आयकर अपीलीय 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 Nos. 1244 & 1245/JP/2018
निर्धारण वर्ष/Assessment Year :2008-09

Shri Prahlad Kumar Arora, 3/34, Kala Kuwa, Housing Board, Bhadbujya Wali Gali, Ashoka Talkies, Alwar.	ब्नाम Vs.	ITO, Ward 2(1), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ATAPA 6106 A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by: Shri Shri P.C. Parwal (CA)
राजस्व की ओर से/ Revenue by : Shri Raj Mehra (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 22/04/2019
उदघोषणा की तारीख/ Date of Pronouncement : 10/06/2019

आदेश/ ORDER

PER: R.C. SHARMA, A.M.

These appeals are filed by the assessee against the separate orders of ld.CIT(A), Alwar dated 03-11-2017 and 29-06-2018 respectively for the A.Y. 2008-09 in the matter of orders passed u/s. 143(3)/147 and 154 of the Income Tax Act, 1961 (in short, the Act).

2. There is delay in filing the appeals, for which, application for condonation of delay has been filed. With regard to condonation of delay, the assessee has filed an affidavit wherein he stated the reasons in detail for delay filing of appeals. After going through the reasons, we are satisfied that there was reasonable cause for delay, therefore, in the substantial interest of justice, we condone the delay and admit the appeals for hearing on merit.

3. Grounds of appeal raised by the assessee in ITA No. 1244/JP/18 for the A.Y 2008-09 are as under:-

> *"1. The ld. CIT(A) has erred on facts and in law in holding that assessee has given Rs. 2,60,000/- to Sh. Rohtash Kumar for executing POA for the property in question in his favour only on the basis of his statement ignoring that the same was rebutted on the very next date by filing the affidavit and thereby confirming the addition of same by treating it as unexplained u/s. 69 of the IT Act.*
>
> *2. The assessee craves to amend, alter and modify any of the grounds of appeal.*
>
> *3. The appropriate cost be awarded to the assessee."*

4. Grounds of appeal raised by the assessee in ITA No. 1245/JP/18 for the A.Y 2008-09 are as under:-

> *1. The ld. CIT(A) has erred on facts and in law in dismissing filed by assessee u/s. 154 of the Act against the order dt. 03.11.2017 by incorrectly holding that no mistake apparent from record has taken place.*
>
> *2. The assessee craves to amend, alter and modify any of the grounds of appeal.*
>
> *3. The appropriate cost be awarded to the assessee."*

5. Rival contentions have been heard and record perused. Facts in brief are that on the basis of information regarding transfer of commercial plot, the A.O. issued notice U/s 148 of the Act. In compliance to which the assessee filed return of income declaring income at Rs. 60,000/-. In the course of reassessment proceedings, the A.O. observed that the assessee had transferred a commercial property to one Shri Charan Singh Yadav for Rs. 6.00 lacs. This property was obtained by way of power of attorney from Shri Rohitash Kumar. The A.O. further stated that the statement of assessee was recorded wherein

he stated that Rs. 2.60 lacs were paid to Shri Rohitash Kumar for appointing him as a power of attorney holder for sale of the said property. This statement was retracted by filing an affidavit on the very next date wherein it was stated that the assessee received amount of Rs. 10,000/- from Shri Rohitash Kumar for this work. However, the A.O. did not accept the retraction and observed that the assessee had paid Rs. 2.60 lacs to Shri Rohitash Kumar and the said property was sold by him at Rs. 6.00 lacs. Thus, the A.O. held that the assessee has earned profit of Rs. 3.40 lacs in this transaction. Accordingly, Rs. 3.40 lacs were added by the A.O. in the assessee's income from other sources.

6. By the impugned order, the ld. CIT(A) observed that since Shri Rohitash Kumar has accepted sale consideration of Rs. 6.00 lacs in his return of income, thus only Rs. 2.60 lacs paid by the assessee remained unexplained in his hands. Accordingly, he confirmed the addition to the extent of Rs. 2.60 lacs against which 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 has acted as a power of attorney holder in respect of plot owned by Shri Rohitash Kumar. The assessee agreed to act as a power of attorney holder for a consideration of Rs. 10,000/-. This

property was sold for Rs. 6.00 lacs. The sale consideration of Rs. 6.00 lacs received by Shri Rohitash Kumar was declared by him in his return of income. The fact that Shri Rohitash Kumar was in receipt of sale consideration of Rs. 6.00 lacs have been accepted by the lower authorities. Accordingly, the ld. CIT(A) has confirmed the addition of Rs. 2.60 lacs on the plea that the assessee in his statement dated 09/09/2015 has admitted that he has given Rs. 2.60 lacs to Shri Rohitash Kumar for acting as a power of attorney holder. However, the ld. CIT(A) failed to consider the fact that the assessee retracted from the statement by filing affidavit on the very next date. The A.O. at page 2 observed that *on the very next day i.e. on 10/09/2015, the assessee through its A/R filed written submission enclosing with an affidavit. In the affidavit the assessee has stated that due to fear in the statements dated 09/09/2015, he had accepted to pay Rs. 2.60,000/- towards appointing power of attorney but the truth is that he had received Rs. 10,000/- towards this work from Shri Rohitash Kumar*. Thus, it is clear that the addition of Rs.2.60 lacs has been confirmed by the ld. CIT(A) on the basis of statement which has been retracted by filing affidavit on the very next date explaining the reasons for retracting from the earlier statement. We also found that the A.O. in his order at para 4 has accepted that assessment of Shri Rohitash Kumar was also reopened U/s 147 of the Act and Rohitash Kumar had accepted receipt of sale

consideration of Rs. 6.00 lacs and he declared the same in the return of income. If the assessee had paid Rs. 2.60 lacs to Shri Rohitash Kumar and he also received sale consideration of Rs. 6.00 lacs, he should have been assessed at Rs. 8.60 lacs. Thus, there do not appear to be any substance for the addition of Rs. 2.60 lacs upheld by the ld. CIT(A) only on the basis of statement which has been retracted on the very next date by filing affidavit. The Hon'ble Supreme Court in the case of Pullangode Rubber Produce Company Ltd. Vs State of Kerala and Another (1973) 91 ITR 0018 has held that "Admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show that correct state of affairs." In the present case, no evidence is brought on record that assessee paid Rs. 2,60,000/- to Shri Rohitash Kumar. Therefore, the addition made only on the basis of statement which stands retracted on the next day itself is unjustified. After retraction of statement, no inquiry was made by the A.O. nor by the ld. CIT(A) from Rohitash Kumar as to whether any amount was paid by the assessee to him for giving power of attorney. Accordingly, we do not find any justification in the order of the ld. CIT(A) for upholding addition of Rs. 2.60 lacs by taking contrary stand. Accordingly, we direct to delete the addition of Rs. 2.60 lacs confirmed in the hands of assessee who is an

electric mechanic and filed return declaring salary income of Rs.60,000-/. However, considering the role of assessee as broker and Power of Attorney holder, we consider brokerage income of 5% as reasonable. Accordingly, we direct to uphold addition to Rs. 30,000/- (6,00,000-5%).

8. In the result, appeal of the assessee is allowed in part.

9. Appeal No. 1245/JP/2018 filed by the assessee for rejection of his application U/s 154 of the Act has no merit, therefore, dismissed.

10. In the result, appeal being ITA No. 1244/JP/2018 is allowed in part whereas ITA No. 1245/JP/2018 is dismissed.

Order pronounced in the open court on 10th June, 2019

Sd/-	Sd/-
(विजय पाल राव)	(रमेश सी शर्मा)
(VIJAY PAL RAO)	(RAMESH C SHARMA)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 10th June, 2019
*Ranjan
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Prahlad Kumar Arora, Alwar.
2. प्रत्यर्थी/ The Respondent- The I.T.O., Ward 2(1), Alwar.
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. 1244 & 1245/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar