

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR  
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 525/JP/2018  
निर्धारण वर्ष / Assessment Year :2015-16

Ajmer Auto Agencies, Srinagar Road, Ajmer.	बनाम Vs.	D.C.I.T., Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAIFA 2148 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 23/01/2019  
उदघोषणा की तारीख / Date of Pronouncement : 28/01/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 22/02/2018 of Id. CIT(A)-4, Jaipur for the A.Y. 2015-16. The assessee has raised following grounds of appeal:

- "1. Under the facts and circumstances of the case the Learned CIT(A) 4, Jaipur has grossly erred in law as well as facts in confirming the addition of Rs. 129074/- on account of undisclosed income by wrongly alleging that undisclosed TDS of Rs. 9504/- was not shown in ITR.*
- 2. Under the facts and circumstances of the case the Learned CIT(A) 4, Jaipur has grossly erred in law as well as facts in confirming the addition without considering the explanation submitted by the assessee firm and reply to Remand report of learned AO dated 24.01.2018.*

3. *That the Appellant assessee firm craves for a leave to add, alter and amend any Grounds of appeal at the time of appellate hearing."*

2. Ground No. 1 of the appeal is regarding the addition of Rs. 1,29,074/- on account of undisclosed income revealed as per 26AS. During the course of assessment proceedings, the Assessing Officer noted that there was an amount of Rs. 9,504/- of undisclosed TDS which was not shown in the income tax return. The said TDS is with respect to an income of Rs. 1,29,074/-. The Assessing Officer asked the assessee to explain the justification of the same alongwith necessary documentary evidence. The Assessing Officer has observed that since the assessee has failed to furnish any justification, accordingly, the receipt of Rs. 1,29,074/- as revealed by 26AS was treated as undisclosed income of the assessee. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) but could not succeed.

3. Before us, the Id AR of the assessee has submitted that the assessee has reconciled the difference of 26AS with its return of income, however, the Id. CIT(A) has confirmed the addition made by the Assessing Officer. He has referred to the explanation of the assessee furnished before the Id. CIT(A) which is reproduced at para 7 of the impugned order and submitted that this amount of Rs. 9,504/- shown in the 26AS as TDS in respect of alleged income of Rs. 1,29,074/- was not

part of 26AS at the time of filing of return of income. The Id AR has referred to Form No. 26AS as taken by the assessee on 18/08/2015 and submitted that there was no such amount in the said 26AS and further the said amount was appearing under various entries as per 26AS dated 21/11/2017. The Assessing Officer has considered the details of 26AS which was not available at the time of filing of return. The Id AR has further referred his explanation that there are four entries in the latest Form No. 26AS which has laid to the difference of this amount, however these amounts were not received by the assessee. So far as it pertains to Capital First Ltd, TVS motors and Raj Motors. As regards the amount of Rs. 60,000/- shown as receipt from Worldwide Machinery Solution Pvt. Ltd., the Id AR has submitted that the assessee has already declared the interest income from the said party of Rs. 1,43,400/- and therefore, the said amount of Rs. 60,000/- was part of the interest already declared by the assessee and no further addition can be made on this account. Since this amount was not reflected in the Form No. 26AS at the time of filing of return of income, therefore, the assessee has even not claimed the TDS credit in respect of the said amount. The Id AR has referred the expenditure on each and every item of difference as under:

- “(a) The assessee has received dealership commission from Capital First Ltd. The commission received from this party is only Rs. 1,55,879/- (PB 16) which tallies with the amount reflected in Form No.26AS downloaded on*

18.08.2015 (**PB 6**). Later on in Form No.26AS downloaded on 21.11.2017 (**PB 9**), an additional amount of Rs.20,970/- is further reflected whereas assessee has not received any such amount. It appears that party has deducted TDS on the amount of service tax also and therefore, this difference cannot be included in income.

- (b) The assessee firm was having a dealership of TVS Motors till Sept., 2013 and thereafter it settles its dues from TVS Motors. The assessee received a sum of Rs. 1,83,085/- from TVS Motors against the refund of security deposit and settlement of outstanding dues for which income was booked in the previous year. In Form No.26AS downloaded on 18.08.2015 (**PB 5-6**), this amount was not reflecting. The assessee has not received any interest income of Rs.5,548/- as mentioned in Form No.26AS downloaded on 21.11.2017 as is evident from the copy of ledger account of TVS Motors in the books of assessee (**PB 19-20**). Hence, no addition for such difference can be made.
- (c) In case of Worldwide Machinery Solution Pvt. Ltd., the assessee has declared interest income of Rs. 1,43,400/- (**PB 14 & 21**) whereas in Form No.26AS downloaded on 18.08.2015 (**PB 5-6**) no income from M/s Worldwide Machinery Solution Pvt. Ltd. is reflected but in Form No.26AS downloaded on 21.11.2017 (**PB 9**) such amount is reflecting at Rs.60,000/- as against Rs. 1,43,400/- declared by the assessee in the income. Thus, assessee has already included higher income than that reflected in Form No.26AS, hence, the amount of Rs.60,000/- cannot be again included in the income.
- (d) Assessee was having a workshop for servicing of Honda vehicles and whenever some spare parts etc. are required on urgent basis it was purchased from M/s Raj Motors. The fact of purchase of spare parts from Raj Motors is evident from copy of his ledger account placed at **PB**

**22-28.** *In the Form No.26AS downloaded on 18.08.2015, the name of Raj Motors is not appearing but in Form No.26AS downloaded on 21.11.2017 (PB 8), the name is appearing according to which it has deducted TDS u/s 194C on an amount of Rs.42,556/-. It appears that Raj Motors has wrongly deducted TDS in the account of assessee and therefore, such amount cannot be included in the income of assessee.”*

Thus, the Id AR has submitted that the amount of Rs. 20,970/- shown against the Capital First Ltd. is nothing but may be TDS deducted in respect of service tax, which was not reflected in the earlier 26AS but subsequently it was uploaded by the said party. As regards the TVS Motors, the assessee, as per the settlement of its dues from the said company received a sum of Rs. 1,83,085/-, which was in the earlier assessment years and this amount is subsequently shown in the 26AS on account of interest of Rs. 5,548/- was never received by the assessee. The amount of Rs. 42,556/- as shown receipt from Raj Motors is a mistake as the assessee is only producing the spare parts from the said party and therefore, there is no question of any receipt from the said party. Thus, the Id AR has submitted that the addition made by the Assessing Officer without proper verification of the correctness of these receipts is not sustainable and may be deleted.

4. On the other hand, the Id DR has submitted that despite the sufficient opportunities given by the Assessing Officer as well as the Id.

CIT(A), the assessee failed to explain the differences in the various receipts shown in the return of income as well as per Form No. 26AS. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The Assessing Officer has made the addition of Rs. 1,29,074/- on account of the receipts shown in the Form 26AS which was not declared by the assessee in the return of income. The Id AR of the assessee has now explained that this amount of Rs. 1,29,074/- is comprising of four different receipts shown in the Form No. 26AS in respect of four parties but these entries were not appearing in the Form No. 26AS as downloaded by the assessee on 18/08/2015 at the time of filing of return of income. The discrepancy in the amount which is shown in the 26AS but was not disclosed by the assessee in the return of income is in respect of four receipts, the details of which is as under:

Name of Party	Amount of TDS	Corresponding income	Section under which deduction made
Capital First Ltd.	Rs. 2,098/-	Rs. 20,970/-	194H
TVS Motors	Rs. 555/-	Rs. 5,548/-	194A
Worldwide Machinery Solution Pvt. Ltd.	Rs. 6,000/-	Rs. 60,000/-	194A
Raj Motors	Rs. 851/-	Rs. 42,556/-	194C

We find that as per 26AS downloaded by the assessee on 18/8/2015 at page Nos. 5 and 6 of the paper book, these entries were not reflected. However, 26AS as updated on 21/11/2017 the receipts in respect of these

four parties referred above are reflected, therefore, it is clear that these receipts were shown in the 26AS, subsequently as the deductors have updated the TDS details. As regards the Capital First Ltd., the payment of Rs. 20,790/-, it was a TDS deducted U/s 194H of Rs. 2,098/-, the Id AR has explained that though in the subsequent Form No. 26AS, this additional amount was shown whereas the assessee has not received any such amount from the said company. The Id AR has submitted that it may be a TDS deducted by the said party on amount of service tax and therefore, the same cannot be treated as income of the assessee. The variation of receipts shown in the two Form No. 26AS first taken on 18/8/2015 at the time of filing of return of income and another taken on 21/11/2017 clearly manifests that some amounts were subsequently added in the traces. The Assessing Officer has made addition without verification of the nature of the receipt and even without verification whether any incorrect details are uploaded in the account of the assessee. Therefore, merely because there is a TDS details uploaded by the other party would not ipso facto amounts to an additional receipt by the assessee which can be considered as income. The assessee has submitted that the additional amount shown as receipt from Capital First was never received by the assessee, therefore, it requires a proper verification from the other party as to what this amount of Rs. 20,970/- on which the TDS

of Rs. 2,098 was deducted U/s 194H of the Act is actually representing. Accordingly we direct the Assessing Officer to verify the correctness of the details and the nature of the alleged receipts.

5.1 As regards receipt of Rs. 5,5,48/- from the TVS motors on which the TDS of Rs. 555/- U/s 194A of the Act is deducted. It appears that this credit was shown on account of interest income, however, the assessee has submitted that there was a refund of security deposit and settlement of outstanding dues by the said company to the assessee but the said amount of Rs. 1,83,085/- was received in the preceding years as the assessee was having dealership up to September, 2013, therefore, the said amount does not pertain to the year under consideration. He has referred the ledger account of TVS motors in the books of the assessee and submitted that the entire claim/receipt as per the settlement with the company has been duly reflected in the ledger account, therefore, in absence of this amount of Rs. 5,548/- received by the assessee on account of interest, the same cannot be added. He has further contended that when the assessee is not having any business with the said company as the dealership was only up to September, 2013, then the said amount cannot be added. However, we find that if the interest if any was became due and payable by the said company to the assessee then it would be an income of the assessee as it was credited only during the year under

consideration. However, the actual receipt of the said income or whether the said amount of Rs. 5,548/- is actually payable to the assessee by the TVS motors or not is to be verified from the other party. Hence, the Assessing Officer is directed to verify whether the said amount was payable by the said company to the assessee or actually paid during the year under consideration or not and then consider the same after giving an opportunity of hearing to the assessee.

5.2 As regards the receipt of Rs. 60,000/- as rent from Worldwide Machinery Solution Pvt. Ltd., we find that the assessee has already shown an interest income of Rs. 1,43,400/- from Worldwide Machinery Solution Pvt. Ltd., therefore, a lesser amount shown in the Form No. 26AS would not lead to the conclusion that this is an additional income of the assessee when the assessee has already declared the interest income from the same party. Accordingly, we delete the addition of Rs. 60,000/- made by the Assessing Officer.

5.3 The another amount of Rs. 42,556/- shown as receipt from Raj Motors on which the TDS of Rs. 851/- was deducted U/s 194C of the act, the Id AR has submitted that the assessee is not working under contract of the said company but the assessee purchases spare parts from the said party and there is no question of any receipt but the assessee has been

paying against the purchases made from the said party. Once, there is no business between the parties which would fall under the provisions of Section 194C of the Act then the said amount of Rs. 42,556/- shown as receipt under contract is required to be verified from the other party. Accordingly, we direct the Assessing Officer to verify the correctness of the said entry in the Form 26AS from the other party and then consider the issue after giving an opportunity of hearing to the assessee.

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

Order pronounced in the open court on 28<sup>th</sup> January, 2019.

Sd/-

(रमेश सी शर्मा)

(RAMESH C SHARMA)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28<sup>th</sup> January, 2019

\*Ranjan

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

1. अपीलार्थी / The Appellant- Ajmer Auto Agencies, Ajmer.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Central Circle-3, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 525/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar