

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

श्री रमेश सी० 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. 429 & 430/JP/2018
निर्धारण वर्ष / Assessment Year : 2008-09 & 2009-10

B.D. Mundra & Sons, 16, Jhalawar Road, Kota.	बनाम Vs.	The DCIT, Central Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAHB 7882 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri C.M. Birla (C.A.)
राजस्व की ओर से / Revenue by : Shri Varindra Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 12/02/2019
उदघोषणा की तारीख / Date of Pronouncement: 05/03/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against two separate orders of the Id. CIT(A), Jaipur both dated 01.02.2018 arising from assessment framed U/s 153A of the I. T. Act for the assessment years 2008-09 & 2009-10 respectively. The assessee has raised identical grounds for both years however, the quantum of disallowances/

additions varies. The grounds raised for the assessment year 2008-09 are as under:-

"1. That under the facts and circumstances of the case the Hon'ble CIT(A) erred in confirming disallowance of:-

(i) A sum of Rs. 70984/- being 5% of vehicle repair & maintenance expenses for personal use ignoring that these expenses were on 40 motor cycle, 4 deeps, one Tavera & one car and that personal use confines to Travera & car only wherein total expenses are hardly less than Rs. 2000/- P.M. and also ignoring decision of Hon'ble ITAT in ass. Year 2007-08 wherein addition of Rs. 5000/- were sustained by Hon'ble ITAT;

(ii) A sum of Rs. 48065/- being 5% of petrol & diesel expenses for personal use ignoring that expenses on Tavera & car are hardly Rs. 5000-6000 P.M. and also ignoring decision of Hon'ble ITAT in Ass. Year 2007-08 wherein addition of Rs. 12500/- were sustained by Hon'ble ITAT;

(iii) A sum of Rs. 33000/- being 10% of telephon expenses for personal use ignoring that expenses on Telephone at residence and mobiles are hardly Rs. 4000/- P.M. and also ignoring decision of Hon'ble ITAT in Ass. Year 2007-08 wherein addition of Rs. 10000/-- were sustained by Hon'ble ITAT;

(iv) A sum of Rs. 144185/- being payment for Membership & Subscription expenses of clubs/institutions ignoring that these expenses were very much necessary for business expediency and also ignoring decision of Hon'ble ITAT in Ass. Year 2007-08 wherein addition of Rs. 17090/- were sustained by Hon'ble ITAT;

2. That under the facts and circumstances of the case the Hon'ble CIT(A) erred in confirming addition of Rs. 127779/- being temporary construction at RIICO plot and which has life of 2-3 years which was used to house old tractors received in exchange

sale scheme therefore it is allowable expenses u/s 37. Besides even if it is capitalized it was to be provided depreciation @ 100% (as per Appendix 1-Building (4)).

3. That under the facts and circumstances of the case the Hon'ble CIT(A) further erred in confirming additions of Rs. 1805716/- out of expenses claimed on account of exchange sales scheme. The additions are confirmed on flimsy grounds ignoring that in past years as well as subsequent years it was allowed by the learned Assessing Officers.

4. That the appellant craves leave to add, alter, amend, modify and/or otherwise substitute any of the foregoing grounds as and when required."

2. The Id. AR of the assessee has submitted that the Id. CIT(A) while passing the impugned orders as directed the AO to give effect to the order of this Tribunal dated 27.10.2016 whereby the appeals for the assessment years 2008-09 & 2009-10 arising from the original assessment order passed U/s 143(3) of the Act were decided. The Id. AR has pointed out that the assessee filed Misc. Application against the order dated 27.10.2016 however, the Misc. Application filed by the assessee were dismissed being barred by limitation. Thus, the Id. AR submitted that the miscellaneous application filed by the assessee was not entertained by the Tribunal and therefore, some of the issues in the appeals against the assessment order passed U/s 143(3) of the Act

need some rectification and clarification has not been done. The Id. CIT(A) instead of deciding the issue raised by the assessee in the miscellaneous application has directed the AO to pass the order in consonance of the order of this Tribunal. Thus, the Id. AR has pleaded that those issues which were raised in the miscellaneous application may be considered in the present appeal. He has further pointed that the Tribunal while passing the order dated 27.10.2016 has followed the decision for the assessment year 2007-08 however, there is no clarity in the order of the Tribunal for the A.Y. 2007-08 and consequently the AO while passing giving effect order has not given any relief in respect of the additions. Therefore, the Id. AR has contended that the Tribunal may decide all these issues again in these appeals.

3. On the other hand, Id. DR has submitted that the AO has not made any fresh addition in the income of the assessee while passing the order U/s 153A of the Act but the total income of the assessee was reiterated as finally confirmed in the proceedings arising from the original assessment order passed U/s 143(3) of the Act. Therefore, the issues which are raised by the assessee in these appeals have already been considered and decided by this Tribunal. The order of the Tribunal has already attained finality and hence, no fresh finding can be given on

the issues which were already adjudicated by the Tribunal. He has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as relevant material on record. There was a search and seizure action U/s 132 of the Act in case of the assessee on 13.08.2013. The AO accordingly issued notice U/s 153A of the Act for the assessment years 2008-09 & 2009-10 on 12.12.2014 however, in the meantime the assessment were completed U/s 143(3) of the Act vide orders dated 31.12.2010 and 29.12.2011 for the assessment years 2008-09 & 2009-10 respectively. Even the Id. CIT(A) also decide the appeals filed by the assessee vide order dated 19.03.2013 and consequently the AO passed the giving effect order on 10.05.2013 for the assessment years 2008-09 and recomputed the total income of the assessee as per the order of the Id. CIT(A).

5. Similar for the assessment year 2009-10, the AO recomputed the total income of the assessee while passing the giving effect order of the Id. CIT(A) dated 25.03.2013. The matter arising from the original assessment U/s 143(3) of the Act was carried to this Tribunal and Tribunal finally decided the appeals in ITA No. 399 & 400/JP/2013 vide order dated 27.10.2016. Though the assessee filed Misc. Application in

respect of the assessment year 2008-09 against the order of the Tribunal dated 27.10.2016 however, the said miscellaneous application filed by the assessee was dismissed by the Tribunal vide order dated 12.02.2018 being barred by limitation. Thus, it is clear that the order dated 27.10.2016 of this Tribunal has attained finality as the assessee has not challenged the said order before the Hon'ble High Court. The Assessing Officer while completing the assessment U/s 143(3) r.w.s. 153A of the Act for the assessment year 2008-09 on 29.01.2016 has reassessed the total income of the assessee in para 6 as under:-

"6. The case of the assessee was completed u/s 143(3) by the ACIT, Circle-1, Kota vide order dated 31.12.2010 by making certain addition in the return income of Rs. 7,27,980/- and assessed at Rs. 66,50,461/-. Thereafter, order dated 19.03.2013 of Ld. CIT(A), Kota was received and income of the assessee revised vide order u/s 250 of the IT Act, 1961 dated 10.05.2013 and income of the assessee re-computed at Rs. 42,51,240/- by the ITO, ward-1(1), Kota. Thus, the addition in order sustained by the Ld. CIT(A), Kota may be considered as addition made in this order and total income of the assessee has been assessed at Rs. 42,51,240/-.

Assessed u/s 143(3) r.w.s. 153A at Rs. 42,51,240/-. Interest u/s 234A/234B/234C/234D is/are charged and interest u/s 244A is withdrawn as per ITNS-150, if applicable. The ITNs-150 forming part of this order, Demand noticed and Challan are issued.

This order has been passed after obtaining prior approval u/s 153D of the I.T. Act, 1961 of the Addl. Commissioner of Income-

*tax, Central Range, Jaipur vide his office letter क्र. – अ. आ.
आयुक्त/केन्द्रीय खण्ड/जयपुर/2015-16/2049 दिनांक 29.01.2016.*

Therefore, it is clear from the assessment order passed U/s 153A of the Act that the AO has not made any addition to the total income of the assessee as assessed and finalized in the proceedings completed U/s 143(3) of the Act. But the AO has recomputed the total income as it was finally assessed as a result of the Id. CIT(A) orders arising from the original assessment order. Hence, the AO has not decided any issue afresh while passing the order U/s 153A but just recomputed the total income as it was assessed in the proceedings U/s 143(3) of the Act. The assessee challenged the said order before the Id. CIT(A) however, the Id. CIT(A) after considering the decision of this Tribunal in assessee's own case arising from the original assessment U/s 143(3) of the Act has directed the AO to reiterate the additions as per the order of this Tribunal. The relevant findings of the Id. CIT(A) has held in para 4.3 as under:-

"4.3 Thus, I am of the view that AO can reiterate the additions after referring and following the directions of Hon'ble ITAT, Jaipur order as above. Thus, AO shall take returned income as per return filed u/s 153A and shall add the addition which are confirmed/penalty confirmed by Hon'ble by Hon'ble ITAT, Jaipur. On the facts and in the circumstances of the case, additions

*directed to be deleted by Hon'ble ITAT, Jaipur may be deleted.
Subject to final verification by the AO the appeal is allowed."*

Therefore, the Id. CIT(A) has followed the order of this Tribunal and directed the AO to give effect to the directions given in the order of this Tribunal dated 27.10.2016. The grievance of the assessee in the proceedings arising from the order passed U/s 153A of the Act is that the Tribunal has not considered the miscellaneous application filed by the assessee as there is no clarity in order of this Tribunal for the assessment year 2007-08 which was followed for the assessment years 2008-09 & 2009-10 respectively. However, since the order of this Tribunal dated 27.10.2016 has attained finality and the Assessing Officer has not made any fresh additions in the proceedings U/s 153A of the Act, therefore, all the issues which are reiterated by the AO in the proceedings U/s 153A of the Act have already been adjudicated by this Tribunal. Therefore, in these proceedings we cannot review or revise the decision of this Tribunal on the very issues while passing the order dated 27.10.2016 in the appeal arising from original assessment years. Even otherwise there is no fresh issue arises from the assessment order passed U/s 153A of the Act then, the issues already adjudicated by this

Tribunal cannot be reopened in these proceeding when the AO has not made any addition.

6. As regards the grievance of the assessee that there is no clarity in the order for the assessment year 2007-08 the remedy was to take appropriate steps by filing the miscellaneous application. Since the assessee has not taken any steps therefore, in these proceedings the order for the assessment year 2007-08 cannot be relooked. However, having regard to the facts and circumstances of the case we direct the AO that while giving effect to the order of this Tribunal dated 27.10.2016 the additions sustained by this Tribunal may be recomputed in terms of percentage to the total claim and then allow the relief if any to the assessee in respect of each item of disallowance/ addition. Therefore, disallowance sustained by this Tribunal for the assessment year 2007-08 may be first converted in the percentage of the total claim and then shall apply the same percentage for the year under consideration while passing the giving effect order.

7. For the assessment year 2009-10, the AO has passed an identical order without making any fresh addition or disallowance but reiterated the total income as arising from the proceedings of assessment U/s

143(3) of the Act. The relevant part of the order of the Assessing Officer passed U/s 143(3) r.w.s. 153 and has held in para 6 as under:-

"6. The case of the assessee was completed u/s 143(3) by the ACIT, Circle-1, Kota vide order dated 29.12.2011 by making certain addition in the return income of Rs. 8,19,880/- and assessed at Rs. 81,87,064/-. Thereafter, order dated 25.03.2013 of Ld. CIT(A), Kota was received and income of the assessee revised vide order u/s 250 of the IT Act, 1961 dated 13.05.2013 and income of the assessee re-computed at Rs. 74,14,540/- by the ITO, ward-1(1), Kota. Thus, the addition in order sustained by the Ld. CIT(A), Kota may be considered as addition made in this order and total income of the assessee has been assessed at Rs. 74,14,540/-.

Assessed u/s 143(3) r.w.s. 153A at Rs. 74,14,540/-. Interest u/s 234A/234B/234C/234D is/are charged and interest u/s 244A is withdrawn as per ITNS-150, if applicable. The ITNs-150 forming part of this order, Demand noticed and Challan are issued.

This order has been passed after obtaining prior approval u/s 153D of the I.T. Act, 1961 of the Addl. Commissioner of Income-tax, Central Range, Jaipur vide his office letter क्र. - अ. आ. आयुक्त/केन्द्रीय खण्ड/जयपुर/2015-16/2049 दिनांक 29.01.2016.

Therefore, for both the assessment years, the AO has not made any fresh addition to the total income of the assessee but it was assessed as per outcome of the original assessment framed U/s 143(3) of the Act. Accordingly, the directions given by us for the assessment years 2008-09 are also applicable for the assessment year 2009-10.

In the result, both the appeals filed the assessee are partly allowed.

Order pronounced in the open court on 05/03/2019.

Sd/-
(रमेश सी0 शर्मा)
(Ramesh. C. Sharma)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 05/03/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- B.D. Mundra & Sons, Kota
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, Kota.
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. 429 & 430/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar