

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. 700/JP/2019
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Ram Babu Agarwal R-13, Yudhishtar Marg, C-Scheme, Jaipur.	बनाम Vs.	The DCIT, Circle-5, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AASPA 6246 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Miss. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 07/07/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 23.04.2019 of Id. CIT(A)-II, Jaipur for the assessment order 2015-16. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference. The assessee has raised the following grounds:-

"1. Under the facts and circumstances of the case, the learned CIT(A) erred in confirming the action of the Assessing Officer of not excluding interest income of Rs. 23,57,248/- from total

income of A.Y. 2015-16 as same has been assessed in A.Y. 2014-15 by AO.

2. Under the facts and circumstances of the case, the learned CIT(A) erred in law confirming the action of the Assessing Officer action of taxing the same income twice by way of interest income of Rs. 23,57,248/- has already included in the A.Y. 2014-15 by AO which is against the natural justice of law.

3. Under the facts and circumstances of the case, the learned CIT(A) erred in holding that assessee has sufficient time to revise his return which was not done.

4. Under the facts and circumstances of the case, the learned CIT(A) erred in holding that it is not clear if this amount was included in total income shown by assessee."

2. The only issue arises in this appeal of the assessee is regarding the interest income of Rs. 23,57,248/- from partnership firms was included in the total income of the assessee for the year under consideration as well as for the assessment year 2014-15 and consequently the assessee is seeking exclusion of the said interest income from the total income of the year under consideration. The assessee is an individual and partner in various partnership firms. The assessee filed his return of income on 30.03.2016 declaring total income of Rs. 42,95,090/- including interest income of Rs. Rs. 23,57,248/-. Initially the assessment was processed U/s 143(1) and subsequently it was selected for scrutiny. During the assessment proceedings, the assessee has submitted that the interest income of Rs.

23,57,248/- pertains to the assessment year 2014-15 and the AO has added the same to the income of the assessee for the assessment year 2014-15, therefore, the said income may be excluded from the income of the assessee. The AO did not accept this submission of the assessee on the ground that the assessee has not revised his return of income and therefore, the income cannot be assessed at the lower than the income declared in the return of income. The assessee challenged the action of the AO before the Id. CIT(A) and submitted that the AO is bound to make the assessment of total income or loss of the assessee and determined the sum payable by him or refund any amount due to him on the basis of such assessment. Therefore, the AO is duty bound to assess the correct income of the assessee as per law. If an income is mistakenly offered to tax by the assessee the same cannot be charged to tax when it is not liable for tax for the year under consideration. The assessee relied upon various decisions in support of the contention that only the correct income of the assessee has to be assessed to tax and no income shall be taxed twice. The Id. CIT(A) did not accept this contention of the assessee on the ground that since the assessee has not revised his return of income, therefore, the said income cannot be excluded.

3. Before us, the Id. AR of the assessee has submitted that it is a case of taxation of same income twice once in the assessment year 2014-15 and then again in assessment year 2015-16. The Id. AR has pointed out that the AO as well as Id. CIT(A) has rejected the submissions of the assessee on the ground that the assessee has not revised his return of income. He has submitted that since the assessee filed his return of income belatedly on 30.03.2016, therefore, the same could not be revised. The Id. AR has referred to the assessment order for the assessment year 2014-15 and submitted that the Assessing Officer has made an addition of Rs. 23,57,248/- on account of interest income from the partnership firms and also levied the penalty U/s 271(1)(c) against the said addition. The assessee has not challenged the assessment order and addition made by the AO for the assessment year 2014-15 however, after the addition made for assessment year 2014-15 the assessee sought to exclude the same income which was offered to tax for the assessment year 2015-16. Therefore, the Assessing Officer has taxed the same income twice one for the assessment year 2014-15 and then for the assessment year 2015-16. Since, the assessee has not offered this income for the assessment year 2014-15 but it was offered for the assessment year 2015-16 on the

basis of receipt of the interest, therefore, once the said income as added for the assessment year 2014-15 then consequently the same cannot be taxed for the assessment year 2015-16. He has referred to the CBDT Circular No. 14 dated 11.04.1955 and submitted that the Department must not take advantage of ignorance of the assessee as to his rights. It is the duty of the AO to assist a tax payer in every reasonable way. In support of his contention, he has relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. R. Dalmia 135 ITR 346. He has also relied upon the decision of Kolkata Bench dated 14.05.2018 in case of ACIT vs. Smt. Sharmila Kumar in ITA No. 679/Kol/2016 as well as decision of Pune Bench dated 29.01.2015 in case of ACIT vs. Bajaj Finance Ltd. in ITA No. 288 to 291/PN/2014.

4. On the other hand, Id. DR has submitted that the assessee has not rectified his return of income for filing revised return of income. Further, the remedy if any is available only U/s 119(2(b) of the Act and the CBDT has already been issued consequential circular in this respect, therefore, the assessee cannot challenge the assessment order whereby the AO as accepted the return of income and no addition is made. She has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. In the case in hand the interest income of Rs. 23,57,248/- pertains to the assessment year 2014-15 however, the assessee has not offered the said income in the return of income for the assessment year 2014-15 but it was offered to tax for the assessment year 2015-16. While completing assessment for the assessment year 2014-15, the AO pointed out this anomaly regarding the interest income which was accepted by the assessee and consequently the AO made an addition of Rs. 23,57,248/- to the total income of the assessee while passing the scrutiny assessment U/s 143(3) of the Act dated 02.12.2016. Consequently, the assessee has sought the exclusion of the said income from the total income of the assessee for the assessment year 2015-16 which was denied by the AO in para 4 of the assessment order as under:-

"4 In response the notice the AR of the assessee Sh. Rajiv Gupta, CA appeared and filed written submission. After considering the reply of the assessee and information available on record, returned income of the assessee is accepted. The A/R of the assessee had made request to exclude interest income of Rs. 23,57,248/- from total income of A.Y. 2015-16 as same has been assessed in A.Y. 2014-15. The request of the assessee cannot be accepted as the assessee has not revised his income for A.Y. 2015-16 and income cannot be assessed at lower than income declared in return of income."

The only reason for denial of exclusion of the income from the total income of the assessee is non filing of the revised return of income. It is pertinent to note that since the return of income was filed by the assessee belatedly, therefore, the assessee could not file a revised return of income. Undisputedly the said income of Rs. 23,57,248/-on account of interest from the partnership firms has been taxed for the assessment year 2014-15 and it was again taxed for the year under consideration. It is a case of taxing the same income twice. It is duty of the AO to assess the correct income of the assessee permissible in law. The AO cannot take the advantage of any mistake on the part of the assessee to offer an excess income which is otherwise not taxable under law. In the case in hand, what is the mistake on the part of the assessee is to declare and offer to tax the interest income for the assessment year 2015-16 instead of 2014-15. Once, the interest income was assessed for the assessment year 2014-15 and the assessee has not challenged the said order of the Assessing Officer then the consequent effect of the assessment for the assessment year 2014-15 would be to exclude the same income for the assessment year 2015-16. Therefore, the addition made by the Assessing Officer for the

assessment year 2014-15 would led to double taxation of the same income. The AO has to remove the said anomaly in the assessment by excluding the said income for the assessment years 2015-16 as the income pertains to the assessment year 2014-15 and was also accordingly, taxed as per law. Once, the AO has treated the income in question as chargeable to tax for the assessment year 2014-15 the same cannot be charged to tax for the assessment year 2015-16. Even if the Assessing Officer is having limitation for not assessing income below the income declared in return of income the said bar is not applicable to the appellate authority. The CIT(A) has rejected the contention of the assessee as held in para 2.3.2 as under :-

"2.3.2. On perusal of overall facts, it is seen that for A.Y. 2014-15 in assessment made on 02.12.2016, addition of interest from partnership firm of Rs. 23,57,248/-was made. Appellant filed return of income for A.Y. 2015-16 on 30.03.2016. Thus, he had sufficient time to revise his return which was not done. Also it is not clear if this amount was included in total income shown by assessee, therefore, this claim cannot be allowed to assessee. Accordingly, those grounds are dismissed.

Thus, the Id. CIT(A) has also misunderstood the fact about the return of income for the year under consideration was filed much prior to the assessment framed by the AO for the assessment year 2014-15. Therefore, at the time of filing of the return of income it was not certain

or known to the assessee that the AO would make an addition of the said income for the assessment year 2014-15. Even otherwise the assessee is liable to pay tax only on the income which is chargeable to tax as per law, if any excess amount of income offered to tax the AO is duty bound to correct the same and only income which assessable to tax as per law has to be assessed to tax. Hence, in the facts and circumstances of the case the assessee cannot be penalized only for the reason that he has not filed revised return of income for correcting the apparent mistake of double taxation of the income. In view of the above fact and circumstances of the case the income which is already charged to tax for the assessment year 2014-15 on account of interest from partnership firms of Rs. 23,57,248/- is deleted from the total income of the assessee. The AO is directed to assessee the total income of the assessee by excluding the said income.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 07/07/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/07/2020.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Ram Babu Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-5, Jaipur.
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. 700/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar