

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. 68/JP/2017
निर्धारण वर्ष/Assessment Year: 2010-11

Shri Sudhir Sharma Prop. S.K. Industries C-48, Sethi Colony, Jaipur	बनाम Vs.	The ITO Ward- 5 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BCYPS 2416 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Written Submissions
राजस्व की ओर से / Revenue by: Shri J.C. Kulhari, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 27/06/2018
घोषणा की तारीख / Date of Pronouncement : 28/06/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the Id.
CIT(A)-5, Jaipur dated 18-10-2016 for the Assessment Year 2010-11
raising therein following grounds of appeal.

“1. The impugned addition made in the order u/s 143(3) r/w 147 of the Act dated 14-07-2014 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2. The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be

quashed. Consequently, the impugned assessment framed u/s 143(3) r/w 147 of the Act dated 14-07-2014 also kindly be quashed.

3. Rs.69,727/-. The CIT erred in law as well as on the facts of the case in making addition of Rs. 69,727/- [i.e. NP Rate @ 6% on difference amount of contract receipt of Rs. 11,62,123] on account of alleged difference between the contract receipt. The addition so made by the AO and confirmed by the Id. CIT(A) are contrary to the provisions of law and facts of the case hence, the same kindly be deleted in full.

4. The Id AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C and 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/ withdrawn being contrary to the provisions of law and facts, kindly be deleted in full.

2.1 Apropos Ground No. 1, 2 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“3.3 I have considered the facts of the case, the assessment order and the submissions of the appellant. The main arguments of appellant are that there was no fresh material which cam to the notice of AO while reopening the assessment. It is thus argued that the reopening of assessment is on account of change of opinion of the AO which is not allowable as per various judgements cited. It is further cited that the assessee had requested for the reasons for reopening the assessment which were however not supplied to him. The third argument of appellant is that once the AO had rejected books of account and applied net profit rate on receipts of business in the original assessment, the reopening of assessment without any fresh material amounts to having a different view of the original assessment and hence implies a change of opinion.

I have considered the facts of the case and arguments put forth by the appellant. It is observed that the assessment was reopened on account of difference of Rs. 11,62,123/- in

the turnover as per Form 26AS and the turnover declared as well as assessed in the original assessment . In the original assessment, there is no query raised by the AO regarding the said difference and also no discussion thereon in the original assessment order. It is therefore, not a case of change in opinion. Further the notice u/s 148 was issued on 03-01-2014 which is within 4 years of the end of the assessment order. It is further seen that the AO supplied the reasons for reopening of assessment which is evident from order sheet noting dated 23-06-2014 mentioning that the reasons for reopening u/s 147 have been provided to the assessee. The third argument of the appellant is also not tenable since the AO rejected the books of account of and applied net profit rate in the original assessment order on the receipts of business which were evidently less by an amount of Rs. 11,62,123/- which was not taken into account in the original assessment. Thus there is no infirmity or change of opinion while reopening the assessment. Ground Nos. 1,2 & 3 of appeal are accordingly dismissed.

2.2 None appeared on behalf of the assessee during the course of hearing. However, the written submission filed by the Id.AR of the assessee has been taken into consideration.

2.3 On the other hand, the Id. DR supported the order of the lower authorities.

2.4 We have heard the Id. DR and perused the materials available on record including the written submissions of the assessee. Brief facts of the case are that the assessee e-filed the original return of income on 11-10-2010 declaring income of Rs. 7,43,720/-. Subsequently case was completed u/s 143(3) on 27-11-2012 and total income was assessed at

Rs. 15,49,360/-. It is noted that in this case notice u/s 148 was issued on 3-01-2014 after recording reasons and taking approval from the Addl. LD. CIT, Range-5, Jaipur which was duly served upon the assessee.

Reasons of reopening the assessee's case are as under:-

“The total contract receipts as per Form 16A was Rs. 2,86,51,493/- against which the amount shown in trading and profit & loss a/c was Rs. 2,74,89,370/-. Thus contract receipts are taken less by Rs. 11,62,123/- in trading and profit & loss a/c. The omission has resulted into under computation of income by Rs. 69,727/-.

In view of the above, I have reason to believe that income of Rs. 69,727/- for A.Y. 2010-11 has escaped assessment within the meaning of section 147 of the I.T. Act, 1961 on account of failure on the part of the assessee to disclose fully and truly all the materials facts in respect of computation of income.”

Regarding issuance of notice, the Id.AR of the assessee vide letter dated 25-06-2014 submitted the reply before the AO. However, the AO was not convinced with the reply of the assessee and held that the notice u/s 148 of the Act had rightly been issued in this case. The relevant observation of the AO to this effect is as under:-

“I am not convinced with the reply of the assessee's A/R that issuance of notice is invalid ab initio. This issue was never examined during original assessment proceeding. No query or verification was done. This fact is evident from notice u/s 142(1) dated 10-07-2012. Hence, the defect noticed later on does not preclude the department to initiate proceedings u/s 148. Therefore, to examine the issue of difference of contract receipts, notice u/s 148 has rightly been issued in this case.”

In appellate proceedings, the Id. CIT(A) has confirmed the action of the AO holding that the AO supplied the reasons for reopening the assessment which is evident from the order sheet noting dated 23-06-2014 mentioning that the reasons for reopening u/s 147 have been provided to the assessee. It is noted from the available records that the Id. CIT(A) has elaborately discussed the issue in question and confirmed the action of the AO. We have taken into consideration the orders of the lower authorities and written submission of the assessee but we did not find any controverting material against the findings of the lower authorities. In this view of the matter, we concur with the findings of the Id. CIT(A). Thus Ground No. 1 and 2 of the assessee are dismissed.

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

“4.3 I have considered the facts of the case and arguments put forth by the appellant. The difference in turnover amounting to Rs. 11,62,123/- is on account of contract receipts from Elite Buildcon and Triton Hotels which have accrued to the assessee and TDS thereon has been deducted by the parties and credit of such TDS has been claimed by the assessee in the return. It has however, been claimed by the assessee that the amount corresponding to the said difference of Rs. 11,62,123/- was actually disputed with both parties and was not received eventually. The assessee is following mercantile system of accounting. Based on the bills raised by the assessee against work undertaken for the above 2 parties, the said amount was credited in the assessee's account in their books and parties also deducted TDS thereon. The

difference amounts were reversed much later after a gap of almost 2 years. Thus the assessee could not have known during the year that the said amount would not be received by him. Therefore, the only correct option available to the assessee was to credit the full amount in the turnover as per bills raised by the assessee and to write off such amounts as and when such amounts became not receivable. In fact the assessee was asked to submit the ledger accounts of above parties during the appellate proceedings in order to ascertain the accounting treatment given by the assessee in his books of account. However, the assessee has failed to furnish the copy of such ledger accounts. Nonetheless the fact remains that the said contract receipts needed to be booked as turnover for the year under consideration in view of the facts stated above. Thus the addition of Rs. 69,727/- being the net profit at the rate of 6% of the contract receipts of Rs. 11,62,123/- is in order and is accordingly upheld.

4.4. Before parting it would be pertinent to note that while the assessee has not shown the contract receipts of Rs. 11,62,123 he has claimed the credit of the corresponding TDS amount which is also not correct since as per Sec 199 read with Rule 37BA, credit for TDS has to be limited in accordance with the amount of corresponding income shown. Therefore, it was not correct on the part of the assessee to have claimed the credit of entire amount of TDS. However, since the entire contract receipts have not been taken for assessment of profits, the AO may allow credit of the entire amount of TDS.

3.2 We have heard the ld. DR and perused the materials available on record including the written submission of the assessee. Brief facts of the case are that the AO made the addition of Rs. 69,727/- by observing as under:-

“I am not convinced with the reply of the assessee’s A/R. The total contract receipts as per Form 16A was Rs. 2,86,51,493/- against

which the amount shown in trading and profit & loss a/c was Rs. 2,74,89,370/-. Thus the assessee has declared contract receipt short by Rs. 11,62,123/-. During the assessment proceeding, the assessee's A/r was failed to reconcile the difference in contract receipts of Rs. 11,62,123/-. Further the assessee has claimed whole TDS as made by the deductors in his original return of income. In view of the facts, I am not agree with the plea of the assessee's A/R. In the assessment order u/s 143(3) dated 27-11-2012 has applied N.P. Rate of 6%. Therefore, on the similar line, I apply N.P. Rate of 6% of difference of contract receipt of Rs. 11,62,123/- on which net profit comes to Rs. 69,727/- which is added to the total income of the assessee.’’

In first appeal, the Id. CIT(A) has confirmed the action of the AO by observing that *‘‘in fact the assessee was asked to submit the ledger accounts of above parties during the appellate proceedings in order to ascertain the accounting treatment given by the assessee in his books of accounts. However, the assessee failed to furnish the copy of such ledger accounts. Nonetheless the fact remains that the said contract receipts needed to be booked as turnover for the year under consideration in view of the facts stated above. Thus the addition of Rs. 69,727/- being the net profit at the rate of 6% of the contract receipts of Rs. 11,62,123/- is in order and is accordingly upheld.’’* We have taken into consideration the submissions of the assessee, however, we find no merit in the submissions of the assessee. In this view of the matter, we concur with the findings of the Id. CIT(A). Thus Ground No. 3 of the assessee is dismissed.

4.1 The Ground No. 4 of the assessee is regarding charging of interest u/s 234A, 234B, 234C & 234D and withdrawing interest u/s 244A of the Act are mandatory in nature and the assessee will get the consequential relief, if any.

5.0 In the result, the appeal of the assessee is dismissed

Order pronounced in the open Court on 28-06-2018.

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

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

जयपुर /Jaipur

दिनांक /Dated:- 28 /06/ 2018

*Mishra

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

1. अपीलार्थी /The Appellant- Shri Sudhir Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 5(2), Jaipur
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. 68 /JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar