

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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 Nos. 1393 to 1398/JP/2018  
निर्धारण वर्ष / Assessment Years :2008-09 to 2013-14

M/s O.K. Silk Mills Ltd., B-4, Shiv Marg, Bani Park, Jaipur-302016.	बनाम Vs.	D.C.I.T., Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACO 1925 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 1399 to 1403/JP/2018  
निर्धारण वर्ष / Assessment Years :2008-09 to 2012-13

M/s Okay Plus Builders Pvt. Ltd. 49, Keshav Path, Suraj Nagar (W), Civil Lines, Jaipur.	बनाम Vs.	D.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACO 8605 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 1404 to 1407/JP/2018  
निर्धारण वर्ष / Assessment Years :2008-09 to 2011-12

M/s Shree Krishna Vatika Buildwell Pvt. Ltd., 49, Keshav Path, Suraj Nagar (W), Civil Lines, Jaipur.	बनाम Vs.	D.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJCS 6657 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 1409 to 1411/JP/2018  
निर्धारण वर्ष / Assessment Years :2011-12 to 2013-14

M/s Shree Krishna Vatika Homes Pvt. Ltd., 72-A, Kiran Path, Suraj Nagar West, Civil Lines, Jaipur-302006.	बनाम Vs.	D.C.I.T., Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AANCS 5983 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal (CA)  
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 08/05/2019  
उदघोषणा की तारीख / Date of Pronouncement : 09/05/2019

आदेश / ORDER

PER: BENCH

These are the appeals filed by the different assessees against the separate orders of the Id.CIT(A)-IV, Jaipur dated 07/09/2018 for the A.Ys. 2008-09 to 2013-14 in the matter of order passed U/s 143(3) read with Section 153A of the Income Tax Act, 1961 (in short, the Act).

2. The grievance of the assessee in all the years under consideration are common, therefore, we have heard all the appeals together and are now deciding the same by this consolidated order.

3. Grounds taken by the assessee in ITA No. 1393/JP/2018 for the A.Y. 2008-09 are as under:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in upholding that assessee has declared additional income of Rs. 5,232/- in return of income filed in response to notice issued u/s 153A without appreciating the facts and circumstances of the case and the submissions made before the Ld. AO. Thus, the conclusion so drawn based on wrong appreciation of facts, deserves to be ignored.

1.1 That the Ld. CIT(A) has failed to appreciate the fact that the current year loss of Rs. 5,232/- as was appearing in acknowledgement of return filed u/s 139, was also duly appearing in the 'Schedule CFL' of the ITR-6 filed u/s 153A of the IT Act. But inadvertently the same did not add up in the 'Total loss carried forward' column of the said schedule, and consequently did not appear in the acknowledgement filed u/s 153A of the Act. The Appellant prays that this being a technical/ software error, beyond control of the assessee does not bar the assessee from claiming and carrying forward the legitimate losses genuinely incurred. Thus treating the same as additional income declared in return filed u/s 153A is absolutely unjustified and the addition so made deserves to be deleted.

2. The appellant craves the right to add, delete or amend any of the grounds of appeal either before or at the time of hearing of appeal.”

4. Rival contentions have been heard and record perused. Briefly stating the present bunch of 5 appeals are filed against the single order of Ld. CIT(A) dated 07.09.2018 for AYs 2008-09 to 2013-14 involving a single issue, and are therefore taken up together under this single order for all AYs i.e. 2008-09 to 2013-14 for the sake of convenience and brevity.

5. Brief facts of the case are that the assessee is a private limited company engaged in the business of Builders and Contractors. A search u/s 132 of the Income Tax Act, 1961 was conducted on 04.09.2013 in the

case of JKD Group and Okay Plus Group and its members, and the assessee is one of the member of Okay Plus Group. Originally the Return of Income for all the respective years under appeal were filed u/s 139(1) of the Income Tax Act, 1961 declaring Nil Income after claiming loss as appearing in the above table, which were claimed as carried forward to next years. Thereafter in response to notice issued u/s 153A dated 04.12.2014, returns were filed within the time limit provided in the notice declaring Nil Income and claiming loss for the current year as was claimed in the returns filed u/s 139(1) of the Act, however, due to some technical error the figure of current year loss claimed and carried forward did not appear in the acknowledgement generated online. The AO completed assessment u/s 143(3) r.w.s. 153A of the Act for all the above AYs at Nil Income but without giving benefit of carry forward to current year losses, stating that such loss was not claimed by the assessee in the return filed u/s 153A and made addition of the same by alleging it to be additional income offered by the assessee in its return filed pursuant to search u/s 153A of the Act. Ld. CIT(A) did not consider the explanation / submissions made by the assessee and confirmed the rejection of carry forward of current years loss in all the assessment years as above on the following grounds:

1. The assessee nowhere in the submission had mentioned that both returns filed u/s 139(1) and 153A were exactly identical. He further alleged that since the computation is first made on the stand alone computer of the Chartered Accountant, which is then uploaded on the income tax website, it is not possible that two separate acknowledgements are generated when the data fed is exactly the same. Thus it was conclusively indicative that the two returns filed were not exactly the same.
2. That what is the technical reason due to which different acknowledgement is generated was not spelled out (even if it was assumed that both returns filed u/s139(1) and sec 153A are identical). Thus this contention is vague and unspecific.
3. The claim was in the nature of fresh claim, which was never raised before AO, and moreover did not arise out of the return filed u/s 153A of the Act. Ld. CIT(A) further alleged that an assessee can raise only the issue that has been examined by AO or that arises from the assessment order.
4. Ld. CIT(A) further alleged that the assessee would have genuinely not claimed the current year loss for some reason best known to the assessee, say not claiming certain expenditure after the search operation.
6. Against the above order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

7. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the assessee had not declared any additional income, pursuant to search in any of the assessment years involved. The contention of the assessee that no additional income was offered in the return filed u/s 153A is further strengthened by the reply of the assessee to the point no 8 of the questionnaires issued during each of the assessment proceedings, wherein the assessee has specifically mentioned the fact that no additional income was offered by it. Moreover, during the course of search no incriminating material whatsoever was found indicating any undisclosed income pertaining to assessee. Further AO has not pointed any such document in the assessment order. And this being so, there was no occasion for the assessee to disclose any additional income or not claim the loss, that was been made in the return filed u/s 139(1). The computation of income and other particulars like Balance Sheet etc. also shows that assessee has incurred and claimed loss in the respective assessment years.

8. We also observe that in the assessment order, the A.O. has wrongly observed that current year income of the assessee is NIL, only on the basis of the Acknowledgement and without actually going through the complete return of income filed u/s 153A. If the AO would have perused schedule

BP related to income from Business and profession, it would be clear from row 9 and 13 which show the current year income as loss instead of NIL income. Similarly, in the last but one main row i.e. A37 the current year business income has been shown as a loss and again at row C i.e. income chargeable under the head profit and gains has been shown as negative i.e. loss. Further in schedule CYLA in the column no. 3 meant for specifying the current year business loss if any, the assessee has duly filled the current year loss. Finally, in row VII of schedule CYLA again the current year loss (after set off) the assessee has again shown the current year loss amount. Also, in "Schedule CFL" in the row (xi) specifying the current year loss, the amount of loss is duly appearing. Thus, the assessee has duly shown its current year loss at all the required places in the ITR which are at as many as three places.

9. With regard to Id. CIT(A)'s observation to the effect that all the data in the two returns filed were not same because if it would have been so then two different Acknowledgement would not have been generated, is misplaced. In this regard, we observe that though data in the two returns were obviously same as submitted earlier also, but as the return now filed was u/s 153A and the earlier return was u/s 139(1) accordingly different acknowledgement would surely be generated even if the data of income etc. are same. We also found that the assessee has duly filled the

current years losses in the ITR as stated above, but due to some technical error the same is not reflected in the acknowledgement generated based on information picked up from the schedules of the ITR, which in-turn picks data from the files generated at the stand alone computer of the Chartered Accountant. Thus, the carry forward of current year loss in respective years deserve to be allowed.

10. We also observe that the claim of the assessee for earlier years loss, which is inclusive of the loss of the preceding AY has been duly allowed by the AO and the same has not been disputed by Ld. CIT(A). This further strengthens our conclusion that the current years losses were not shown in the acknowledgement generated for returns filed u/s 153A were due to some inadvertent technical error, and in no manner ought to have been considered as additional income declared by the assessee pursuant to the search operations carried out in the group.

11. From the record we also found that the assessee had attended the proceedings under the bonafide belief that the losses as claimed (which was same in both returns filed u/s 139(1) and 153A) were duly being assessed by the AO, and this intention of the AO to treat the current year loss of the assessee as its additional income was never intimated during

the assessment proceeding. Rather it was noticed only when the assessment order was received, thus no opportunity was ever granted to explain the issue during the course of assessment proceedings before AO.

12. Moreover, we observe that it is not a case where the claim of any deduction has not been lodged in the original return filed u/s 139(1) and now the assessee wants to take the benefit of the same in the return of income filed u/s 153A. In the instant case, assessee has claimed the business loss and carried forward the loss in the original return of income filed u/s 139(1) of the IT Act, 1961 and again in the return filed in response to notice issued u/s 153A, however due to some error the claim was not properly appearing in the acknowledgment of return generated and for such genuine error the assessee should not be penalized.

13. In view of the above discussion, I do not find any merits in the orders so passed by the lower authorities regarding declaration of additional income by the assessee, accordingly, we direct the A.O. to allow the benefit of carry forward of losses as claimed in all the assessment years involved. We direct accordingly.

14. The facts and circumstances in all the years under consideration with respect to all the bunch of other appeals are same. Following the reasoning given hereinabove i.e. in ITA No. 1393/JP/2018 for the A.Y.

2008-09, we set aside the orders of the authorities below and allow all the appeals so filed by the different assesses.

15. In the result, all the appeals of the different assesses are allowed in terms indicated hereinabove.

Order pronounced in the open court on 09<sup>th</sup> May, 2019.

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

Sd/-  
(रमेश सी शर्मा)  
(RAMESH C SHARMA)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 09<sup>th</sup> May, 2019

\*Ranjan

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

1. अपीलार्थी / The Appellants- (i) M/s O.K. Silk Mills Ltd., Jaipur.  
(ii) M/s Okay Plus Builders Pvt. Ltd., Jaipur  
(iii) M/s Shree Krishna Vatika Buildwell Pvt. Ltd., Jaipur.  
(iv) M/s Shree Krishna Vatika Homes Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondents- (i) The D.C.I.T., Circle-2, Jaipur.  
(ii) The D.C.I.T., Central Circle-2, 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. 1393 to 1398/JP/2018, 1399 to 1403/JP/2018, 1404 to 1407/JP/2018 and 1409 to 1411/JP/2018)  
आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar