

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. 1057/JP/2019  
निर्धारण वर्ष / Assessment Year :2014-15

Sh. Balu Ram Sharma, Prop. M/s Maya Motors, Parbatpura Bypass, Ajmer	बनाम Vs.	ITO, Ward-2(2), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BIKPS6799D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sanjeev Jain (CA)  
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 04/06/2020  
उदघोषणा की तारीख / Date of Pronouncement: 04/06/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 12.06.2019 wherein the assessee has taken the following grounds of appeal:

- "1. Ld. CIT(Appeals) erred in law as well as on facts of the case by confirming action of the AO in issuing notice u/s 148 as the reasons recorded for issuance of notice u/s 148 are not justified.*
- 2. Ld. CIT (Appeals) erred in law as well as on facts of the case by confirming an addition of Rs. 36,000/- on account of Account Maintenance Expenses incurred by the assessee, being part time accountant salary and not being a professional expense on which TDS was not required to be deducted.*
- 3. Ld. CIT(Appeals) erred in law as well as on facts of the case by confirming addition of Rs. 2,46,485/- on account of Advertisement Expense incurred by the assessee being small payments made to*

*different persons at different times on different dates on which TDS was not required to be deducted.”*

2. During the course of hearing, the Id. AR submitted that during the year under consideration, the assessee was engaged in business of trading of tractors under the name and style of M/s Maya Motors. It was submitted that the assessment was originally completed u/s 143(3) on 23.06.2017 wherein the ITO had asked for all income and expenditure reflected in the return filed for the year under consideration and after considering the details and submissions filed by the assessee, the assessment was completed u/s 143(3) of the Act. It was accordingly submitted that no new information or material has come in the possession of the Assessing officer basis which he has reopened the assessment by issuance of notice u/s 148 of the Act and it is clearly a case of change of opinion and which the Courts have held not permissible for reopening the assessment.

3. Per contra, the Id. DR submitted that the matter has been reopened on the ground that the account maintenance expenses amounting to Rs 36,000/- and advertisement expenses amounting to Rs 2,46,485/- were claimed by the assessee and the assessee had failed to deduct TDS on such expenses and the provisions of section 40(a)(ia) were clearly attracted and basis such information in possession of the Assessing officer, he has reopened the assessment proceedings by issuance of notice u/s 148 of the Act. It was submitted that it is a clearly a case of violation of provisions of section 40(a)(ia) of the Act and there cannot be a two opinions about it. It was accordingly submitted that there is no infirmity in action of the AO in reopening the assessment proceedings. Further, Id DR drawn our reference to the order of the Id CIT(A) wherein the assessee has stated that he wishes to file certain additional evidences in support of its claim of the aforesaid expenses as the assessee was not in possession of these documents when the

assessment proceedings were finalized by the AO. It was accordingly submitted that where the details of the expenses were not filed by the assessee at first place, there is no question of forming any opinion by the AO and the contention of the Id AR regarding change of opinion is devoid of merits and the same may be rejected. Further, she relied on the order of the lower authorities.

4. We have heard the rival submissions and pursued the material available on record. We find that the matter has been listed for hearing on couple of occasions before the Id CIT(A), however, there was no compliance on part of the assessee except an application dated 14.01.2019 seeking condonation of delay in filing the appeal as well as permission seeking filing of additional evidence. The Id CIT(A) has condoned the delay, however, there is no finding regarding admission of additional evidence as sought by the assessee and the matter has been decided *ex-parte* by the Id CIT(A) summarily without deciding on merits. Therefore, in the interest of justice and fair play and especially where the matter has not been decided on merits, we believe that the assessee deserves one more opportunity to put forth his arguments and contentions and we accordingly set aside the matter to the file of the Id. CIT(A) to examine the matter afresh taking into consideration the additional evidence as filed by the assessee and after providing reasonable opportunity to the assessee. The contentions so advanced before us are therefore left open and the assessee is free to raise the same before the Id CIT(A). The assessee is also directed to appear before the Id. CIT(A) and file the necessary information and documentation in support of his contentions, as so advised and ensure in timely completion of the proceedings.

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

Order pronounced in the open Court on 04/06/2020.

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:- 04/06/2020

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Balu Ram Sharma, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(2), Ajmer
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. 1057/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar