

आयकर अपीलिय 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. 336/JP/2019
निर्धारण वर्ष /Assessment Year :2012-13

Shri Subhash Chandra Agarwal, C/o B Vishal & Co. "Raghukul", 15, UIT Plots B/H, Gumanpura Police Station, Jhalawar Road, Kota	बनाम Vs.	ITO, Ward-1(2), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AATPA6866D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. B. V. Maheshwari (CA)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 03/03/2020
उदघोषणा की तारीख / Date of Pronouncement: 06/03/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 21.01.2019 wherein the assessee has taken following grounds of appeal:-

- "1. That the Id. AO grossly erred on law & facts in not considering the Revised return filed by the assessee and the Id. CIT(A) also erred in dismissing the ground, although he has also stated to have admitted the ground.*
- 2. That the Id. AO grossly erred in making the addition to words salary Rs. 8,59,515.00/- the assessee declared salary as per certificate Rs. 1,80,000.00/- thus the Id. AO made addition of Rs. 6,79,515.00/- the Id. CIT(A) have not discussed in details & restrict the salary at Rs. 6,00,000.00/- thereby sustained the addition of Rs. 4,20,000.00/- based on revised return.*

3. *That the Id. AO grossly erred on law & facts in not allowing the loss in house property as claimed by the assessee & apart from that, he assessed income from House Property Rs. 3,17,940.00/-. However the Id. CIT(A) partly allowed the ground of the assessee & house property loss was restricted to Rs. (-) 11,872.00/- in place of Rs. (-) 3,08,872.00/- thereby sustained the addition of Rs. 2,97,000.00/-.*
4. *That the Id. AO grossly erred on law & fact in making the addition of Rs. 12,209.00/- under income from other sources, the Id. CIT(A) also erred in sustaining the said addition.*
5. *That the Id. AO grossly erred on law & facts in disallowance of Rs. 18,75,50.00/- out of Hostel expenses the Id. CIT(A) sustained Rs. 75,000.00/- i.e. part of that.*
6. *That the Id. AO grossly erred on law & facts in not considering deduction u/s 80C Rs. 84,027.00/- However the Id. CIT(A) erred in not considering the deduction to the extent of Rs. 1,00,000.00/- he considered Rs. 73,057.00/- thereby sustained the addition of Rs. 45,393.00/-."*

2. Regarding Ground No. 1, during the course of hearing, the Id. AR submitted that the assessee is an individual & filed return u/s. 139(4) of I.T. Act. 1961 on 26.03.2013 showing NIL income rather loss of Rs. 365843/-. In the said return, the assessee has not shown salary & house Property income, but on compilation of books, he realized that there is mistake in taking the income and found that the ROI filed in hurry on 30.03.2013 was not proper, then he collected data from employer, banks and noted the following things. The salary was received Rs. 180,000/- but, since Form No. 16 was not available at the time of original return, and when the Form No. 16 was received, then the assessee became aware & filed revised return showing salary as per Form No. 16, and other

Income earned during the year. However, the Ld. A.O. estimated salary income based on A.Y. 2010-11. That the assessee has not worked for Kendriya Academy Vidhyalaya Vidyalay Shiksha Samiti, he worked for new School, being developed i.e. Naveen Kendriya Shiksha Samiti, Baran and got the salary Rs. 180,000/- (15,000/- P.M.), Similarly he has shown rent Rs. 120,000/- received from students & after claiming interest, he declared the loss. Thus the return was revised to bring to tax the actual income. It has been decided by the Allahabad High Court that there is no bar in filing a belated or revised return as long as no assessment intervened — Niranjana Lal Ram Chandra (All) 134 ITR 352 (1982).

3. It was further submitted that once a revised return is filed, the original return couldn't be adverted to at all as was decided by Punjab & Haryana High Court in the matter of depreciation claim following the decision of Beco Engg Co. Ltd. v/s. CIT (1984) 148 ITR 478 (P & H) this is followed in other decision in the case of CIT v/s Mahendra Mills (2000) 243 ITR 56 (SC) it was so decided in Kawal Textiles v/s ITO (1991) 189 ITR 339 (M.P.).

4. Thus, when the revised return is supported by Form No. 16, interest Certificate etc. then the Id. AO ought to accept the figures of revised return. Further the Ld. CIT(A) also ignored the facts & proceeded with the original return and assessment order which have no base at all. In view of above we submit to allow the revised return & the ground based thereon.

5. Regarding Ground No. 2, the Id. AR submitted that this is the addition made by estimating that the assessee would have received so much salary from his employer. In case of salary, there must be two persons - one employer and the other employee. At the time of assessment the assessee has given Form No. 16 that how much he received the salary

during the year, but the learned A.O. narrated so many things in the assessment order and it shows that he proceeded with a prejudiced mind. What he states is that in the AY 2010 - 11 (ignored AY 2011 - 12) salary was Rs. 7,25,863/- and in this year it is NIL. He has not looked into the Return. In the Return the salary has been shown Rs. 1,80,000/- which is as per form No. 16 issued by the employer. On this issue the learned A.O. has no authority to question why it is reduced, how it can be given more since in the year under consideration the employee has worked in other school. This is the mutual thing between an employer and employee and the most important thing is that when the payment is given by the employer and is duly acknowledged by the employee, in that case there is no chance of increase or reduction. It is not a business income that can be based on the earlier year, hence the estimation of salary made by the learned A.O. based on the AY 2010 - 11 is totally wrong and addition is based on his assumption, therefore, may kindly be deleted. The Ld. CIT(A) also reiterated the Ld. A.O.'s version & choose to estimate the salary in place of actual Salary & estimated the salary Rs. 600,000/- in place Rs. 180,000/-, we submit to allow the ground on actual basis.

6. Regarding Ground No. 3, the Id. AR submitted that in case of house property, the assessee owns a house situated at 756, Pratap Nagar, Kota jointly with his wife and son. On purchase and construction of this house, he has taken loan from ICICI bank and the loan was of Rs. 90 lakhs; a fair proportion of 1/3rd was to be given by him and out of the said 1/3rd liability he has paid the interest on the loan and against that he also received rent of Rs. 1,20,000/- which has been shown in the Return. After getting the deduction of interest and repairs etc., there was a loss and it has been stated in the Return of the Assessee. However, the learned A.O. discussed this issue that the Assessee has claimed loss since he has not considered the Revised income which was duly filed in time and a copy thereof was

submitted in course of assessment proceedings, the A.O. estimated the rent that in the two years the rent was shown this much and by making his own estimate he has assessed the positive income from the house instead of loss claimed by the Assessee. However complete details of purchase of property, loan, bank statement which have been given to the learned A.O. and copies thereof are further enclosed herewith to substantiate that whatever amount claimed by us, is confirmed and the addition made by the learned A.O. based on his estimation may kindly be deleted. The Ld. CIT(A) allowed the interest but estimated the rental income Rs. 454,200/- which has no base. He has taken rent based on A.Y. 2010-11 which is entirely different. In A.Y. 2010-11, the rent from H No.- 756 have been assessed Rs. 1,20,000/- and after deductions the loss was allow Rs. 3,19,720/-. On perusal of the return of the previous year there was rent of different property & in 2010-11 it was quite different, in this year he has let out 2 rooms to students for 10 months of his house no. 756, Pratap Nagar, hence the basis taken by Ld. A.O. of A.Y. 2010-11 is not of same house. Further the Ld. CIT(A) have not gone in to details of rent, property, repayment hence sustained the part of the addition based on A.O.'s order. We thus submit that the actual rent be considered and allow the ground of the assessee.

7. Regarding Ground No. 5, the Id. AR submitted that in relation to hostel income, complete details were filed. We have given receipts and explained the account. There was a receipt of Rs. 11,51,600/-, out of that the assessee has shown income to the extent of Rs. 4,02,570/- which is around 35%. We submit that there are so many hostels in Kota City and income shown by us (i.e. 35%) is much more than the income shown by other hostel owners. Most of the hostel owners are showing income U/s 44AD i.e. 8 - 10% in comparison to that the income shown by the Assessee is much more. Hence, by mentioning that certain

expenses could not be vouched or verified, the learned A.O. disallowed Rs. 1,87,500/- ignoring the fact that the Assessee has already shown a good percentage of profit, hence the estimated addition made by disallowing the expenses is totally wrong. The Ld. CIT(A) discussed the issue but without going in to details sustained the part addition of Rs. 75,000/-. On perusal of details, your will find that the expenses are in following proportion:

Salary	32.20%
Food & Medical	25.10%
Repair & Maintenance	7.72%
Profit	35.08%
	<hr/>
	100.00

It is the bare minimum expenditure and the profit is 35% which is much more from retails business u/s. 44AD, as such the profit is reasonable may kindly be accepted.

8. Regarding Ground No. 6, the Id. AR submitted that in relation to deduction U/s 80C we submitted the details and receipts completely, a copy thereof is again enclosed herewith. In relation to housing loan and repayment, complete repayment schedule was submitted and all these papers, submitted before the learned A.O. along with the submission to kindly peruse the same on the basis of these papers and documents in relation to deduction claimed U/s 80C kindly allow the same since the addition made by the learned A.O. are totally baseless. The Ld. CIT(A) also not discussed properly & hence only part relief was allowed based on the repayment schedule we are submitting the repayment schedule & payment proof during the year, and request to allow the deduction u/s 80C.

9. On the contrary, the Id. DR submitted that the assessee has filed a belated return and thereafter, has revised such belated return of income which is not permissible and has rightly not been considered by the AO. Further, on merits, she relied on the findings of the authorities below and supported the orders of the authorities below.

10. We have heard the rival submissions and perused the material available on record.

11. Regarding Ground No. 1, we find that the assessee has filed his return of income originally on 28.03.2013 which was subsequently revised on 29.06.2013. The original return was therefore, not filed in time prescribed u/s 139(1) of the Act. Rather, it was filed belatedly well before the end of the assessment year on 28.03.2013 and therefore, it is a return filed u/s 139(4) of the Act. Under Section 139(5) of the Act, any person having furnished a return u/s 139(1) or not 139(2) may furnish a revised return at any time before the assessment is made. Therefore, no revised return can be filed u/s 139(5) of the Act in a case where the return was originally filed belatedly u/s 139(4) of the Act. In the instant case, given that the return was originally filed u/s 139(4) of the Act, the same cannot be revised u/s 139(5) of the Act. Therefore, the revised return filed by the assessee on 29.06.2013 has rightly not been considered by the Assessing Officer. The said action of the Assessing Officer is also in consonance with the decision of the Hon'ble Supreme Court in case of Kumar Jagdish Chandra Sinha vs. CIT 86 Taxman 122 (SC) which has been relied by the Id. CIT(A). In light of same, the ground No. 1 of the assessee's appeal is dismissed.

12. Regarding Ground No. 2, the assessee has challenged the action of the Assessing Officer in bringing to tax salary income of Rs. 8,59,515/- and Id.

CIT(A) restricting the same to Rs. 6,00,000/- as against 1.8 lakh claimed to be received by the assessee during the year. As per the Assessing Officer, the assessee was a regular employee as well as Secretary of Kendriya Academy Educational Society, Kota and in A.Y 2010-11, he has shown salary income of Rs. 7,16,263/- and in subsequent assessment year 2013-14, he has shown salary income of Rs. 10,55,858/-. Given that the assessee has not shown any salary income for impugned assessment year, considering past year salary and 20% increment for the year under consideration, the Assessing Officer has worked out the salary income at Rs. 8,59,515/- and brought to tax the same. As per the Id. CIT(A), though the finding of the AO also lacks any corroborative basis but it is also true practically that the appellant has been associated with the institution in the earlier years and he shown to have also generated sufficient cash receipts towards remuneration (as also claimed in the invalidated revised return), which drives home the fact that he may have received certain remuneration which was not shown for tax purposes and he himself has admitted to Rs. 1,80,000/- in the course of filing the so called revised return. The Id. CIT(A) accordingly held that it would be reasonable to consider salary income of Rs. 6,00,000/- as against Rs. 8,59,515/- taken by the AO based on past record and the balance addition was deleted. During the course of hearing, the Id. AR submitted that the assessee has filed copy of form 16 disclosing the salary income of Rs. 1.8 lakhs which has been received by the assessee during the year under consideration which has been ignored by the Assessing Officer. It was further submitted that the assessee has not received any other salary income and therefore, there is no basis for the Assessing Officer to estimate the salary income basis past years.

13. On perusal of records, we find that for A.Y 2010-11, the assessee has shown gross salary of Rs. 7,25,863/- from Kendriya Vidhyalaya Educational

Society, Kota and in A.Y 2011-12, the assessee has shown salary income of Rs. 2,40,000/- from the same institution. However, in the original return filed by the assessee for the impugned assessment year, he has not shown any income under the head salary. Thereafter, in the return filed on 29.06.2013 (not admitted by the Assessing Officer), he has shown salary income of Rs. 1.8 lakh from Divine School, Baran, Rajasthan. Further, on perusal of Form 16 which has been issued by the Navin Kendriya Shiksha Samiti, Pratap Nagar, Baran, Rajasthan, an amount of Rs. 1.8 lakh has been shown to have been paid by the said institution to the assessee during the financial year relevant to impugned assessment year. The return for A.Y 2013-14 is not on record however, the AO has stated in his order that the assessee has received and has shown salary income of Rs. 10,55,858/-. Therefore, we find that there is fluctuation in the salary income so reported by the assessee from year to year and the said salary income is also claimed to have been received from different institutions. Therefore, we find that it is important to determine which all institutions, the assessee worked for during the year under consideration and how much salary he has been earned during the year. In absence of sufficient facts on record, we deem it appropriate to remand the matter to the file of the AO who shall examine the same afresh after calling for information from the respective institutions as well as after providing reasonable opportunity to the assessee. In the result, the Ground No. 2 of the assessee's appeal is allowed for statistical purposes.

14. Regarding Ground No. 3, the limited issued under consideration relates to determination of rental income derived by the assessee from its various properties. Given that in the return filed by the assessee, the assessee has not shown any rental income rather has claimed loss of Rs. 7,73,744/-, the AO referred to the return filed by the assessee for A.Y 2010-11 wherein the assessee has shown rental income of Rs 96,000/- from property situated at

Kota Junction, Kota, rental income of Rs. 1.2 lakh from House No. 756, Pratap Nagar, Kota, Rajasthan and rental income of Rs. 1.65 lakhs from property situated at Dadabari, Kota and on such basis of past rental income so disclosed by the assessee for A.Y 2010-11 and increment of 20%, he has determined the rental income at Rs. 4,54,200/- which on appeal has been sustained by the Id. CIT(A).

15. During the course of hearing, the Id. AR submitted that the assessee owns house situated at House No. 756, Pratap Nagar, Kota which has been let out during the year. The rental income of Rs. 1.2 lakh has been shown in the revised return filed by the assessee which has not been considered by the Assessing Officer. It was further submitted that no rental income was derived from property situated at Dada Bari, Kota during the year under consideration and the other property situated at Kota Junction, Kota has been sold out during A.Y 2011-12 and long term capital gains have been duly disclosed in the return filed for A.Y 2011-12 which can be verified from records.

16. Considering the facts and circumstances of the case, where the only property which has been let out is House No. 756, Pratap Nagar, Kota, the annual rental value of Rs 1.2 lakhs which is consistent with earlier year reporting of rental income from the said property should therefore be considered in absence of anything contrary on record. In respect of second property, it has been submitted that the same was not rented out during the year and therefore, in view of the provisions of section 23(1)(a) r/w 23(1)(c), the explanation of the assessee that no rental value can be estimated is found to be reasonable in absence of anything contrary on record. In respect of third property, it has been submitted that the same was sold and capital gains offered to tax during AY 2011-12, the same can be verified by

the AO and where the same is found to be correct, there cannot be any rental value which can be brought to tax for the impugned assessment year. In the result, Ground No 3 of assessee's appeal is disposed off.

17. Regarding Ground No. 4, during the course of hearing, the Id. AR of the assessee has not been pressed this, hence, the same is dismissed being not pressed.

18. Regarding Ground No. 5, briefly, the facts of the case are that the AO has made disallowance of Rs. 25% of expenses claimed to have been incurred by the assessee as part of its running of Hostel premises which have been rented to the students in absence of books of accounts and other details produced before him which on appeal has been restricted by the Id. CIT(A) at Rs. 75,000/-.

19. During the course of hearing, the Id. AR submitted that the assessee has returned a profit of 35% which is quite high as compared to profit shown by other similar situated assessees providing hostel premises to students in the city of Kota and it was accordingly submitted that the disallowance so sustained by the Id. CIT(A) may be deleted. We find that 35% profit rate is a reasonable profit rate so disclosed by the assessee and even though the assessee has not submitted the books of accounts, estimation of profits needs to be reasonable, therefore, taking into consideration the profitability so shown by the assessee @ 35%, the addition sustained by the Id. CIT(A) is hereby deleted. In the result, the ground of appeal is allowed.

20. Regarding Ground No. 6, the assessee has produced the LIC certificate during the course of hearing, basis the same, the AO is directed to allow

deduction of Rs. 9,878/- after carrying out the necessary verification. In the result, Ground No. 6 of the assessee's appeal is allowed.

In the result, the appeal of the assessee is disposed off with above directions.

Order pronounced in the open Court on 06/03/2020.

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:- 06/03/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Subhash Chandra Agarwal, Kota
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(2), 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. 336/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar