

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

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

आयकर अपील सं./ITA No. 1033/JP/2018  
निर्धारण वर्ष/Assessment Year : 2016-17

Shri Hari Om Bhatia 49-A, New Colony, Gumanpura, Kota.	बनाम Vs.	The DCIT, Central Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANAPB6218Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri Abhishek Sharma (ACIT)

सुनवाई की तारीख / Date of Hearing : 01/10/2019  
उदघोषणा की तारीख / Date of Pronouncement : 01/11/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 22.06.2018 of Id. CIT(A)-2, Udaipur for the assessment year 2016-17. The assessee has raised the following ground:-

*"1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 1,07,083/- on account of difference in SBI Bank Incentive/Commission income declared in ITR as per Form 26AS and the amount shown in statement of affairs.*

*2. The assessee craves to amend, alter and modify any of the grounds of appeal.*

*3. The appropriate cost be awarded to the assessee."*

2. The assessee is an individual and derives income from salary, interest and incentive/commission. The assessee filed his return of income on 15.12-2016 declaring total income of Rs. 22,50,940/-. The return of income was filed by the assessee after a search and seizure action carried out at his premises U/s 132(1) of the IT Act on 03.03.2016. During the course of assessment proceedings, the AO asked the assessee to file the statement of affairs wherein the assessee has shown the incentive/commission received from SBI at Rs. 3,40,000/- whereas the assessee declared the income on account of incentive/commission in the return of income at Rs. 2,32,917/-. It was clarified that in the return of income the assessee has declared incentive/commission income received from SBI as per Form 26AS whereas during the year under consideration the incentive/commission was received at Rs. 3,40,000/-. The Assessing Officer did not accept the explanation of the assessee and made the addition of the differential amount of Rs. 1,07,083/- to the income of the assessee. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3. Before the Tribunal, the Id. AR of the assessee has submitted that as per Form 26AS the incentive/commission is received of Rs. 2,32,917/- which was declared and offered to tax in the return of income. In the course of assessment proceedings as required by the AO the assessee prepared the statement of affairs and according to which the incentive received is shown at Rs. 3,40,000/- which is actual amount received during the year. The Id. AR has thus submitted that the statement of affairs was prepared on the basis of actual amount receipt as per bank statement however, the assessee has declared the income on account of incentive/commission income from the bank as per Form 26AS. Thus, the Id. AR has submitted that the fact remains that the incentive/commission accrued and due for the year is Rs. 2,32,917/- and the amount which is actually received more than this income pertains to the incentive/commission already accrued to the assessee in the preceding year and offered to tax. Therefore, the said amount cannot be brought to tax for the year under consideration as it will be doubled taxation on the same income. He has filed computation of income for the assessment year 2015-16 along with Form 26AS and pointed out that some of the receipts shown in the statement of affairs for the year under consideration were already shown in Form 26AS for the assessment year 2015-16 and therefore, the same was offered to tax in the assessment year 2015-16.

He has pointed that if the amount which was already offered to tax for the preceding year is taken into consideration then there will be no addition on this account.

4. On the other hand, Id. DR has relied upon the orders of the authorities below and submitted that the assessee himself as prepared the statement of affairs showing the income from incentive/commission received from bank and therefore, the Assessing Officer has made the addition on the basis of particulars and facts disclosed by the assessee.

He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as relevant material on record. The addition of Rs. 1,07,083/- was made by the AO due to the difference of incentive/commission income from SBI shown in the return of income and subsequently shown in the statement of affairs prepared by the assessee. The assessee has explained that the income on account of incentive/commission is declared in the return of income at Rs. 2,32,917/- on the basis of Form 26AS. On careful perusal of the details filed by the assessee as well as Form 26AS for the assessment year 2015-16 along with the computation of total income it is found that some of the amounts of incentive/commission from the bank were already shown in Form 26AS for the assessment year 2015-16 though the same was actually received for the year under consideration. It is also not in dispute that the

assessment has been declaring the income from incentive/commission from the bank on the basis of Form 26AS which means the income was offered as the same is accrued and become due for the year under consideration. Similarly when some of the amounts become due and accrued in the preceding year i.e. assessment year 2015-16 and was offered to tax on the basis of Form 26AS then to the extent of the said amount which has already offered to tax in the preceding year cannot be taxed again on the basis of receipt. The assessee is following the consistent method of recognizing the income from incentive/commission from the bank which is based on accrual and shown in Form 26AS then the change in the basis of recognizing the income from accrual to receipt will amount to double taxation of the amount which was already offered to tax. Hence, to avoid the double taxation of the amount the AO is directed to verify the necessary details pertaining to the income which was already offered to tax in the preceding year and is again shown as part of the receipt of incentive/commission and added to the income of the assessee. Accordingly this matter is set aside to the record of the Assessing Officer for proper verification of these facts and then assess the correct income for the year under consideration after excluding the income which was already offered to tax for the preceding year.

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

Order pronounced in the open court on 01/11/2019.

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

जयपुर / Jaipur

दिनांक / Dated:- 01/11/2019

\*Santosh

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

1. अपीलार्थी / The Appellant- Shri Hari Om Bhatia, Kota.
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle, Kota.
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. 1033/JP/18)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar