expenses claimed.
4. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 12,25,443/- on account of unexplained investment in property on the basis of computation of income.
5. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 1,51,221/- out of Rs. 2,55,707/- made by the learned Assessing Officer on account of unsecured loan and sundry creditors appearing in balance sheet of the assessee u/s 68 of the Income Tax Act, 1961.
6. Under the facts and circumstances of the case the learned CIT (A) has erred in not allowing rebate u/s 88 of Rs. 7235/- of Income Tax Act, 1961 claimed by the assessee.
7. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

2. At the outset, the Id. Counsel for the assessee submitted that Ground No. 1 raises an issue of legality of the order passed by the AO under section 153 of the Income Tax Act, 1961 (hereinafter referred to as the Act). Further, the Id. Counsel submitted that in fact no search was carried out at the premises of the assessee and the assessment has not been framed on the basis of the search material.

2.1. On the contrary, the Id. D/R opposed the submissions and pointed out that similar ground was raised as Ground No. 1 before Id. CIT (A) and the assessee had not Pressed the ground before Id. CIT (A). Therefore, assessee cannot be allowed to raise this ground before this Tribunal.

2.2. In re-joinder, the Id. Counsel for the assessee submitted that at that point of time the judgment of the Hon'ble Jurisdictional High Court in the case of Jai Steel India vs. ACIT, 259 CTR 281 (Raj.) and judgment of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573 (Delhi) were not available.

2.3. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. The issue raised in this ground goes to the root of the legality of the order. We, therefore, deem it proper and in the interest of justice, restore this ground to the Id. CIT (A) to decide it afresh in the light of the judicial pronouncements relied by the Id. Counsel for the assessee, preferably within 3 months from the date of service of this order. Thus, the order of Id. CIT (A) is set aside.

2.4. Since we have restored the legal ground for decision afresh, we are not adjudicating other grounds raised in this appeal and the same are also restored to Id. CIT (A) for afresh decision.

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

4. Now we take up appeal of the assessee pertaining to **A.Y. 2006-07**. The grounds in this appeal are as under :-

” 1. That under the facts and circumstances of the case the order passed by the learned Assessing Officer/Learned CIT (A) u/s 144/153A is void-ab-initio.

2. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 1,36,985/- on account of trading expenses claimed.

3. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 1,11,582/- on account of expenses claimed by the assessee in profit & loss accounts @ 10% of total expenses claimed.
4. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 6,42,000/- out of Rs. 4,94,000/- made by the learned Assessing Officer on account of unsecured loan and sundry creditors appearing in balance sheet of the assessee u/s 68 of the Income Tax Act, 1961.
5. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 14,02,841/- on account of long term capital gain income without any material and by disallowing cost of improvements during the previous years.
6. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 31,189/- on account of long term capital gain loss claimed by the assessee.
7. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 2,13,060/- on account of long term capital gain by invoking the provisions of section 50C of the Income Tax Act, 1961.
8. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 56,347/- on account of long term capital gain loss claimed by the assessee.
9. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the disallowing of Rs. 54,825/- on account of deduction u/s 80C claimed by the assessee.
10. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

5. Ground No. 1 involved in this appeal is a legal ground. We have restored the identical ground raised in assessee's appeal for the assessment year 2005-06 to the Id. CIT (A) for decision afresh after taking into consideration the judgments of Hon'ble Jurisdictional High Court and Hon'ble Delhi High Court (supra). Therefore, following the decision arrived hereinabove pertaining to assessment year 2005-06,

we restore Ground No. 1 along with other grounds to the Id. CIT (A) for decision afresh in the light of judicial pronouncements mentioned above.

6. In the result, appeal of the assessee is allowed for statistical purposes.
7. In totality, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 18/09/2017.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-

(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18/09/2017.
das/

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

1. अपीलार्थी / The Appellant- Shri Dharmendra Pandey, Jaipur.
2. प्रत्यर्थी / The Respondent- The Assistant Commissioner of Income-tax, Central Circle, 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. 471 & 472/JP/2014}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

