

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 630/JP/2018
निर्धारण वर्ष/Assessment Year : 2009-10.

Shri Purushottam Dayal Jain P.O. Bapawar, Tehsil Sangod, District Kota.	बनाम Vs.	The Income Tax Officer Ward 2(3), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABKPJ 0846 N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shyam Bihari Natani (CA)
राजस्व की ओर से/ Revenue by: Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख/ Date of Hearing : 04.09.2018.
घोषणा की तारीख/ Date of Pronouncement : 05/09/2018.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 15th January, 2018 of Id. CIT (A), Kota for the assessment year 2009-10. The assessee has raised the following grounds :-

1. In the facts and circumstances of the case the learned CIT (A) has erred in passing order against the principles of natural justice and equity in not providing adequate opportunity to the assessee.
2. In the facts and circumstances of the case the learned CIT (A) has erred in confirming the order of the learned Assessing Officer in determining income at Rs. 2,63,05,399/- against returned income of Rs. 4,99,520/-.
3. In the facts and circumstances of the case the learned CIT (A) has erred in confirming the following additions made by the learned Assessing Officer by passing ex-parte order u/s 144 of the Income Tax Act, 1961 without providing adequate opportunity :-

- (i) On account of hammali expenses of Rs. 1,83,202/-
- (ii) On account of indirect expenses of Rs. 49,701/-
- (iii) On account of household expenses of Rs. 40,020/-
- (iv) On account of agriculture creditors of Rs. 1,62,27,577/-
- (v) On account of claim of sales of Rs. 59,81,896/-
- (vi) On account of unsecured loan of Rs. 33,22,928/-
- (vii) On account of difference in sundry creditors of Rs. 555/-

4. 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 assessee is proprietor of M/s. Shubham Trading Co. which is engaged in the business of dealer in agriculture commodities. The assessee filed his return of income on 26.09.2009 declaring income of Rs. 4,99,520/-. The AO completed the assessment on 19th December, 2011 under section 144 of the IT Act at the total income of Rs. 2,63,05,399/-. Thus the AO made various disallowances and additions on account of freight and hammali expenses, indirect expenses, household expenses, agriculture creditors, claim on sales and unsecured loans. The assessee filed appeal before Id. CIT (A) against the assessment order passed under section 144 of the IT Act. However, none has appeared on behalf of the assessee even before the Id. CIT (A) due to the reason that the assessee was in police custody. The assessee filed application for raising additional ground as well as additional evidence to be admitted. The Id. CIT (A) while passing the impugned order has upheld the disallowances/additions made by the AO on the ground that the assessee was responsible for presenting documents in support of the claim. However, when the assessee did not file any evidence before the AO then the AO could not be faulted for making the additions/disallowances.

3. Before us, the Id. A/R of the assessee has submitted that since the assessee was in Jail for about 21 months, during the course of assessment assessee could not submit any document/information or evidence in support of the various claims made by the assessee. Further, since all the books of accounts were seized by the State authorities which were lying in the police custody, therefore, the assessee could not furnish any document/evidence before the Id. CIT (A). The Id. A/R has referred the order of impounding the books and other records of the assessee and submitted that the relevant documents could not be filed as the same were impounded by the State authorities and lying in the police custody. The Id. A/R has further submitted that now the assessee has collected all the relevant evidences from the police through court and, therefore, these evidences are required to be considered in support of the claims which were disallowed by the AO. Thus the Id. A/R has submitted that the application filed under section 29 of the ITAT Rules for admitting evidence may be allowed. The Id. A/R has further submitted that the assessment order passed under section 144 of the Act is also bad in law as there was no service of notice under section 143(2) of the Act. He has also prayed that the application filed by the assessee for admitting additional ground may be allowed. In support of his contention he has relied upon the decision of the Coordinate Bench of the Tribunal dated 31st May, 2018 in case of Mahendra Kumar Sethia vs. ITO in ITA No. 186/JP/2017. Hence the Id. A/R has submitted that the additional ground raised by the assessee goes to the root of the matter and is purely legal in nature. Therefore, the same may be admitted for adjudication.

3.2. On the other hand, the Id. D/R has vehemently objected to the application for admission of additional evidence as well as raising the additional ground at this

stage and submitted that the AO as well as the Id. CIT (A) granted sufficient opportunity to the assessee but the assessee did not file any evidence in support of the claim. Further, when the assessee never objected to the notice under section 143(2) either before the AO or before the Id. CIT (A) then raising such a ground at this stage without explaining the sufficient reason for not raising the same before the authorities below is not permitted. He has relied upon the orders of the authorities below.

4. Having considered the rival submissions as well as the relevant material on record, we note that the assessee did not appear before the AO in the assessment proceedings due to the reason that the assessee was in the police custody for about two years. This fact is not in dispute and the Id. CIT (A) has also recorded this fact. Thus the AO passed the assessment order ex parte under section 144 and made various disallowances and additions which are about Rs. 2.58 crores. Though the assessee challenged the assessment order passed by the AO under section 144 by filing appeal before the Id. CIT (A), however, the assessee did not file any evidence in support of the claim even before the Id. CIT (A). The assessee submitted before the Id. CIT (A) that since the assessee was in police custody and all the books of accounts and other records were impounded by the Government authorities and lying in the police custody, therefore, the assessee was not able to produce the relevant evidence. Now the assessee has filed an application for admitting additional evidence as well as an application for admitting additional ground which reads as under :-

“ The assessment order framed under section 143(3) is bad in law there being no service of notice under 143(2).”

We find that the revenue has not disputed that the assessee was in police custody for about 21 months from 22nd October, 2011 onwards and finally released on bail on 20th July, 2013. Thus, during the assessment proceedings, the assessee was in the police custody and, therefore, the assessee could not appear before the AO. The assessee has explained the non production of supporting evidence that the entire books of accounts and other records were in the police custody as impounded by the Government authorities. Thus we find that the assessee was having sufficient cause for not appearing before the AO as well as not producing the evidence in support of the claim. The AO has made various disallowances/additions for want of the supporting evidence. Accordingly we find that the assessee has made out the case of sufficient cause for not producing the supporting evidence. Hence we find merit in the application filed under Rule 29 of the ITAT Rules for admitting the additional evidence and accordingly the matter is set aside to the record of the AO for examination of the evidence/documents to be filed by the assessee in support of various claims.

5. The assessee has also raised a ground challenging the validity of the order passed by the AO for want of service of notice under section 143(2). Though this ground raised by the assessee involves only a legal issue, however, since the relevant record is not before us as the assessee never questioned the service of notice under section 143(2) either before the AO or before the Id. CIT (A), therefore, in the absence of the relevant record, this issue cannot be adjudicated conclusively. Accordingly in the facts and circumstances of the case, since we have already set aside the matter to the record of the AO, therefore, this issue is also set aside to the

record of the AO for consideration and adjudication of the same after giving an opportunity of hearing to the assessee.

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

Order is pronounced in the open court on 05/09/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 05/09/2018.

Das/

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

1. The Appellant- Shri Purushottam Dayal Jain, Kota.
2. The Respondent – The ITO Ward 2(3),Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 630/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

