

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

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 431/JP/2018
निर्धारण वर्ष/Assessment Year: 2014-15

Smt. Seema Mundra 524-A, Talwandi Kota	बनाम Vs.	The DCIT Central Circle Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADGPM 6758 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri C.M. Birla, CA
राजस्व की ओर से / Revenue by: Shri Varinder Mehta, CIT - DR

सुनवाई की तारीख / Date of Hearing : 18/06/2018
घोषणा की तारीख / Date of Pronouncement : 21/06/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the Id.
CIT(A)-4, Jaipur dated 1-02-2018 for the Assessment Year 2014-15
raising therein following grounds of appeal.

“1. That under the facts and circumstances of the case the Id. CIT(A) erred in not considering that F.Y. 2013-14 being the search year the issuance of notice u/s 142(1) r.w.s.s 153A for Asstt.Year 2014-15 was beyond legislative powers of the AO and therefore, entire proceedings based on this illegal notice being void the order u/s 143(3) r.w.s. 153B(1) deserves annulment.

2. That without prejudice to GOA 1 above the ld. CIT(A) erred in confirming addition/ disallowance of Rs. 7,34,042/- from interest a/c.

3. That without prejudice to GOA 1 and 2 above the ld. CIT(A) further erred in not considering that interest Rs. 2,98,920/- is already charged from Pawan Mundra and therefore, addition, if any should be Rs. 4,35,122/- (734042 – 298920) only with corresponding relief in Pawan Mundra who is also taxed for Asstt. Year 2014-15 u/s 143(3) r.w.s. 158B(1).’’

2.1 Apropos Ground No. 1 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

’’3. In the present case, it is seen that appellant derived income from job work in her proprietorship concern namely M/s. Preet Stone Industries, interest income and also declared agricultural income. Appellant e-filed her original return of income on 29-11-2014 for the A.Y. 2014-15 declaring total income at Rs. 2,81,210/- and also declared agricultural income of Rs. 1,72,000/-

Appellant belongs to Mundra Group, Kota on whose premises, a search u/s 132 of the Act was carried out on 13-08-2013. Various assets/books of accounts and documents were found, inventorized and seized as per annexure prepared during the course of search. Pursuant to this, AO issued a notice u/s 142(2) r.w.s. 153A of the Act to the appellant, in compliance of which, appellant filed her return of income on 19-01-2015 for the A.Y. 2014-15 declaring total income at Rs. 2,81,210/- and also declared agricultural income of Rs. 1,72,000/-. Finally, AO completed assessment u/s 143(3) r.w.s. 153B(1)(b) of the Act vide order dated 29-01-2016 at a total income of Rs. 10,15,250/-.

4....

5. The appellant has taken a legal ground that since notice u/s 153A was issued to him for the instant A. Yr. the entire assessment should be quashed. The appellant

has cited Sec 153A to state that for this A. Yr. notice cannot be issued.

I have perused the ground and submission made. I am of the view, though notice u/s 153A need not be issued for the instant A.Yr. being search assessment year (date of search being 13-08-2013), it does not cause any prejudice to the appellant. Further, admittedly no dispute, legal or procedural, is raised by the appellant either before the AO or before me regarding completion of assessment u/s 143(3). Merely issue of notice u/s 153A and mentioning of same in the top header of assessment order does not vitiate the entire order. On the facts and in the circumstances of the, in my view the legal objection raised by the appellant deserves to be dismissed. Appellant's appeal in Ground No. 1 is dismissed

2.2 During the course of hearing, the Id.AR of the assessee prayed for quashing of the assessment order for which the Id.AR of the assessee filed the following written submission.

“Before we proceed further we submit sec.153A has been amended by the Finance Act 2017 w.e.f. 01.04.2017. Because of amendment in section 153A(1)(a), 153A(1)(b), its three provisos, section 153B and 153C after *six assessment years - 'and for the relevant assessment year or years' - is inserted.*

We however submit this amendment is effective from 01.04.2017; it does apply where search under section 132 of the Income-tax Act is initiated or requisition under section 132A of the Income-tax Act is made on or after the 1st day of April, 2017 and it applies to assessment years preceding to search years only.

Though the Hon'ble CIT(A) has accepted that this Ass.Year being search year the AO should not have issued notice u/s 153A but to him as it has not caused any prejudice to assessee and as the AO has issued notice u/s 143(2) before assessment u/s 143(3) is finalized merely issue of notice u/s 153A and mentioning of same in the top header of assessment order does not vitiate the

entire order. We submit Hon'ble CIT(A) failed to appreciate that there are plethora of judgments wherein because of failure to give notice u/s 143(2) assessment completed u/s 143(3) are vitiated.

In circumstances akin to us Hon'ble Chandigarh Bench in Rajeev Kumar vs. ACIT (2017) 186 TTJ 522 relying on decision of Hon'ble Delhi Bench of ITAT in Upendra Kumara Sharma vs DCIT, Circle 9(1) (ITA No.3141/DEL/09 dated 12.04.2010) have quashed assessment order. We may add that decision of Hon'ble Chandigarh Bench (supra) does answer doubts raised by Hon'ble CIT(A) also.

We therefore submit assessment order be quashed. “

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.4 We have heard the rival contentions and perused the materials available on record. It is not imperative to repeat the facts and circumstances of the case as the ld. CIT(A) has elaborately discussed the issue in his order. However, it is noted that on the similar issue the ITAT Chandigarh Bench in the case of Rajeev Kuamr vs ACIT (2017) 186 TTJ 522 relying on decision of ITAT Delhi Bench in the case of Upendra Kumar Sharma vs DCIT Circle – 9(1) (ITA No.3141/Del/09 dated 12-04-2010) has quashed the assessment order. The relevant observation of ITAT Chandigarh Bench is as under:-

“11.....It is well settled that an assessment is to be framed for the previous year which precedes the assessment year. Therefore, for the previous year 2006-07, the assessment year 2007-08, this assessment year succeeds the period of search and not precedes. From the plain language of the provisions contained in cl. (b) of sub-s(1) of section 153A of the Act, it is clear that the assessment under section 153A of the Act could have been framed for the 6 Assessment Years

which precedes the assessment year 2007-08. Therefore, we are of the confirmed view that the assessment under section 153A of the Act could have been framed from the Assessment Years 2001-02 to 2006-07 only and not for the Assessment Year 2007-08. As the assessment for the Assessment Year under consideration was framed by the AO under section 153A of the Act, therefore, this assessment was not valid in the eyes of law and of initio. Thus the same is quashed. Since we have quashed the assessment order under consideration considering the same as invalid, no findings are given on other grounds raised by the assessee.’’

Respectfully following the decision of ITAT Chandigarh Bench in the case of Rajeev Kumar vs ACIT (supra), it is noted that the legal objection raised by the assessee before the Id. CIT(A) has merit and we concur with the submissions of the assessee. Thus Ground No. 1 of the assessee is allowed.

3.1 Apropos Ground No. 2 and 3 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“6. With reference to Ground No. 2, it is seen that on perusal of details filed by the appellant AO revealed that the appellant paid processing charges and interest to bank at Rs. 7,34,042/-. However, interest free loans were advanced to various persons/ concerns which also includes persons covered u/s 40A(2)(b). Accordingly, the appellant was required to justify the payment of interest w.r.t. not charging of interest on interest free loan. The reason furnished by the appellant that loan taken from bank was advance to Shri Pawan Mundra has not supported with any evidences therefore, nexus for payment of processing charges and interest to bank has not been proved. Therefore, the processing charged and interest paid to bank of Rs.

7,34,042/- was disallowed and addition made by the AO to the income of the appellant.

7. ...

8. Ground 2(i) and (ii) are taken together as requested by the appellant. Firstly the appellant has taken a legal plea that disallowance cannot be made as no incriminating seized material is found. Judgement namely Jai Steel vs ACIT 259 CTR 281 (Jaipur) & CIT vs Kabul Chawla 281 CTR 45 (Del.) are cited in support of the contention.

The legal pleas is untenable as on the date of search (13-08-2013) no return was filed for the A.Yr. 2014-15. In fact the return was filed on 29-11-2014. Since on the date of search the assessment was pending the judgements cited are NOT applicable. The legal plea thus is dismissed.

Coming to the merits of the issue, the AO has made disallowance in para 6 of the assessment order with a crucial observation that "the reason furnished by the appellant that loan taken from was advanced to Shri Pawan Mundra has not supported with any evidence therefore, nexus for payment of processing charge and interest to bank has not been proved." Perusal of submissions made (entire portion reproduced above) does not address nor rebut the finding by the AO. Under these facts and in the circumstances of the case, addition made by the AO of Rs. 7,34,042/- is confirmed."

3.2 During the course of hearing, the ld.AR of the assessee prayed that the disallowance of Rs. 7,34,042/- be deleted and the ld.AR further submitted that assessee has already charged interest of Rs. 2,98,920/- from Shri Pawan Mundra for which the AO be directed to restrict the

disallowance to Rs. 4,35,122/- (Rs. 7,34,042 minus 2,98,920) only with a corresponding set off relief to Pawan Mundra.

3.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.4 We have heard the rival contentions and perused the materials available on record. In this case it is noted that the interest paid and received are appearing in Assessee's paper book page 5 from which it is apparent that interest received from 4 persons and paid to bank is shown in Profit & Loss Account where there is surplus of Rs. 1,01,394/- and it is shown in computation statement at assessee's paper book page 3 under Business Income Head. It is noted that the lower authorities have confirmed the addition because assessee failed to furnish the nexus of loan taken from bank qua advanced to Shri Pawan Mundra. It is further noted that the assessee has submitted the bank statements of self (Central Bank of India, Kota) and also of M/s. Stone Edge Co. (a proprietary concern of Shri Pawan Mundra – Punjab National Bank, Kota) wherefrom nexus is verifiable (APB 14-15). In this view of the matter, the disallowance of Rs. 7,34,042/- made by the AO is directed to be deleted. As regards the charging of interest by the assessee of Rs. 2,98,920/- from Shri Pawan Mundra, the AO is directed to restrict the

disallowance to Rs. 4,35,122/- (Rs. 7,34,042 minus 2,98,920) only with a corresponding set off relief to Pawan Mundra in view of the submissions made before us. Thus the Ground No. 2 and 3 of the assessee are allowed.

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

Order pronounced in the open Court on 21 -06-2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य /Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 21 /06/ 2018

*Mishra

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

1. अपीलार्थी / The Appellant- Smt. Seema Mundra, Kota
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle, Kota
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.431 /JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar