

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'B' 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. 140/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

Sh. Vikas Agarwal E-236 Muralipura Scheme Jaipur Raj. 332039	बनाम Vs.	The ITO, Ward 4(3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGVPA1080H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओर से/ Revenue by : Shri K. C. Meena (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 26/03/2019
उदघोषणा की तारीख/ Date of Pronouncement: 29/03/2019

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 27.12.2018 wherein the assessee has taken the following grounds of appeal:-

"1. The impugned assessment order u/s 144C rws 143(3) dated 18.11.2017 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in passing the exparty order without providing the adequate and reasonable opportunity of being heard to the assessee in the gross breach of law. Hence the entire addition and disallowance so made by the Id. AO and sustained by the Id. CIT(A) is being totally contrary to the

provisions of law and facts on the record and hence the penalty may kindly be deleted in full.

3. *Rs. 29,40,632/- The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 29,40,632/- made by the AO or TPO on account of Arms Length Price in respect of international Transaction in the value of Specified Domestic transaction entered into by the assessee. Hence the addition so made by the Id. AO or TPO and sustained by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.*

4. *Rs. 49,324/-: The Id. CIT(A) has grossly erred in law as well as the facts of the case in confirming the disallowance of Rs. 49,324/- claimed on account of interest on car loan. Hence the disallowance so made by the Id. AO and sustained by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.*

5. *Rs. 40,557/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the disallowance of Rs. 40,557/- on account of depreciation on car. Hence the disallowance so made by the Id. AO and sustained by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.*

6. *The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C and D as also withdrawing interest u/s 244A. The appellant totally denies it liability of charging of*

any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full."

2. During the course of hearing, the Id. AR submitted that the first notice received by the assessee from the office of CIT(A) for the hearing scheduled on 26.10.2018 which has been sent to the local Counsel of the assessee, however, due to heavy pressure of Tax Audit the last date being 31st Oct, he has forgotten to inform the AR who has to represent the matter before the Id CIT(A). Thereafter, in respect of the second notice for hearing scheduled on 11.12.2018, the assessee has informed the AR verbally through the local Counsel and the Id AR was under the impression that the appeal is fixed before the Id. CIT(A)-2 Jaipur, hence he has sent his staff to the office of CIT(A)-2, Jaipur for filing the adjournment application and seeking the adjournment in the matter. But the office of CIT(A)-2 has told that that there is no appeal of this name in the fixation diary and the adjournment application was not received. It was further submitted that no notice for the hearing scheduled on 12.11.2018 and 27.12.2018 has come to the notice of the assessee. Further the appeal has been transferred from the office of the CIT(A)-2, Jaipur to CIT(A)- Ajmer and this facts was not in the notice of the assessee or the Id AR. Further, in Form 35, the address for communication has been stated as that of the AR however no notice at the communication address has been received rather the two notices have been received directly by the assessee but the matter couldn't be represented on the scheduled date as submitted earlier. It was further submitted that the assessee/AR came to know about the transfer of appeal from CIT(A)-2, Jaipur to CIT(A)- Ajmer only after receiving the order from CIT(A)- Ajmer. It was accordingly submitted that the matter couldn't be represented before the Id CIT(A) for the aforesaid reasons

and in the interest of justice, the matter may be restored to the file of the Id CIT(A) for hearing on merits.

3. Per contra, the Id. DR is heard who has submitted that the assessee has been granted sufficient opportunity by the Id. CIT(A). Hence, the order of Id. CIT(A) should be sustained.

4. We have heard the rival contentions and perused the material available on record. It is noted that the assessee has filed the appeal before the Id CIT(A)-2, Jaipur and thereafter, the same has been transferred to the Id CIT(A), Ajmer vide order of the Pr.CIT dated 25.09.2018. The Id AR has made a statement at the Bar that the assessee as well the AR whose address has been stated as communication address in Form 35 were not aware of such transfer of the appeal from Id CIT(A)-2, Jaipur to the Id CIT(A), Ajmer and only after, the impugned order was received, the assessee and the AR came to know about the transfer of appeal matter. The Id DR submitted that due to redistribution of work load, the appeal matters are generally transferred from one CIT(A) to another CIT(A) and in the instant case, the matter was transferred to CIT(A) Ajmer and for the purposes of disposing off the matter, the assessee doesn't have to travel to Ajmer rather a camp office is set up at Jaipur itself where the CIT(A) Ajmer hear the matters. To our mind, it is a welcome step on part of the Department in terms of re-balancing the workload of appeal matters among various CIT(A) and at the same time, it is essential that the assessee be informed about such jurisdiction changes in a timely manner to make it more efficient and effective. In the present case, apparently the assessee or the Id AR are not aware of such jurisdiction change. Further, given that the matter has not been decided on merits, we believe that in the interest of justice and fair play, the assessee deserve one more opportunity to represent its case before the Id CIT(A). In the result, we set-

aside the matter to the file of the Id CIT(A) to decide the appeal on merits after providing reasonable opportunity to the assessee.

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

Pronounced in the Open Court on 29/03/2019.

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:- 29/03/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Vikas Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 4(3), 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. 140/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

