

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1255, 1256 & 1257/JP/2018
निर्धारण वर्ष/Assessment Year : 2011-12, 12-13 & 13-14.

Smt. Madhu Vijay, c/o B. Vishal & Co., CA Raghukul, 15, UIT Plots, Nr. Gumanpura Police Station, Jhalawar Road, Kota.	बनाम Vs.	The DCIT Central Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABFPV 6232 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B. V. Maheshwari (CA)
राजस्व की ओर से / Revenue by : Shri Abhishek Sharma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 30.09.2019.
घोषणा की तारीख / Date of Pronouncement : 04/10/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

These three appeals by the assessee are directed against three separate orders of Id. CIT (Appeals)-2, Udaipur all dated 20.08.2018 for the assessment years 2011-12, 12-13 & 13-14 respectively. For the assessment year 2011-12 the assessee has raised the following grounds of appeal :-

1. That the Id. A.O. grossly erred on law to assess the income u/s 153C in case of Appellant and carried the assessment u/s 153C/143(3) of the Income Tax Act. That the Id.CIT (A) also erred in sustaining the said order.
2. That the Id. AO grossly erred on law and facts in making the addition of FDR interest income Rs. 64,844/-. That the Id. CIT (A) also erred in sustaining the said order.

3. That the Id. AO grossly erred on law and facts in making addition of Post Office interest Rs. 14,400/- & SB A/c in Trust Rs. 1200/- & The Id. CIT (A) also erred in sustaining the said order.
4. The assessee craves to leave, add, alter amend the grounds of appeal at the time of hearing."

Ground No. 1 is regarding validity of assessment framed under section 153C read with section 143(3).

2. At the time of hearing, the Id. A/R of the assessee has stated that the assessee does not press ground no. 1 of the appeal and the same may be dismissed as not pressed. The Id. D/R has raised no objection if the ground no. 1 of the assessee's appeal is dismissed as not pressed. Accordingly, ground no. 1 of the assessee's appeal is dismissed being not pressed.

Ground No. 2 is regarding addition on FDR interest.

3. I have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. The AO has made the addition on account of interest on FDR of Rs. 64,844/- which was not declared by the assessee in the return of income filed under section 139(1) of the IT Act. Thus in the proceedings under section 153C, the AO on examination of the FDR statement produced by the assessee noted that the assessee has not included the interest on the FDR in the return of income filed. There is no incriminating material found which belong to the assessee disclosing the income on account of interest on FDR. Therefore, when no reference is made by the AO of any document found during the course of search and seizure action carried out in the case of Kota Dal Mill under which the husband of the assessee was covered, the addition made by the AO while framing the assessment under section

153C is not justified. Accordingly the said addition is deleted. Even otherwise, the interest on FDR in case of Individual may be considered either on receipt basis or on accrual basis, if assessee is following a practice of recognizing the income on receipt basis then no addition can be made on this account and that too in the proceedings under section 153C of the Act.

Ground No. 3 is regarding interest on Post Office and Savings Bank account.

4. I have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. This addition has been made by the AO in the proceedings under section 153C without making any reference to any material found or seized during the course of search belonging to the assessee and disclosing such income. Hence in the absence of any material, the addition made by the AO is not sustainable.

For the assessment years 2012-13, the assessee has raised the following grounds :-

- “ 1. That the Id. AO grossly erred on law and facts in issuing the notice u/s 153C in case of Appellant and carried the assessment u/s 153C/143(3) of the Income Tax Act. That the Id. CIT(A) also erred in sustaining the said order.
2. That the Id. AO grossly erred on law and facts in charging tax on FDR interest Rs. 52,208/-. That the Id. CIT (A) also erred in sustaining the said order.
3. The assessee craves to leave, add, alter amend the grounds of appeal at the time of hearing.”

5. At the time of hearing, the Id. A/R of the assessee has stated that the assessee does not press ground no. 1 of the appeal and the may be dismissed as not pressed. The Id. D/R has raised no objection if the ground no. 1 of the assessee's appeal is dismissed as not pressed. Accordingly, ground no. 1 of the assessee's appeal is dismissed being not pressed.

Ground No. 2 is regarding interest on FDR.

6. The issue raised in Ground No. 2 is common to issue raised in Ground No. 2 for the assessment year 2011-12. In view of the findings of the Tribunal for the assessment year 2011-12, the addition made by the AO is deleted.

For the assessment years 2013-14, the assessee has raised the following grounds :-

- "1. That the Id. AO grossly erred on law and facts in issuing the notice u/s 153C in case of Appellant and carried the assessment u/s 153C/143(3) of the Income Tax Act and the Id. CIT(A) also erred in sustaining the findings of Id. AO.
2. That the Id. AO grossly erred on law and facts in making the addition of FDR interest income Rs. 47,746/-. That the Id. CIT (A) also erred in sustaining the said addition made Id. AO.
3. That the Id. AO grossly in stating the tuition income as unexplained u/s 68 and levied tax u/s 115BBE. This is wrong, there should be the regular tax only on the income declared earlier and which not a part of search.
4. The assessee craves to leave, add, alter amend the grounds of appeal at the time of hearing."

Ground Nos. 1 & 3 not pressed.

Ground No. 2 is against interest on FDR

7. The issue raised in Ground No. 2 is common to issue raised in Ground No. 2 for the assessment year 2011-12. In view of the findings of the Tribunal for the assessment year 2011-12, the addition made by the AO is deleted.
8. In the result, all the appeals of the assessee are partly allowed.

Order is pronounced in the open court on 04/10/2019.

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

Jaipur

Dated:- 04/10/2019.

Das/

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

1. The Appellant- Smt Madhu Vijay, Kota.
2. The Respondent – The DCIT Central Circle, Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1255, 1256 & 1257/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

