

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

श्री विजय पॉल 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. 750/JP/2017
निर्धारण वर्ष / Assessment Years : 2014-15

Shri Ramesh Chand B-24, Mandi Yard, Kekri Distt. Ajmer- 305404	बनाम Vs.	Income-tax Officer, Ward-2(3), Ajmer
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABPPC0200J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Shri Raj Mehra(JCIT)

सुनवाई की तारीख / Date of Hearing : 01/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 02/08/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 25.07.2017.10.2017 for Assessment Year 2014-15. wherein the assessee has taken following grounds of appeal:-

- "1. The impugned order u/s 144 dated 23.11.2016 is bad in law and on facts of the case, for want of jurisdiction and for various other reasons and hence, the same may kindly be quashed and in any case, the impugned addition/s be deleted.*
- 2. The Id. AO erred in law as well as on the facts of the case in framing the assessment u/s 144 without affording adequate and reasonable opportunity and even without complying with the mandatory statutory requirement of law. The impugned order*

having been framed in gross breach of natural justice, kindly be quashed.

3. The Id. CIT(A) seriously erred in law as well as on the facts of the case in not admitting the additional evidences furnished by the appellant during the course of the appellate proceedings. The decision of the Id. CIT(A) is totally contrary to the provisions of law and facts on the record and hence the same kindly be admitted and considered.

4. Rs. 39,83,000/- The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs. 39,83,000/- [20% of Rs. 1,99,15,000/-] on account of unexplained cash deposit made by the AO. The addition so made and confirmed by the Id. CIT(A) is totally contrary to the provisions of law and facts on the record and hence the same kindly be deleted in full.

5. Rs. 51,600/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs. 51,600/- on account of unsecured loans made by the AO. The addition so made and confirmed by the Id. CIT(A) is totally contrary to the provisions of law and facts on the record and hence the same kindly be deleted in full.

6. Rs. 11,02,693/- The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance of the following expenses.

<i>S. No.</i>	<i>Head of Expenses</i>	<i>Exp. claimed</i>	<i>Disallowed by AO 30%</i>	<i>Confirmed by the Id. CIT(A)</i>
<i>6.1</i>	<i>Freight</i>	<i>22,49,148/-</i>	<i>6,74,744/-</i>	<i>Rs. 6,74,744/-</i>
<i>6.2</i>	<i>Salaries & Wages</i>	<i>13,83,508/-</i>	<i>4,15,052/-</i>	<i>Rs. 4,15,052/-</i>
<i>6.3</i>	<i>Other expenses</i>	<i>12,74,812/-</i>	<i>3,82,444/-</i>	<i>Rs. 3,82,444/-</i>

	<i>Total</i>		<i>Rs. 14,72,240/-</i>	<i>Rs. 14,72,240/-</i>
--	--------------	--	------------------------	------------------------

The disallowance so made and confirmed by the Id. CIT(A), being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

7. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C & 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. Ground No. 1 is general in nature, does not require any separate adjudication. Hence the same is dismissed.

3. In Ground No. 2, the assessee has challenged the framing of assessment u/s 144 without affording adequate and reasonable opportunity to the assessee. We have gone through the records and find that notice u/s 143(2) was issued on 18.09.2015. Thereafter, notice u/s 142(1) was issued on 27.06.2016 asking the assessee to furnish required information and documentation. Thereafter, there have been number of occasions wherein the hearing have been scheduled by the Assessing Officer, however, there has been no compliance on the part of the assessee and the Assessing Officer has proceeded and passed the order u/s 144 of the Act. In light of the same, we do not see any infirmity in the order of the Assessing Officer which has been passed u/s 144 of the Act. In the result, Ground No. 2 of the assessee's appeal is dismissed.

4. In Ground No. 3, the assessee has challenged the action of the Id. CIT(A) in not admitting the additional evidences furnished by the assessee in the form of books of accounts i.e. Cash Book, Bank Book, Ledger, Journal and Bills and vouchers during the course of appellate proceedings.

5. The Id. AR has submitted that the Id. CIT(A) has not considered the remand report of the AO wherein he has not objected to the admission of the additional evidence and has in fact verified the same and the found the transactions duly verifiable.

6. In this regard, the Id. AR has drawn our reference to the remand report dated 12.06.2017 called for the Id. CIT(A) from the AO which is available at assessee's paper book page 270-271 and which reads as under:-

"Kindly refer to your office letter No. CIT(A)/AJM/2016-17/5825 dated 20.03.2017 on the above mentioned subject through which written submission filed by the appellant Shri Ramesh Chand, Kekri-Ajmer during the course of appellant proceedings were forwarded to this office and comments/remand report was desired by your honour.

Shri G.M.Jain, CA and A/R of the assessee alongwith Shri Ramesh Chand, Accountant attended the hearing the response to this office letter dated 29.06.2017 and filed his written submission. Books of accounts viz-a-viz ledger, cash book, bank statements, purchase and sales register, bills and vouchers were also produced and examined on test check basis. The case was discussed with them.

The para wise remand report is as under:-

1. Assessment completed u/s 144 of the I.T. Act:

On perusal of record, it was found that enough opportunity of being heard were provided to the assessee, but the assessee neither appeared nor furnished any reply during the period of 5 months of proceeding, which shows that the assessee was not in a position to have anything to produce or say.

All notices/letters were issued to the assessee through speed post and served mostly on very next day of the notice. Therefore, AO has not option than to make the assessment of income of the assessee to the best of his judgment u/s 144 of the Income-tax Act, 1961.

2. Addition on account of cash deposits of Rs. 39,83,000/-

The A/R of the assessee produced the copy of bank account and cash book which was examined. From this, cash deposits in assessee's bank account are verifiable.

3. Addition on account of unsecured loans of Rs. 51,600/-

The A/R of the assessee produced the confirmations alongwith copy of the ledger account regarding unsecured loans, which are verifiable.

4. Disallowance of expenses of Rs. 14,72,240/-

The AO has disallowed the expenses as under:-

<i>S. No.</i>	<i>Expenses</i>	<i>Amount (Rs.)</i>	<i>30% of such expenses (Rs.)</i>
<i>1.</i>	<i>Freight</i>	<i>22,49,148/-</i>	<i>6,74,744/-</i>
<i>2.</i>	<i>Salaries & Wages</i>	<i>13,83,508</i>	<i>4,15,052/-</i>
<i>3.</i>	<i>Other expenses</i>	<i>12,74,812</i>	<i>3,82,444/-</i>

	<i>Total</i>		<i>14,72,240/-</i>
--	--------------	--	--------------------

On perusal of ledger of freight expenses account, it was gathered that the assessee has made various payments of more than Rs. 20,000/- in cash totaling to Rs. 15,80,816/-. The A/R of the assessee has not any explain the circumstances in which payment was made in cash. Therefore expenditure of Rs. 15,80,816/- should not be allowed in view of provisions of section 40A(3) of the I.T. Act, 1961.

It was also gathered that some of the expenses are not fully vouched/self made vouchers. Therefore, taking a reasonable view, 20% of expense may be disallowed out of salaries & wages expenses and other expenses.

It is pertinent to mention here that in AY 2013-14 the AO has also disallowed the General expenses of Rs. 10,000/-

Report is submitted for your kind perusal."

7. On perusal of the remand report, it is observed that the Assessing Officer has not given any adverse comments regarding admission of the additional evidences produced by the assessee. In fact, the same were examined by the Assessing Officer during the course of remand proceedings and the cash deposit in the assessee's back account were held verifiable. Similarly, unsecured loan were held verifiable. Regarding disallowance of expenses which were originally made 30%, the Assessing Officer in the remand report has suggested disallowance of 20% of the said expenses. However, we find that there is no finding or discussion by the Id. CIT(A) in respect of the remand report given by the Assessing Officer dated 12.06.2017. It is therefore a case where the Id. CIT(A) has called for the remand report seeking comments from the AO without the admitting additional evidences. At the same time, the

Assessing Officer has not objected to the admission to the additional evidences and has in fact gone ahead and examined those additional evidences and found the transaction undertaken by the assessee verifiable. In such circumstances whether the Revenue has not objected to the admission of the additional evidences, it would have been better had Id. CIT(A) given his finding on merit rather than rejecting the additional evidences on technicality. In the result, we deem it appropriate to remand the matter to the file of Id. CIT(A) who shall decide the same afresh on merits after taking into consideration the additional evidences so submitted by the assessee and remand report so furnished by the Assessing Officer dated 12.06.2017. In the result, Ground No. 3 is allowed for statistical purposes.

8. Regarding Ground No. 4 to 6 regarding merits of the case and the Ground No. 7 is on the levy of interest u/s 234A, 234B, 234C & 234D. Since we have remanded the matter to the file of the Assessing Officer, we deem it appropriate to set aside these grounds to the file of the Id. CIT(A) as well.

In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 02/08/2018.

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

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 02/08/2018

***Ganesh Kr.**

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

1. अपीलार्थी / The Appellant- Shri Ramesh Chand, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(3), Ajmer
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. 750/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar