

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' 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. 674 & 675/JP/2019
निर्धारण वर्ष / Assessment Year : 2010-11 & 2012-13

Shri Mahaveer Prasad Agarwal, 18, Mahesh Colony, Seva Sadan Road, Bhilwara	बनाम Vs.	DCIT, Central Circle, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACSPA7547E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajendra Jain (CA)
राजस्व की ओर से / Revenue by : Shri Varindar Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 01/08/2019
उदघोषणा की तारीख / Date of Pronouncement : 05/08/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the orders of Id. CIT(A), Udaipur dated 18.03.2019 for the Assessment Year 2010-11 & 2012-13 respectively. Since the common issues are involved, both these appeals were heard together and are being disposed off by this consolidated order.

2. In ITA No. 674/JP/2019, the assessee has taken the following grounds of appeal:-

"1. That on the facts and circumstances of the case, the Id. CIT(A) erred in confirming addition which was outside the purview of section 153A of the Act as no documentary evidences or any other material in respect of addition made were found or seized at the time of search.

2. *That on the facts and circumstances of the case, the Id. CIT(A) erred in confirming addition of Rs. 2,14,211/- in respect of unrecorded income u/s 56 of the Act.*
3. *That on the facts and circumstances of the case, the Id. CIT(A) erred in confirming addition without considering explanation furnished by the assessee.*
4. *That on the facts and circumstances of the case, the Id. CIT(A) ought to have deleted the addition made by the Id. AO in light of decision of Hon'ble Rajasthan High Court and other High Courts referred before the Id. CIT(A).*
5. *That on the facts and circumstances of the case, the Id. CIT(A) erred in recording various findings in the order are contrary to the judicial decisions relied by the assessee.*

3. Briefly stated, the facts of the case are that the assessee is an individual and derives income from salary from Arihant Hospital & Research Sansthan, Bhilwara, pension from Government of Rajasthan, income from medical practice, and also earning interest, dividend and agriculture income. He filed his return of income u/s 139 on 14.10.2010 declaring total income of Rs. 15,20,610/- and agricultural income of Rs. 2,53,942/-. A search & seizure operation u/s 132(1) of Act was carried out on 02.07.2015 at residence of the assessee situated at 18, Mahesh Colony, Sewa Sadan Road, Bhilwada, Rajasthan. Consequent to search, notice u/s 153A of the Act was issued to the assessee. In response to the notice u/s 153A, the assessee furnished his return of income on 13.08.2016 declaring total income of Rs. 15,20,610/- and agricultural the income of Rs. 2,53,942/- as declared earlier in the return filed u/s 139. The assessment u/s 153A was completed at total income of

Rs. 18,05,903/- wherein the Assessing Officer brought to tax interest income of Rs. 2,14,211/- and has also disallowed various expenses amounting to Rs. 71,085/-. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) has deleted the disallowance of Rs. 71,085/-. However, interest income of Rs. 2,14,211/- on account of undisclosed interest has been confirmed against the said finding. The assessee is now in appeal before us.

4. During the course of hearing, the Id. AR submitted that no incriminating documents were found during the course of search in relation to interest income and in absence of any incriminating documents, no additions can be made while completing the assessment u/s 153A. It was submitted that time limit for issue of notice u/s 143(2) has expired well before the date of search and the assessment in respect of return originally filed was not pending as on the date of search. In support, the reliance was placed on the Hon'ble Rajasthan High Court decision in case of Pr. CIT, Jaipur vs. Smt. Daksha Jain, Sirohi in D. B. ITA No. 125/2017 dated 04.07.2019 wherein the Hon'ble High Court has confirmed the approach of the Tribunal of setting aside the search assessment on the ground that no fresh material was seized or discerned in course of search following the view taken by the Delhi High Court in the case of CIT (Central)-III vs. Kabul Chawla reported in 380 ITR 673 and which has been followed by various other High Courts. Further, reliance was placed on the Co-ordinate Bench decision in case of Smt. Jaya Prem Bhatia, Kota vs. DCIT, Central Circle, Kota in ITA No. 593 & 594/JP/2018 dated 25/04/2019 wherein the similar proposition has been laid down by the Co-ordinate Bench. It was further submitted by the Id AR that the assessee has reported the interest income at the time of maturity of

the fixed deposits and on receipt of income tax refund in subsequent assessment year and therefore, the action of the Assessing officer has resulted in double taxation which cannot be sustained in the eyes of the law.

5. Per contra, the Id. DR drawn our reference to the findings of the Assessing Officer and it was submitted that during the course of assessment proceedings, the assessee himself stated that the interest income could not be known before and therefore, by oversight without malafide intention and same could not be shown in the return of income. It was accordingly submitted that when the assessee has himself admitted during the course of assessment proceedings that he has not shown interest income received from SBBJ Account as well as interest on income tax refund totaling to Rs. 2,14,211/-, there is no infirmity in the order of the Assessing officer where he has brought the interest income to tax u/s 56 of the Act. It was further submitted by the Id DR that there is no evidence on record that the assessee has offered the interest income in the subsequent assessment year.

6. Further, our reference was drawn to the findings of the Id. CIT(A) which is contained at para 7.1 of the order which is reproduced as under:-

"7.1 As regards Ground No. 1 of appeal, at the outset, it is to be emphasized that it is not at all contested by the assessee that in the year under appeal, he had earned interest income of Rs.2,14,211/- which were omitted from being disclosed in the return of income filed u/s 139(1) or u/s 153A. In appeal also, the fact of earning such income is not disputed, The addition of interest income are contested only on the ground that it is not

based on incriminating material found during search and therefore outside the scope of assessment u/s 153A.

7.1.1. Undisputedly, as on the date of search, 02.07.2015, notice u/s 143(2) could not have been issued for the A.Y 2010-11, and, in view of the various judicial pronouncements on the scope of assessment u/s 153A, including the decision of the Hon. Rajasthan High Court in case of Jai Steels, u/s 153A the A.O would not have the powers as in original assessment u/s 143(3) and could only make additions to income based only on incriminating material found during search. However, the question of the scope of proceedings u/s 153A, in a case where, on the date of the search, action u/s 148 (though not u/s 143(3)), could have been taken as per law, but cannot be taken only for the reason that search has been conducted and the only section under which assessment can be made is Section 153A, has not been raised before the Hon. Courts. In my view, in such a case, while in the prevailing position of case laws, the A.O does not have powers as in original assessment u/s 143(3), he would have such jurisdiction as he would have while completing assessment u/s 147.

7.1.2 In the instant appeal, the assessment year under consideration is A.Y 2010-11. On the date of search, i.e 02.07.2015, four years had lapsed from the end of the assessment year but six years had not lapsed. There was escapement of income above Rs. 1,00,000/-, namely interest income alone is Rs.2,14,211/-, thus, for the assessment year

under consideration, A.Y 2010-11, action u/s 148, was legally sustainable on the date of search.

7.1.3 However, search having been conducted in the case of the assessee on 02.07.2015, the only section under which the assessment or reassessment could be made for A.Y 2010-11, under consideration, is u/s 153A. However, as discussed above, reassessment u/s 148, was legally possible on the date of search, therefore it is held that the scope of proceedings u/s 153A, though not same as the scope of proceedings u/s 143(3) would be the same as the scope of proceedings u/s 147.

7.1.4 Further, there being no dispute that interest income had escaped assessment, the addition to income of Rs.2,14,211/- on account of undisclosed interest is well within the scope of an assessment u/s 147, and consequently, within the scope of assessment u/s 153A.

7.1.5 In view of the above discussion, the addition to income of Rs.2,14,211/- on account of undisclosed interest is hereby confirmed."

7. We have heard the rival contentions and perused the material available on record. The question that arises for consideration is whether the addition can be made by the Assessing officer while passing the order u/s 153A of the Act for the impugned assessment year. In this regard, we find that the assessee has originally filed his return of income on 14.10.2010 and the time limit for issuance of notice has expired on 31.07.2011 and therefore, as on the date of search which is 2.07.2015, the original proceedings were not pending

and thus not abated. Therefore, it is a case of reassessment proceedings and the additions could be made basis any incriminating material found during the course of search. Admittedly, in the instant case, there is no incriminating material found during the course of search and it is only during the reassessment proceedings that the Assessing officer basis review of Form 26AS has come to know that the assessee has earned interest income from bank. Therefore, no addition can be made in the hands of the assessee in the impugned assessment year and we thus agree with the following findings of the Id CIT(A) where she stated as follows:

"Undisputedly, as on the date of search, 02.07.2015, notice u/s 143(2) could not have been issued for the A.Y 2010-11, and, in view of the various judicial pronouncements on the scope of assessment u/s 153A, including the decision of the Hon. Rajasthan High Court in case of Jai Steels, u/s 153A the A.O would not have the powers as in original assessment u/s 143(3) and could only make additions to income based only on incriminating material found during search."

8. At the same time, it may be noted that the Assessing officer is not without recourse to bring this interest income to tax. The reason for the same is that there is no dispute that the assessee has earned this interest income and there is also no dispute that the same has not been offered to tax by the assessee for the impugned assessment year. Therefore, in a scenario, where during the course of reassessment proceedings u/s 153A, the Assessing officer is ceased of the material and information that the income has escaped taxation, such material and information can form the basis for initiating the reassessment proceedings u/s 147 of the Act. At the same time, the

contentions which has been raised by the Id AR, that the assessee has reported the interest income at the time of maturity of the fixed deposits and on receipt of income tax refund in subsequent assessment year and therefore, the action of the Assessing officer has resulted in double taxation which cannot be sustained in the eyes of the law, has to be considered and examined objectively as the law permits the assessee to report interest income under the head 'Income from other sources" either on the cash or mercantile basis which is regularly employed by the assessee. Where the assessee contends that it has offered the interest income on maturity of fixed deposits and on receipt of income tax refund, basically, the assessee has followed the cash basis of accounting which is permissible under law. In the scenario, where it is found on examination that the interest income has not been reported to tax as so claimed by the assessee even in the subsequent assessment year, the Assessing officer will be at liberty to take action as per law to bring such interest income to tax.

9. However, under the present proceedings which has been initiated u/s 153A, given that the original proceedings were not abated as on the date of search and in absence of any incriminating material found during the course of search, no addition can be made in the hands of the assessee and the same is hereby directed to be deleted.

10. In the result, the appeal filed by the assessee is allowed in light of aforesaid directions.

11. In ITA No. 675/JP/2019, both the parties fairly submitted that the facts and circumstances of the case are exactly identical to facts

and circumstances of appeal in ITA No. 674/JP/2019 and therefore, our finding and directions contained in ITA No. 674/JP/2019 shall equally *mutatis mutandis* to this appeal as well. In the result, the appeal of the assessee is allowed.

In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 05/08/2019.

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:- 05/08/2019.

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Shri Mahaveer Prasad Agarwal, Bhilwara
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle, Kota
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. 674 & 675/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

