

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "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. 1039/JP/2018
निर्धारण वर्ष / Assessment Year : 2015-16

Ajarudin Khan S/o Bundu Khan Vill- Untra, Via- Gangwana, Ajmer.	बनाम Vs.	The ITO, Ward-2, Kishangarh.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DZLPK 7181 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri O.P. Batheja (ITP)
राजस्व की ओर से / Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 29/04/2019
उदघोषणा की तारीख / Date of Pronouncement: 30/04/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 26.07.2018 of Id. CIT (A), Ajmer for the assessment years 2015-16. The assessee has raised the following grounds:-

" (i) That Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 8,91,550/- u/s 69A of the Act.

(ii) That the Id. CIT(A) has erred on facts and in law in not adjudicating the issue of treating agricultural income of Rs. 1,74,220/- as "income from other sources".

Additional Grounds.

1. The Id. AO made addition of Rs. 15,74,626/- u/s 69A (out of which addition of Rs. 8,91,550/- has been confirmed by the Id. CIT(A), on protective basis. As per the settled principals if taxation governing the protective assessment, a protective assessment will not survive without a substantive assessment. The existence of substantive assessment is a pre condition of survival of protective assessment. Since there is no substantive assessment/addition, therefore, the addition/assessment made by Id. AO is bad and law and deserves to be deleted/quashed."

2. The assessee is an individual and filed his return of income on 22.03.2017 declaring income of Rs. 2,50,640/- and agriculture income of Rs. 1,74,220/-. The case of the assessee was selected for scrutiny under CASS. The AO recorded the statement of the assessee U/s 131 of the I.T. Act regarding the claim of cash in hand of Rs. 15,74,626/- part of which was found to be deposited in the bank account of the assessee in the financial year 2016-17. The AO treated the cash of Rs. 15,74,626/- as unexplained money and added to the income of the assessee U/s 69A of the Act to be taxed on protective basis U/s 158BBE

of the Act. Since the cash of Rs. 13,50,000/- was found to be deposited in the bank during the financial year relevant to the assessment year 2017-18, therefore, the AO proposed to assess the said income on substantive basis for the assessment year 2017-18. The assessee while showing the cash in hand and also claimed agricultural income of Rs. 1,74,220/- but the AO has also treated the same as income from undisclosed sources. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. The major addition of Rs. 15,74,626/- was made by the AO U/s 69A of the Act on protective basis and therefore, the said issue cannot be decided in the absence of the outcome of the assessment of the said income on substantive basis for the assessment year 2017-18. On the direction of the Bench the Id. DR has filed a report of the AO dated 18.02.2019 wherein the Assessing Officer has submitted that since the case of the assessee for the assessment year 2017-18 was not falling in the category of CASS for scrutiny, therefore, the AO has now reopened the assessment by issuing notice U/s 148 of the Act on 11.02.2019. The copy of the said notice has been filed along

with the report as well as the reasons for reopening of the assessment. The Id. AR has not disputed the fact that the Assessing Officer has now initiated the proceedings of the reassessment for the assessment year 2017-18 to assess the income of Rs. 15,74,626/- as income from undisclosed source. Having regard to the facts that the AO has initiated the reassessment proceedings for the assessment year 2017-18 to assess the income on account of cash in hand of Rs. 15,74,626/- which includes deposits of cash of Rs. 13,50,000/- made between 06.11.2016 to 31.12.2016 on substantive basis for the assessment year 2017-18 the addition made on protective basis cannot be decided at this stage. Accordingly, in the facts and circumstances of the case and in the interest of justice the matter of assessment on protective basis for the assessment year under consideration as well as the issue of the agricultural income treated as income from undisclosed source is set aside to the record of the Assessing Officer and for denovo assessment along with reassessment for the assessment year 2017-18. Needless to say the assessee be given an appropriate opportunity of hearing before passing the fresh order as per outcome of the assessment for the assessment year 2017-18.

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

Order pronounced in the open court on 30/04/2019.

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/04/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- Ajarudin Khan, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2, Kishangarh.
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. 1039/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar