

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्दादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 377/JP/2015
निर्धारण वर्ष/Assessment Years : 1995-96.

Shri Kailash Chand Dangayach, D-49, Hathi Babu Ka Bagh, Bani Park, Jaipur.	बनाम Vs.	The Income-tax Officer, Ward 3(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADOPD 5054 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar &
Ms Isha Kanungo (Advocates)

राजस्व की ओर से / Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 19.02.2018
घोषणा की तारीख / Date of Pronouncement : 19/03/2018.

आदेश / ORDER

PER SHRI VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 27.03.2015 of
Id. CIT (A)-I, Jaipur for the assessment year 1995-96. The assessee has raised the
following grounds of appeal :-

1. That under the facts and circumstances of the case the learned
CIT (A) has erred in upholding the action of the learned AO in
giving the finding that the amount of Rs. 3,52,123/- was not
declared by Shri Amit Dangayach inspite of vital evidences on
record.

2. That under the facts and circumstances of the case the learned Assessing Officer/Learned CIT (A) has erred in assessing the total income of the assessee at Rs. 14,89,910/- without giving the effects of earlier order.
3. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

2. The only issue arises in this appeal of the assessee is regarding an addition of Rs. 3,52,123/- was made on account of deposits in the bank account. A search and seizure operation under section 132 was carried out on 30th December, 1994. The original assessment was framed under section 144 of the IT Act on 26.03.1998 wherein the AO made various additions including an addition of Rs. 5,00,000/- on account of deposits in various bank accounts in the names of Rachna Dangayach, Akshay Dangayach and Amit Dangayach. On appeal, the Id. CIT (A) vide order dated 23rd February, 1999 set aside the matter issued to the record of the AO. Thereafter the proceedings were again carried to this Tribunal and the Tribunal vide order dated 28th September, 2007 set aside the matter again to the record of the AO. The present appeal is arising from the second set aside order passed by this Tribunal.

3. Before us, the Id. A/R of the assessee has pointed out that in the original proceedings the matter was set aside by the Id. CIT (A) to the record of the AO. However, on further appeal, this Tribunal vide order dated 22nd September, 2006 in ITA No. 236/JP/1999 deleted the addition made by the AO on account of deposits in the bank account. Therefore in the first round of appeal the said addition was deleted by this Tribunal. However, in the meantime the AO again passed an order as per directions of the Id. CIT (A) setting aside the issue and, therefore, the AO in the

order dated 28th March, 2001 again made an addition of Rs. 10,53,786/- as against the original addition of Rs. 5,00,000/- on this account. The Id. A/R has further submitted that the order passed by the AO in the set aside proceedings was again carried to the Tribunal. However, the Tribunal while passing the order dated 28th September, 2007 has mistakenly observed that the issue was set aside to the record of the AO in the original order dated 22nd September, 2006 and hence the matter was set aside to the AO. Thus the Id. A/R has submitted that the proceedings arising from the set aside order passed by the AO are illegal as the addition itself was deleted by this Tribunal in the first round of appeal.

3.1. On the other hand, the Id. D/R has submitted that the matter has travelled upto this Tribunal two times prior to the present appeal and, therefore, the present appeal has arisen from the order passed by the AO as per directions of this Tribunal vide order dated 28th September, 2007. He has further contended that the Tribunal in the subsequent proceedings vide order dated 31st October, 2011 in ITA No. 322/JP/2011 has again set aside the issue to the record of the AO and the present order passed by the AO is in pursuant to the directions of the Tribunal and, therefore, the addition sustained by the Id. CIT (A) is justified.

4. We have considered the rival submissions as well as relevant material on record. There is no dispute that the original assessment order was passed by the AO vide order dated 26th March, 1998 and in the first round of appeal against the said order, the Id. CIT (A) set aside the issue to the record of the AO vide order dated 23rd February, 1999. However, on further appeal, this Tribunal vide order dated 22nd September, 2006 in ITA No. 236/JP/1999 has considered and decided this issue in para 30 to 31 as under :-

“30. The AO made addition of Rs. 5,00,000/- assuming that the assessee might have deposited Rs. 5,00,000/- in the different bank accounts from his unexplained income. The submission of Id AR in this regard remained that these bank accounts were owned and possessed by M/s Onkarmal Bansidhar & Sons, a partnership firm, which had furnished a detailed certificate/explanation in this regard as find mentioned in page no. 3 of the original assessment order. The Id AR submits that the AO on page-8 has referred to certain bank account. As far as the appellant is concerned it is only having one bank account bearing SB A/c no. 14165/68 with United Commercial Bank, Chandpole Bazar, Jaipur. On perusal it is apparent that there are no transactions. The other account mentioned by Id AO 23 CD-14/93 of UCO bank is not of the appellant. Thus the appellant has no concern, connection over the said account. The account referred as 400/63 with Syndicate Bank is certainly in the name of the appellant but has been owned by M/s Onkarmal Banshidhar & Sons as all the transaction of the said account are of M/s Onkarmal Banshidhar & Sons. M/s Onkarmal Banshidhar & Sons is already before the settlement commission. The AO has mentioned about some bank accounts of Rachna, Akshay, Amit, Sunita Rawat, Priyanka however the appellant has neither any concern nor has any connection over the said account of different family members, all are individuals persons in their own right. The appellant can not be held responsible for the bank accounts of different family members. It deserves to be ignored. Sunita Rawat is not related to the appellant. Similarly Priyanka Dangayach is minor daughter of Shri Mahesh Dangayach younger brother, of the appellant. Therefore, all these bank accounts deserve to be considered in the respective heads and not in the heads of the appellant nor has any concern or connection over the same. The AO has presumed and assumed that the assessee deposited Rs. 5 lacs in these accounts same is based on

no evidence as far as the appellant is concerned there is no credit in his individual account the addition being in violation of principles of natural justice deserves to be deleted. The Id DR on the other hand banks upon the assessment order.

31. After having gone through the orders of the lower authorities in view of arguments advanced by the parties, we find from the perusal of page no.8 & 9 of the assessment order that the AO has made the addition in question on the basis that the assessee did not produce any details and bank statements/pass book, therefore it was not possible to identify the account related to HUF and individual. He therefore added back Rs. 3,00,000/- to the total income of the assessee in HUF status for A.Y. 1995-96 for further consideration in his individual assessment as well. The AO mentioned further that considering the non cooperative attitude of the assessee for the interest of revenue he hold that assessee deposited Rs. 5 lacs during the year under assessment in various bank accounts out of his undisclosed income. We are thus of the view that the AO has made addition purely on the assumption without even mentioning any amount found deposited in the different accounts of the bank whose details like account numbers and name of banks have been mentioned at page no.8 & 9 of the assessment order. We are of the view that when reference of these accounts were available with the AO in that case due to non cooperation of the assessee, as alleged, at least one option was available before the AO to verify from the concern banks as to how much deposits were available in these accounts so that a definite amount on the basis of that information should have been added by the AO instead of making a guess that assessee might have deposited an amount of Rs. 5 lacs in these accounts from his undisclosed income, which in our view has no basis or standing in the matter of block assessment. We thus while setting aside first appellate order upholding the assessment, direct the AO to delete the addition. The Ground no.-8 is allowed.”

Thus it is clear that this Tribunal has deleted the addition in respect of the deposits made in the different bank accounts amounting to Rs. 5,00,000/-. Since the AO had passed an order dated 28th March, 2001 in pursuant to the order of the Id. CIT (A), therefore, parallel proceedings were also started in the matter without giving effect to the order of this Tribunal dated 22nd September, 2006. Therefore, once this issue was decided by the Tribunal on merits, therefore, all subsequent proceedings by the AO are in contravention of the order of this Tribunal dated 22nd September, 2006. Though the Tribunal in the subsequent appeal vide order dated 28th September, 2007 has set aside the issue arising from the order passed by the AO dated 28th March, 2001 in pursuant to the order of the Id. CIT (A) setting aside the issue to the AO has again remanded the matter to the AO in para 35 as under :-

“ 35. After perusal of assessment order, we find that the AO has made effort to verify the correctness of the explanation of the assessee. He has however not strictly followed the direction of Id. CIT (A) vide order dated 23.2.1999 in appeal No. 229/1998-99 to decide the matter afresh. Since on similar issue the Tribunal has already set aside the orders of lower authorities in ITA No.236/JP/1999 in the appeal of assessee for the same assessment year 1995-06 and has remanded the matter to the file of the A.O. for a fresh consideration, we while setting aside the orders of the lower authorities on addition of Rs. 10,53,786/- in question, remand the matter to the file of the A.O. to decide the matter afresh in the manner directed by the Id. CIT (A)

vide his order dated 23.2.1999 in appeal No. 229/98-99 after affording adequate opportunity of being heard to the assessee. The ground No. 2 is thus allowed for statistical purposes.”

Thus it is clear that the second order of the Tribunal dated 28th September, 2007 was passed on the basis of assumption of wrong facts that in the first round of appeal in ITA No. 236/JP/1999 vide order dated 22.09.2006 the matter was remanded to the AO whereas in fact the issue was decided in favour of the assessee. Thus the proceedings arising from the order passed by the AO dated 28th March, 2001 is not sustainable in law on this issue when the addition on account of deposits in the bank was deleted by this Tribunal in the first round of appeal itself. Accordingly, in the facts and circumstances of the case, we delete the addition made by the AO on this account.

5. In the result, appeal of the assessee is allowed.

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

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 19/03/2018.

das/

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant- Shri Kailash Chand Dangayach, Jaipur,
2. प्रत्यर्थी / The Respondent-The ITO, Ward 3(2), 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. 377/JP/2015}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar