

आयकर अपीलीय अधिकरण, पटना न्यायपीठ, पटना

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष।

BEFORE SHRI CHANDRA MOHAN GARG, JM & SHRI L.P. SAHU, AM

ITA No.79/PAT/2016

(निर्धारण वर्ष / Assessment Year :2010-2011)

Sanjay Kumar alias Sanjay Kumar Yadav, Prop. Hotel Palika & Wine Shop, Goria Toli, Station Road, Patna	Vs.	DCIT, Circle-6, Patna
स्थायी लेखा सं./PAN No. : AFYPK 5085 L		

निर्धारिती की ओर से /Assessee by	:	Shri Nishant Maitin, CA
राजस्व की ओर से /Revenue by	:	Shri Inderjit Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing	:	18/09/2019
घोषणा की तारीख/ Date of Pronouncement	:	19/09/2019

आदेश / ORDER

Per Bench:

This appeal is filed by the assessee against the order passed by learned CIT(A)-2, Patna, dated 09.02.2016 for the assessment year 2010-2011.

2. As per the office note, there is a delay of 78 days in filing the present appeal. The assessee has filed an application for condonation of delay. We have gone through the application of the assessee and found that there is sufficient cause for delay in filing the present appeal by the assessee. Ld. DR has no objection for condonation of delay. Accordingly, we condone the delay and appeal is heard finally.

3. The assessee in this appeal has raised the following grounds of appeal :-

- (I) *For that the learned CIT (A) has not been justified in confirming the addition of Rs. 10,45,788/- on account of the income from short term capital gain .*
- (II) *For that the learned CIT(A) has not been justified in confirming the addition of Rs.22,50,000/- on account of unexplained cash deposit into bank account*
- (III) *For that the humble appellant craves for leave of the Hon'ble ITAT, Patna Bench Patna to take raise press plead and /or argue any other ground or grounds as may arise hereinafter or during the hearing of the appeal:*

RELIEFS CLAIMED

- A. *The impugned assessment order be kindly quashed, cancelled, annulled or set-aside.*
- B. *The amount of additions by disallowing and not giving the credit, as explained above, may be deleted and/or credit be given.*
- C. *Any other relief or reliefs as the learned assessing officer may deem fit and proper.*

And for this the appellant prays accordingly.

4. Facts of the case are that the assessee is engaged in the hotel business and wine shop and filed his return of income electronically on 14.10.2010 declaring total income at Rs.10,09,060/-. Upon issuance of statutory notices, the assessee filed ledger of sundry creditors, all bank statements, ledgers and confirmation of account of sundry creditors

and unsecured loan. Thereafter the Assessing Officer completed the assessment u/s.144 of the Act making various additions.

5. In appeal, the CIT(A) deleted the addition made on account of ad-hoc disallowance, however, the CIT(A) restricted the addition made on account of income from capital gain to Rs.10,45,788/- and further upheld the addition made by the Assessing Officer on account of undisclosed deposits into the bank account, against which the assessee is in further appeal before the Tribunal.

6. Ld. AR, before us, with regard to the addition sustained by the CIT(A) on account of income from capital gain, submitted that the assessee had capitalized the income from long term capital gain in his capital account for a sum of Rs.84,81,569/-. The basis of income from long term capital gain was the data base available with the assessee, which was filed before the Assessing Officer during the course of assessment proceedings. However, the Assessing Officer assessed the income from capital gain on the basis of data available from the ICIC-Com and completely ignored the data of the assessee made available during the assessment proceedings. Even the CIT(A) did not consider the data of the assessee and confirmed the addition, which is not sustainable and deserves to be deleted.

7. As regards, addition made on account of unexplained cash deposits into the bank account, the ld.AR submitted that the assessee

had made cash deposits of Rs.22,50,000/- out of the cash withdrawal from the same bank account for a sum of Rs.38,00,000/- and during the appellate proceedings, the assessee duly explained the cash deposit into bank account in his written submission dated 29.12.2015. Therefore, the source of the disputed amount has duly been explained by the assessee and submitted that the addition made by the Assessing Officer and confirmed by the CIT(A) deserves to be deleted.

8. Apart from the above, ld. AR vehemently argued that the Assessing Officer has passed assessment order u/s.144 of the Act without issuing any show cause notice and only relying on the Form 26AS, made the addition on account of unexplained cash deposits into the bank account. Even the CIT(A) has not considered the claim of the assessee with regard to availability of cash with the assessee at the relevant point of time. If the Assessing Officer had issued any show cause notice before making addition, the assessee would have substantiated its claim as the assessee was having the source of cash deposits into the bank. Therefore, ld. AR, alternatively, requested that one more opportunity may kindly be provided to substantiate the claim of the assessee on both the grounds before the Assessing Officer.

9. Replying to the above, ld. DR acceded to the above contentions of the ld. AR of the assessee only for the limited purpose to remit the

matter to the file of Assessing Officer on the above issue for further verification.

10. On careful consideration of the above rival submissions of both the parties and on perusal of the entire material available on the record of the Tribunal as well as the orders of both the authorities below, we find that the Assessing Officer has passed assessment order u/s.144 of the Act. Though the ld. CIT(A) has called for remand report from the Assessing Officer on both the issue, however, on perusal of the remand report as reproduced by the CIT(A) in the appellate order on both the issues as agitated by the assessee before us, we are of the view that the remand report submitted by the Assessing Officer suffers from proper verification and examination on the part of the Assessing Officer without issuing any show cause notice as submitted by the assessee before us. Before us ld. AR has alternatively pleaded to provide one more opportunity to substantiate its claim with proper evidence, to which ld. DR has no objection. Therefore, in the interest of justice and fairplay and considering the submissions of the ld. AR of the assessee, we remit both the issues, as mentioned above, to the file of Assessing Officer to decide the same, after due verification and examination. Needless to say, the assessee may be provided adequate opportunity of hearing. The assessee is also directed to cooperate with the Assessing

Officer for early disposal of the case. Accordingly, both the grounds of assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 19/09/2019.

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

पटना / Patna; दिनांक Dated 19/09/2019

Prakash Kumar Mishra, Sr.P.S.(on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पटना / DR, ITAT, Patna
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण,

पटना / ITAT, Patna