

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 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. 297/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12

Income Tax officer, Ward- 3(5), Jaipur.	बनाम Vs.	Debock Builders Pvt. Ltd. 51, Lohiya Colony, 200 ft. Byepass Vaishali Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCD 5275 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 305/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12

Debock Builders Pvt. Ltd. 51, Lohiya Colony, 200 ft. Byepass Vaishali Nagar, Jaipur.	बनाम Vs.	Income Tax officer, Ward- 3(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCD 5275 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vikash Rajvanshi (C.A.)
राजस्व की ओर से / Revenue by : Shri P.R. Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/02/2018
उदघोषणा की तारीख / Date of Pronouncement: 19/03/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These cross appeals are directed against the order dated
25.01.2016 of CIT (A), Jaipur for the assessment year 2011-12.

2. The assessee is a company and engaged in the business of land purchase, land development and sale of plots. The assessee filed his return of income on 31.03.2012 declaring loss of Rs. 7,39,003/-. The AO issued notice u/s 143(2) of the Act for scrutiny assessment as well as notice u/s 142(1) asking the assessee to furnish various records and documents. The assessee failed to comply with the notices issued u/s 142(1). Subsequently the AO issued show cause notice dated 06.05.2013 asking the assessee to explain why the penalty should not be levied u/s 271(1)(b) of the Act. Since, there was no compliance despite penalty u/s 271(1)(b) was levied the AO finally issued a show cause notice u/s 144 on 16.12.2013. The AO framed assessment u/s 144 of the Act whereby the income of the assessee was assessed at Rs. 3,31,24,884/- as against loss of Rs. 7.39 lacs. Thus, the AO made certain disallowances as well as additions including the addition on account of unrecorded sale to the tune of Rs. 1,50,49,690/-, addition on account of cash deposit of Rs. 46,17,180/-, addition on account of unsecured loan of Rs. 1,28,48,704/-. The assessee challenged the action of the AO before the Id. CIT(A) who had granted part relief to the assessee in respect of unrecorded sales of Rs. 1,02,04,233/ out of the total addition of Rs. 1,50,49,690/- made by the AO. The other

addition/disallowance made by the AO were confirmed by the Id. CIT(A) except some partial relief. Thus both assessee as well as Revenue are aggrieved by the impugned order of the Id. CIT(A) and filed these cross appeals.

3. The Revenue has raised the following grounds:-

"1. Whether on facts and in circumstances of the case and in law the Id. CIT(A) has erred in allowing relief of Rs. 1,02,04,233/- out of addition of Rs. 1,50,49,690/- made by the AO on account of unrecorded sales on the basis of the evidences which were not produced before the AO during the course of assessment proceedings despite providing various opportunities by the A.O.

2. Whether on facts and in circumstances of the case and in law the Id. CIT(A) has erred in admitting additional evidences ignoring the fact that none of the mandatory circumstances mentioned in rule 46A of I.T. Rules 1962 was fulfilled in his case."

4. The assessee has raised the following grounds:-

Ground No. 1.

The Ld. A.O. has erred in law as well as in fact in wrongly making assessment u/s 144 inspite of that all information were duly reflected in the audited Financial Statements of the assessee company and Ld. CIT(A) also wrongly held that AO was justified in making assessment u/s 144 of the Act.

Ground No. 2

The Ld. A.O. has erred in law as well as in fact in disallowing Rs. 1,50,49,690/-on account of wrongly considering sales of Rs. 2 crores over and above disclosed sale of Rs. 49,05,310/- .The amount Rs. 2 crores is duly disclosed as security deposit

received from the party and not for sale in the current liabilities. Hence, Ld. A.O. wrongly disallowed the already disclosed security deposit received and CIT (A) deleted the addition of Rs. 1,02,04,233/-but wrongly sustained the addition of Rs. 48,45,457/-

Ground No. 3.

The Ld. A.O. has erred in law as well as in fact in wrongly disallowing the unsecured loans of Rs. 1,28,48,704/- which is duly disclosed in the balance sheet and duly confirmed by the unsecured creditors. The unsecured loan was given by the director of the company Mr. Mukesh Kumar Mahawar and was duly confirmed by him. Ld. CIT(A) gave marginal relief of Rs. 4,00,000/- only and sustained addition of Rs. 1,24,80,704/-.

Ground No. 4.

The Ld. A.O. has erred in law as well as in fact in wrongly disallowing the depreciation of Rs. 4,32,490/- on the addition to the vehicle which is duly disclosed in the audited Balance Sheet of the company. Ld. CIT(A) has not considered the remand report while making the erroneous additions.

Ground No. 5.

The Ld. A.O. has erred in law as well as in fact in wrongly making addition of Rs. 46,17,180/- on account of cash deposits in the current account, which is the genuine cash-in-hand in confirmation with the cash book of the assessee company. Copy of cash book, bank statements was also duly submitted by the assessee company. Ld. CIT(A) did not consider the same and sustained the addition of Rs. 46,17,180/-made by AO.

Ground No. 6.

The Ld. A.O. has erred in law as well as in fact in wrongly disallowing Rs.2,09,347/- on account of payment made for

Advertisement and Brokerage u/s 40(a)(ia) for non-deposit of TDS, inspite of that the above amount was duly disclosed by the recipient in their Income Tax return for relevant assessment year. CIT (A) did not consider the submitted and rejected this ground of appeal

Ground No. 7.

The Ld. A.O. has erred in law as well as in fact in wrongly making addition of 10⁰/0 of Rs. 70,64,773/- of development expenses amounting Rs. 7,06,477/-, whereas all expenses were capitalized and included in closing stock and not charged as expenditure in P&L Account. Ld. AO did not mention anything in the remand report and did not pay any attention to the facts Id. CIT(A) also did not consider the submission.

Ground No. 8

The appellant prays you honor to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.”

5. Ground No. 1 of the assessee's appeal is regarding ex-parte assessment made by the AO u/s 144 of the Act. The Id. AR of the assessee has submitted that the main Director of the assessee company Shri Mukesh Kumar Mahawar was suffering from severe chest pain and continuous pain in his abdomen since last one year. Further, he was also facing police enquiry and criminal proceeding and only when the Court has finally given relief in favour of Shri Mukesh Kumar Mahawar till then the assessee company could not conduct its day to day

business affairs and also suffered such transaction loss due to inconvenience and mental trauma face by the Director of the company. Thus, due to the ill health as well as other inconvenience and suffering of the Director the assessee was not able to represent before the AO. Thus, the Id. AR has submitted that when the assessee has explained the sufficient cause for not appearing before the AO then, the Id. CIT(A) would have set aside the ex-parte order.

6. On the other hand, Id. DR has submitted that the Assessing Officer has given more sufficient opportunities and despite various show cause notices and levy of penalty u/s 271(1)(b) of the Act the assessee did not appear and comply with the various notices issued by the AO. Hence, the AO was left with no option but to complete the assessment ex-parte u/s 144 of the Act. He has further contended that the Id. CIT(A) has entertained additional evidence and therefore, the grievance of the assessee was redressed by the Id. CIT(A).

7. We have considered the rival submissions as well as relevant material on record we note that the assessee filed additional evidences before the Id. CIT(A) which was forwarded to the AO on 16.12.2015 for obtaining its comments on the submissions and additional evidences filed by the assessee. The AO filed its remand report on 13.12.2015

which has been reproduced by the Id. CIT(A) in the impugned order. The AO has stated in the remand report that the assessee did not comply with the requisition and show cause notice issued by the AO despite sufficient opportunities were given and summons issued to the Director of the assessee u/s 131. The relevant part of the remand report of the AO as under:-

"Still not complied.

Thereafter some more opportunities were given to the assessee vide no.1849 dated 31.12.2013, on 28.01.2014 and summon was also issued to Shri Mukesh Kumar Mahawar u/s 131 and last final opportunity was give vide letter no.2174 dated 11.02.2014 but not complied at any time.

It means the several opportunities were available before the assessee before a long time ago of the treatment/illness. In the last the order u/s 14^A/143(2) was passed on 10.03.2014 by the A.O in chair ITO ward 2(2)Jaipur.

It also means that there should be on officer for one case to pass an order. No wait can be possible for the last day of the concerned year in the limitation matter. Also no conflict is revealed between the A/R of the assessee and the A/R as stated wrongly. In such circumstances the another Director may attend the case with another A/R.

Looking the facts and the evidences as are placed before your goodself as an additional evidences are not covered under the provisions of Rule 46A of the I.T. Act 1961 as are not pertained to the year under consideration well as those are

related to the A.Y 2008-09 for the assessee. Rest of the details/information were already by the A.O in chair before passing the order u/s 144 well by comparing the details/information of the audit report and the ITR of the assessee.

Thus after going through assessment record as well as material facts and the submissions produced by the assessee at this stage, no reasons observed for consideration /investigation further in the matter as were considered already at the time of assessment proceedings not beyond of audit report and the /TR filed b the assessee , hence I rely upon the findings of the A.O in chair as mentioned in his order. Therefore, I have also the same opinion on the additions made by the A.O in chair ITO ward 2(2) Jaipur by passing the order u/s 144 on 10.03.2014. No further inquiry is remained balance to be conducted now as all the issues and matter of facts have already been discussed and well determined in the said order earlier."

Thus, it is clear that the Assessing Officer raised the objections against the additional evidence propose to be filed by the assessee and submitted that the assessee has again failed to comply with the various notices and summons issued by the AO. The Id. CIT(A) after consideration the remand report has held that the sufficient opportunities were provided by the AO during the assessment proceedings therefore, the AO was justified in making the assessment u/s 144 of the Act. We do concur with the finding of the Id. CIT(A) on the issue that the Assessing Officer provided more sufficient

opportunities to the assessee and was left with no option but to make assessment u/s 144 of the Act. Hence, we do not find any error or illegality in the finding of the Id. CIT(A) quash this issue.

8. However, we find that the Id. CIT(A) while deciding the issue regarding the addition/disallowance made by the AO has considered the additional evidence filed by the assessee though the said evidence were not examined by the AO due to non compliance of the assessee to the notices issued by the AO even in the remand proceedings. Thus, in the facts and circumstances of the case when both the Revenue as well as the assessee are aggrieved by the impugned order of the Id. CIT(A) and the Revenue has raised a specific ground that Id. CIT(A) has considered the additional evidence without giving an opportunity to the AO and therefore, there is a violation of Rule 46A of the I.T. Rules 1962 then without expressing any view on the merit of the other issues we set aside the matter to the record of the Assessing Officer for deciding the same after allowing an opportunity to assessee to produce the relevant evidence and details and also to comply with the notices to be issued by the AO for further enquiry and investigation of the matter. Hence, we set aside the orders of the authorities below and remit the matter to the

record of the Assessing Officer for adjudication of the same after considering the evidence and other details to be filed by the assessee.

In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 19/03/2018

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 19/03/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- ITO, Ward-3(5), Jaipur.
2. प्रत्यर्थी / The Respondent- Debock Builders Pvt. Ltd., 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. 297 & 305/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar