

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

श्री विजय पाल 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. 519 to 521/JP/2018  
निर्धारण वर्ष / Assessment Years : 2010-11, 2011-12 & 2012-13

Shri Dinesh Mangal, 4/238, SFS Agrawal Farm, Mansarovar, Jaipur.	बनाम Vs.	The DCIT, Central Circle-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEPM 4041 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 17/12/2018  
उदघोषणा की तारीख / Date of Pronouncement : 20/12/2018

आदेश / ORDER

PER BENCH:

These are three appeals filed by the assessee against the respective orders of Id. CIT(A), Jaipur dated 22.03.2018 for the assessment years 2010-11, 2011-12 & 2012-13 respectively. Since common issues are involved, these appeals were heard together and are disposed off by this consolidated order.

2. In ITA No. 519/JP2018 for A.Y. 2010-11, the sole ground of appeal relates to disallowance of Rs. 63,037/- out of interest expense claimed by the assessee. Briefly the facts of the case are that the assessee has shown rental income from his house property situated at 4/238 SFS Mansarovar, Jaipur and against the said rental income, he has claimed interest expenditure of Rs. 1,59,137/-. During the course of assessment proceedings, the AO issued a show cause notice and after considering the submissions of the assessee, the AO has disallowed interest expenditure of Rs 63,067 and his findings are as under:-

*"12. The submission of the A/R is considered carefully but not found convincing. It may be submitted that originally, housing loan of Rs. 11.50 lacs was obtained in the year 2002 from SBI for acquisition of house property under consideration. This loan was partly paid in different years and as on 31.3.2007, it was outstanding at Rs. 9.61 lacs. This outstanding amount was repaid on 25.9.2007 by taking loan of Rs. 17.60 lacs from LIC. This loan amount is apparently for acquiring of house property within the meaning of section 24(b) of the Act. Out of 17.60 lacs, amount of Rs. 9.61 lacs, at the most can be considered against house property and balance amount is a type of mortgage loan on house property and not a housing loan in terms of section 24(b) of the IT Act. As per capital account and details of payment U/s 80C the assessee has not claimed any repayment of loan amount meaning thereby it may be considered that whole amount of Rs. 9.61 lacs remained loaned during entire period of current year. The assessee has not furnished exact interest rate on this loan amount and therefore reasonable rate of interest is considered at 10% and thus amount of Rs.*

*96100 is considered as interest against original outstanding amount of housing loan and this is allowed against rental income declared by the assessee as against claim of Rs. 159137. Thus addition of Rs. 63037 is made on this count."*

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the said disallowance stating that the AO has given sufficient factual basis to make the disallowance and the assessee submissions nowhere factually rebuts the AO's finding. Against the said findings, the assessee is now in appeal before us.

4. During the course of hearing, the Id. AR submitted that out of the loan of Rs. 17.60 obtained from LIC, a part of the loan is utilized for giving deposit to M/s Imaging Super Consultants Pvt. Ltd. as a pre-condition of appointment of assessee as a consultant and head Radiation Oncology and from this company, the assessee is getting professional receipts of Rs. 11,11,656/- which has been duly offered to tax . Hence, the interest which has been disallowed by the AO is eligible against the said professional receipts for computing the income under the head income from profession. It was further submitted that the said contention was raised before the Assessing Officer vide assessee's reply dated 14.10.2013 which was not considered by the Assessing Officer and subsequently by the Id. CIT(A) which reads as under:

*"4. As explained in our earlier letter dated 26.09.2013, assessee has taken Housing Loan and Top Up loan against the house from the bank. Interest paid on the housing loan is claimed as deduction U/s 24 and*

*interest paid for top up loan is claimed as expenditure against the professional fees received from M/s Imaging Super Consultant Pvt. Ltd. it may be noted that the assessee is a M.D (Radio Therapy) and expert in Radio therapy treatment. M/s Imaging Super Consultant Pvt. Ltd. in which assessee was appointed as a director on 03.04.2007 purchased a linear Accelerator Machine which was first of its kind in the state of Rajasthan. Besides this machine certain other equipments like High Dose Rate Brachytherapy, Dosimetry instruments and treatment planning system were purchased. For purchase of these equipments/machines funds was required by the company. Towards capital cost of these equipments the assessee has provided advance to M/s Imaging Super Consultant Pvt. Ltd. It may also be noted that assessee is approved licensee by Atomic Energy Regulatory Board, BARC, Govt. of India, Mumbai and the person who holds such license is allowed to operate such machines/equipments. Due to these new machine/equipments more patients were attracted for the Radio therapy treatment by latest technology i.e. 3DCRT, IMRT, IGRT, SRS, SRT. This has in turn resulted into more professional receipt to the assessee from this company based on different type of treatment/procedure. Thus the advance in form of unsecured loan/equity capital was given by the assessee to M/s Imaging Super Consultant Pvt. Ltd. for commercial expediency from the amount borrowed from the bank. Therefore, the interest paid on such borrowing is allowable to the assessee u/s 36(1)(iii) against the professional receipt in view of the decision of the Supreme Court in case of S.A. Builder 288 ITR 1. It may also be noted that the assessee was required to provide interest free fund to M/s Imaging Super Consultant Pvt. Ltd.*

*for acquisition of machine as a part of his appointment with Searoc Cancer Center (Unit of M/s Imaging Super Consultant Pvt. Ltd.) copy of appointment letter is enclosed.”*

5. The Id. DR is heard who has relied on the finding of the lower authorities.

6. We have heard the rival contentions and perused the material available on record. It is not in dispute that the assessee has incurred the interest expenditure on loan taken from the LIC and a part of such interest expenditure has been disallowed by the AO while computing the income under the head “Income from House property”. At the same time, the assessee has made an alternate contention before the Assessing officer that such interest expenditure where disallowed under the head “Income from House property” may be allowed as deduction under the head “Income from profession” wherein the assessee has disclosed and offered to tax his professional receipts. We find that the alternate contention so raised by the assessee has not been addressed by the AO and even by the Id CIT(A). Therefore, in such circumstances, we are constrained to remand the matter back to the file of the Assessing officer which shall examine the same as per law after providing reasonable opportunity to the assessee.

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

**ITA No. 520/JP/2018**

7. Now, coming to ITA No. 520/JP/2018 for AY 2011-12. Ground No. 1 is similar to sole ground of appeal in ITA No. 519/JP2018, therefore, our findings and directions contained in ITA No. 519/JP/2018 shall apply equally in this regard. Ground no. 1 of assessee's appeal is thus allowed for statistical purposes.

8. Ground no. 2 of assessee's appeal relates to confirmation of addition of Rs. 1,97,600/- on account of undisclosed investment in jewellery on the basis of documents seized during the course of search.

9. Briefly the facts of the case are that a search and seizure operation U/s 132(1) of the Act was carried out on 08.06.2011 at the different premises of Dr. Anish Maru Group and the residential premises of the assessee was also covered under the search as he was associated with the said group. During the course of search, certain documents were seized as per Annexure AS of panchnama dated 08.06.2011 page No. 1 of Exhibit 1 and page no. 1 of Exhibit 2 which were containing entries related to certain purchase of jewellery items in the month of November 2010 to May 2011 and details thereof are reproduced at para 13 of the AO's order. During the course of assessment proceedings, the assessee was asked to explain these entries and to explain why the same may not be treated as entries relating to purchase of jewellery by the assessee. In response, the assessee submitted that nothings on these pages were made by the wife of the assessee on the basis of enquiry made by her and since no

jewellery item was purchased, no payment was made and therefore, there is no basis for assumption of purchase of jewellery items by the assessee. The reply so filed by the AR was not found acceptable to the AO and his findings are contained at para 16 which is reproduced as under:-

*"16. Reply of the A/R is not acceptable. It may be seen that the entries are not in respect of any enquiry but these are with clear description of date/month, description of items of jewellery and amount. For the purpose of enquiry such type of entries are not made with date/month and amount. Such entries can be made only as a memoranda entry for any actual transaction. Moreover, these entries are found noted in the same note books (Exhibit No. 1 and 2) wherein the wife of the assessee has noted month wise house hold expenses on other pages of the exhibits. The assessee has not disputed entries of house hold expenses entered on other pages of these note books and has claimed that house hold expenses noted in these exhibits are the actual expenses incurred by her wife and are included in total drawing of the family. Thus when the entries on other pages are actual entries, the notings made on page No. 1, as described above, are also real and correct entries. These entries clearly indicating undisclosed purchase of jewellery by the assessee in AY 2011-12 (Rs. 197600) and in AY 2012-13 (Rs. 160000). Addition of these amounts is accordingly made in respective years as undisclosed investment in jewellery. The assessee is liable for penalty u/s 271AAA of the IT Act on this addition for which notice has been separately issued."*

10. On appeal, the Id. CIT(A) has confirmed the said addition holding that no factual basis is offered by the assessee in his submission rebutting the findings of the Assessing Officer. Now the assessee is in appeal before us

11. The Id AR submitted that it was not disputed that nothings at page 1 of these two exhibits are in the handwriting of Smt. Beena Mangal, wife of assessee. Neither the assessee nor his wife was questioned about notings on these pages at the time of search. For the first time the enquiry in respect of these papers were made by the AO in course of assessment proceedings. In reply dated 26.09.2013, the assessee while giving the page wise details of various annexure, with reference to these papers has explained that these notings are in respect of the enquiries made by her and that no such jewellery is purchase. Thereafter vide letter dated 14.10.2013 it was explained that notings on page 1 of exhibit 1 is in respect of the enquiry made by father in law of the assessee's wife and notings on page of exhibit 2 is in respect of enquiry made by assessee's wife. It was further stated that no such jewellery was purchased nor these items were found in the inventory of jewellery prepared at the time of search. The affidavit of assessee's wife Smt. Beena Mangal was filed. In this affidavit she has explained the details of the enquiry made by her which resulted into these notings. This affidavit is not controverted. Therefore, without any corroborative material to establish that the notings of jewellery on these papers is actually purchased by the assessee, the addition made by the AO is only on surmises and conjectures.

12. It was further submitted that the AO has not referred to the reply of the assessee dated 14-10-2013 and the affidavit of Smt. Beena Mangal in the assessment order. From the affidavit and the notings on the paper it can be seen that the paper do not contain the name of any party from whom the jewellery is purchase nor there is any noting of the payment. Further on other pages of this annexure the details of the house hold actually incurred are noted but these notings are made on the last page of the diary which itself shows that the same do not represent the actual purchase of the jewellery. This is also correlated from the fact that the items of jewellery noted on these pages were not found in search. The reply of the assessee dated 14-10-2013 reads as under:

*"6. The paper at exhibit 1 page 61 and exhibit-2 page 1, are in the handwriting of Smt. Beena Mangal, wife of assessee. She had enquired about the value of the items noted at Exhibit-1 page 61 on an enquiry made by her father-in-law. Similarly, in respect of items noted at page 1 of Exhibit-2, the enquiry was made by her. However no such items were purchased. This is evident from the fact that neither the weight of Gold/Diamond nor the rate of Gold/Diamond per gm/ct is mentioned against these items. Had these items been purchased, there would have been rough estimate slip or the detailed working of the amount as found noted on page 6 and 7 of Exhibit-8. Further, the items noted on these two pages were not found in the search as evident from the inventory of jewelry prepared at the time of search. The affidavit of Smt. Beena Mangal in this connection is enclosed. Hence, in the absence of any evidence regarding payment in respect of these items,*

*simply on the basis of noting made by Smt. Beena Mangal, more particularly when no such item was found in the search, no adverse inference about unexplained investment should be drawn."*

13. The Id. DR is heard who has relied on the findings of the lower authorities.

14. We have heard the rival contentions and perused the material available on record. It is the contention of the Id AR that the AO while framing the assessment has not referred the reply of the assessee dated 14-10-2013 and the affidavit of Smt. Beena Mangal. Since we have set-aside the other issue, this issue is also set-aside to the file of the AO to examine the same a fresh after taking into consideration the assessee's submission and affidavit. In the result, the ground of appeal is allowed for statistical purposes.

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

**ITA No. 521/JP2018**

15. Now, coming to ITA No. 520/JP/2018 for AY 2011-12. Ground No. 1 is similar to sole ground of appeal in ITA No. 519/JP2018, therefore, our findings and directions contained in ITA No. 519/JP/2018 shall apply equally in this regard. Ground no. 1 of assessee's appeal is thus allowed for statistical purposes.

16. In ITA No. 521/JP2018 for AY 2012-13, ground no. 1 is similar to sole ground of appeal in ITA No. 519/JP2018, and ground no. 2 is similar to ground no. 2 in ITA No. 520/JP/2018. Therefore, our findings and directions contained in ITA No. 519 & 520/JP/18 shall apply equally in this regard. In the result, both the grounds of appeal are allowed for statistical purposes.

In the result, all three appeals are allowed for statistical purposes.

Order pronounced in the open Court on 20/12/2018.

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/12/2018.

\*Santosh

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

1. अपीलार्थी / The Appellant- Shri Dinesh Mangal, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-1, Jaipur.
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. 519 to 521/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar.