

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.75/Ran/2017
A.Y. : 2008-2009

Sunil Kumar Sahay, Qtr.No.E-39, Sector-3, HEC Colony, Ranchi-834004	vs	ITO Ward-1(1), Ranchi
PAN No. : ABUPS 2802 B		
(Appellant)	.	Respondent

Assessee by : Shri R.K.Kaushal, CA

Revenue by : Shri P.K.Mondal, JCIT

Date of Hearing : 29.05.2018

Date of Pronouncement : 30.05.2018

ORDER

Per Pavan Kumar Gadale, JM:

This is an appeal filed by the assessee against the order of CIT(A), Ranchi, dated 14.12.2016 for the assessment year 2008-2009.

2. At the time of hearing Id. AR of the assessee has filed an application seeking adjournment and the same has been withdrawn and accordingly the adjournment application filed by the assessee is dismissed as withdrawn.

3. The assessee has raised the following grounds of appeal :-

1. *That the Assessment Order is based on wrong appreciation of facts, based on whims and presumptions and is not supported by proper facts and proper appreciation of law .*
2. **WHETHER** *the assessing officer was justified in making addition of Rupees 11,95,500/- alleging that the investment were made by the Assessee and has invested an amount and the said amount is assessable u/s 69 of the Income Tax Act,*

1961 & without considering the explanations as submitted by the Assessee and without applying the facts of the case and legal provisions ?? .

3. **WHETHER** *the assessing officer was justified in ignoring the very basics of issuing notice u/s 147/148 and the points for which the permission of the Commissioner of Income Tax was obtained and making the addition which were not consented to by the Commissioner of Income Tax without applying the facts of the case and legal provisions ??*
4. **WHETHER** *the income truly and fully assessable in the hands of Firms can be justifiably assessed in the hands of the partners of the firm??*
5. *Any other Grounds of appeal which the Assessee may think fit in the light of the circumstances and fitness of the case at the time of hearing to get the justice form the Hon'ble Sir.*

4. Brief facts of the case are that during the course of assessment proceedings of Sri Adiya Vikram Jaiswal for the assessment year 2010-2011, the AO noted that M/s ABC Construction is not filing its return of income. The AO had evidence in his possession from the case of Sri Adiya Vikram Jaiswal that land worth Rs.56,61,456/- was sold in the F.Y.2009-10. The above land was purchased on 13.05.2008 and 23.05.2008 by making payment of Rs.20,91,000/- and Rs.11,43,000/-. Payment of Rs.23.91 lakhs making payment of 20,91,000/- and Rs.9,00,000/- respectively. Further Rs.8,43,000/- was paid in the financial year 2008-09. The AO therefore reason to believe that investment for the financial year 2007-08 relevant to A.Y.2008-09 as well as interest and remuneration to partners was not disclosed by the firm. Considering the above facts notice u/s.148 of the Act was issued on 28.03.2014. However, no compliance to this notice was made, rather the assessee denied having made any such transaction and asked the AO to supply information as was in his

possession. Accordingly the assessee was supplied with the copies of the purchase deeds. Thereafter AO completed the assessment making addition of Rs.11,95,500/- u/s.69 of the Act and assessed the total income at Rs.16,90,520/- and passed order u/s.147/143(3) of the Act, dated 28.03.2015.

5. Aggrieved by the assessment order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the assessee argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of assessee and the findings of AO, dismissed the appeal of the assessee.

6. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal.

7. Ld. AR before us submitted that the order passed by the AO is bad in law and also the issue of notice u/s.148 of the Act is not in accordance with the provisions of the Act and assessment has to be quashed and also the addition made u/s.69 of the Act by the AO and confirmed by the CIT(A) is without any basis and prayed for allowing the appeal.

8. Contra, Id.DR relied on the orders of lower authorities.

9. We heard the rival submissions and perused the material on record. Prima facie, on perusal of the grounds of appeal, we found that the Id. AR of the assessee submitted that the assessee has raised additional ground of appeal wherein he has challenged the order passed u/s.147 of the Act, which is as under :-

WHETHER the assessing officer was justified in ignoring the very basics of issuing notice u/s 147/148 and the points for which the permission of the Commissioner of Income Tax was obtained and making the addition which were not consented to by the Commissioner of Income Tax without applying the facts of the case and legal provisions ??

We find that this ground has been raised for the first time before the Tribunal and accordingly, we consider it appropriate to remit the entire disputed issue to the file of CIT(A), who shall consider the ground and verify and examine the issue afresh and pass order after providing adequate opportunity to the assessee and the assessee shall cooperate in submitting the information before the CIT(A). Hence, the ground of appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 30/05 /2018

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Ranchi, Dated 30/05/2018
Prakash Kumar Mishra, Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
Sunil Kumar Sahay,
Qtr.No.E-39, Sector-3, HEC Colony,
Ranchi-834004
2. The Respondent –
ITO Ward-1(1), Ranchi
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

BY ORDER,

//True Copy//

SR.PS, ITAT, RANCHI