

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA Nos. 242, 243 & 244/JP/2019
निर्धारण वर्ष/Assessment Years : 2011-12, 12-13 & 13-14.

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| M/s. Shree Krishna Vatika Buildmart Pvt. Ltd., 72-A, Okay Plus House, Kiran Path, Suraj Nagar (W), Civil Lines, Jaipur. | बनाम Vs. | The Deputy Commissioner of Income-tax, Circle-2, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN No. AANCS 1863 K | | |
| 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 : 11.07.2019.

घोषणा की तारीख / Date of Pronouncement : 12/07/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

These three appeals by the assessee are directed against the composite order of Id. CIT (Appeals)-4, Jaipur dated 3rd December, 2018, Jaipur for the assessment years 2011-12 to 2013-14 respectively. The assessee has raised common grounds in these appeals except the quantum of addition/disallowance as under :-

1. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in upholding that assessee has declared additional income of Rs. 1,23,399/- 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 Id. AO. Thus, the conclusion so drawn based on wrong appreciation of facts, deserves to be ignored.

- 1.1. That the Id. CIT (A) has failed to appreciate the fact that the current year loss of Rs. 1,23,399/- 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.

2. The assessee is a private limited company engaged in the business of production and trading of clothes. A search under section 132 was conducted on 4th September, 2013 in case of JKD Group and Okay Plus Group and its members. The assessee is one of the members of Okay Plus Group and was covered under the search and seizure action. In response to notice under section 153A of the IT Act, the assessee filed its return of income and claimed loss of Rs. 1,23,399/-, Rs. 7,14,169/- and Rs. 7,51,319/- for the assessment years 2011-12 to 2013-14 respectively. The AO disallowed the claim of loss to be carried forward on the ground that in the acknowledgement of return of income filed under section 153A this loss is not shown. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has referred to the return of income under section 139(1) of the IT Act and submitted that the assessee has duly shown the loss of the respective amounts in the return of income filed under section

139(1). He has also referred to the computation of income and submitted that the assessee has duly claimed the loss to be carried forward for all these three years. The Id. A/R has pointed out that due to some technical error, in the acknowledgement of return of income filed under section 153A the loss is not appearing. However, when the assessee has claimed the same in the computation of income filed under section 139(1), then the same cannot be disallowed merely because of the technical error in the acknowledgement generated by the systems of the department. He has further pointed out that an identical issue has been considered by this Tribunal in case of M/s. O.K. Silk Mills Ltd., M/s. Okay Plus Builders Pvt. Ltd., M/s. Shree Krishna Vatika Buildwell Pvt. Ltd. and M/s. Shree Krishna Vatika Homes Pvt. Ltd. for the assessment years 2008-09 to 13-14 vide order dated 9th May, 2019. Further, the Tribunal again in case of M/s. Shree Krishna Vatika Construction Pvt. Ltd. vide order dated 31st May, 2019 in ITA Nos. 371 to 373/JP/2019 has decided this issue in favour of the assessee on the identical facts arising from the same search and seizure action in case of other group concerns.

4. On the other hand, the Id. D/R has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. The solitary issue in these three appeals is regarding disallowance of carry forward of losses claimed by the assessee in the proceedings under section 153A of the IT Act. We have perused the relevant record including the returns of income filed under section 139(1) as well as returns of income filed under section 153A of the IT Act and noted that the assessee has claimed the respective amounts of losses

for these three assessment years in the returns of income under section 139(1) and the same amounts were also claimed in the returns of income filed under section 153A of the IT Act though in the acknowledgements generated by the departmental system for the returns of income filed under section 153A the amount of loss has not been shown. However, in the computation of total income, this income is duly reflected and matching with the amount as shown in the return of income filed electronically. Once the amount is duly claimed in the return of income filed electronically as well as also shown in the computation of income, then merely because the same is not appearing in the acknowledgement of return of income generated by the departmental systems cannot be the reason for denial of the claim. We find that this Tribunal in the other group cases of the assessee in ITA No. 1393 to 1411/JP/2018 vide order dated 9th May, 2019 have considered and decided this issue in favour of the assessee. The said decision was then followed by the Tribunal in the case of other group concern, namely, M/s. Shree Krishna Vatika Construction Pvt. Ltd. in ITA Nos. 371 to 373/JP/2019 vide order dated 31st May, 2019 in para 4 to 6 as under :-

"4. We have considered the rival contentions and carefully gone through the orders of the authorities below. In all these appeals, addition has been made by the A.O. in respect of loss which was appearing in acknowledgement of return filed U/s 139 of the Act which was also appearing in the Schedule CFL of the ITR-6 filed U/s 153A of the Act. However, inadvertently the same did not add up in the 'Total loss carried forward' column of the said Act.

5. We found that exactly similar issue has been allegedly decided by the Tribunal in its order dated 09/05/2019 and after considering all the facts and circumstances, the Tribunal has held as under:

“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."*

6. As the facts and circumstances in the impugned appeals are exactly same as has been discussed elaborately by the Tribunal in its order dated 09/05/2019. Respectfully following the order of the Tribunal dated 09/05/2019, we do not find any merit in the addition so made by the A.O. by ignoring the assessee's claim of loss so filed in the return U/s 139(1) of the Act."

The facts in the appeals before us are identical to the facts of the appeals of the group concerns as decided by the Tribunal. Accordingly, in view of the above discussions as well as following the decisions of this Tribunal cited supra, the orders

of the authorities below qua this issue are set aside and the claim of the assessee for carry forward of losses is allowed.

6. In the result, all the appeals of the assessee are allowed.

Order is pronounced in the open court on 12/07/2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

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

Jaipur

Dated:- 12/07/2019.

Das/

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

1. The Appellant- M/s. Shree Krishna Vatika Buildmart Pvt. Ltd., Jaipur.
2. The Respondent – The DCIT, Central Circle-2, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 242-244/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

