

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD “SMC” BENCH, ALLAHABAD**

(THROUGH VIRTUAL COURT),

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.242/ALLD/2018

Assessment Year: 2007-08

Shashi Bala Singh C/o Jay Ambe Cold Storage Lakhahra Sangipur Tah. Lalganj, Pratapgarh PAN-BBWPS8155C	v.	Income Tax Officer, Pratapgarh
(Appellant)		(Respondent)

ITA No.243/ALLD/2018

Assessment Year: 2007-08

Satyendra Singh C/o Jay Ambe Cold Storage Lakhahra Sangipur Tah. Lalganj, Pratapgarh PAN-EDZPS9417M	v.	Income Tax Officer, Pratapgarh
(Appellant)		(Respondent)

ITA No.244/ALLD/2018

Assessment Year: 2007-08

Smt. Krishna Singh C/o Jay Ambe Cold Storage Lakhahra Sangipur Tah. Lalganj, Pratapgarh PAN-BFSPS7364K	v.	Income Tax Officer, Pratapgarh
(Appellant)		(Respondent)

ITA No.245/ALLD/2018
Assessment Year: 2007-08

Sri Prabhanjan Singh C/o Jay Ambe Cold Storage Lakhahra Sangipur Tah. Lalganj, Pratapgarh PAN-CKLPS9053C	v.	Income Tax Officer, Pratapgarh
(Appellant)		(Respondent)
(Appellant)		(Respondent)

AND

ITA No.246/ALLD/2018
Assessment Year: 2007-08

Archana Singh C/o Jay Ambe Cold Storage Lakhahra Sangipur Tah. Lalganj, Pratapgarh PAN-BJLPS9701H	v.	Income Tax Officer, Pratapgarh
(Appellant)		(Respondent)

Appellant by:	Mr. Praveen Godbole, CA
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	15.12.2020
Date of pronouncement:	16 .12.2020

ORDER

PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

These five appeals by five assesseees who are partners in partnership firm M/s Jay Ambe Cold Storage arising from the five separate orders of the CIT(A) all dated 21st March, 2018 for the assessment year 2007-08. Since these appeals are arising from the identical facts and involved identical issues therefore for the sake of convenience these are heard together and being disposed of by this composite order. The assesseees have raised common grounds in these appeals except the difference of

quantum of addition in appeal no. 242/2018. The grounds raised in ITA Nos. 242 and 243 are as under:-

ITA No. 242/ALLD/2018

- a) *That in any view of the matter action u/s 148 has initiated by the Assessing Officer and his action as confirmed by Commissioner of Income Tax (Appeal) is highly unjustified and incorrect in the fact and circumstances of the case.*
- b) *That in any view of the matter addition of Rs. 6 lakh made and maintained by the two lower authorities is wrong/ incorrect in so far as the investment in firm made from definite sources. The two lower authority failed to considered family status/financial status which is cause of addition hence the addition is unwarranted.*
- c) *That in any view of the matter when the Assessing Officer accepted the source and part investment was added and no benefit was allowed by considering the family status and maintained the addition Rs. 6 lakh as income from undisclosed sources is highly unjustified and in this regard finding and observation in the order are incorrect.*
- d) *That in any view of the matter penal interest charged under different section is highly unjustified.*
- e) *That in any view of the matter the assessee reserves his rights to take any fresh ground of appeal before hearing of appeal.*

ITA No. 243/ALLD/2018

- a) *“1. That in any view of the matter proceeding u/s 148 of the Act as stated is illegal, bad in law in so far as the action of the assessing officer observing that the investment towards share capital represent undisclosed income of the assessee is not correct hence the action of two lower authority were wrong and incorrect in making and confirming the addition.*
- b) *2. That in any view of the matter assessment order dated 27/03/2014 passed u/s 147/144 of the Act by determining the income at Rs. 3,89,300/- is highly unjustified and incorrect in so far as Rs. 3,00,000/- it represents earlier years saving. The assessing officer failed to considered financial background of the assessee and his family member.*
- c) *3. That in any view of the matter in the facts and circumstances of the*

case amount of Rs. 3,00,000/- added and considered in the hands of assessee as income from undisclosed source is not correct at all and both the two lower authority were wrong in making and confirming a token investment and the observation in the order are incorrect.

- d) 4. That in any view of the matter the penal interest charge u/s 234A and B of the Act is highly unjustified and incorrect.*
- e) 5. That in any view of the matter the assessee reserves his rights to take any fresh ground of appeal before hearing of appeal."*

2. All the five assesseees are individuals and partners of M/s Jay Ambe Cold Storage. They have not filed any return of income under section 139(1) of the Act. The Assessing Officer has issued notice under section 148 on 01.06.2012 based on the information that the assesseees have introduced capital of Rs. 07,90,266/- in each case in partnership firm M/s Jay Ambe Cold Storage. While completing the assessment, the AO made addition of Rs. 6 Lacs on account of unexplained investment in case of Shri. Shashi Bala Singh and Rs. 3 Lac each in case of other four partners. The assessee challenged the addition made by the AO before the CIT(A) but could not succeed.

3. Before the Tribunal, the learned AR of the assessee has submitted that the Assessing Officer has reopened the assessment on the ground that the assessee partners have introduced capital of Rs. 07,90,266/- in each case. However, during the assessment proceedings, the AO accepted this fact that this amount of Rs. 07,90,266/- is the opening balance of partners capital in M/s Jay Ambe Cold Storage. Thus the reopening is not sustainable when it was based on incorrect facts. The AO then noted that during the year under consideration all these assesseees have introduced capital of Rs. 6 Lacs each in the partnership and thereby the AO made the addition of Rs. 6 lacs in the hands of Shri. Shashi Bala Singh and Rs. 03 Lacs each in the hands of the other partners. The AO has not provided the reasons recorded for reopening of the assessment and therefore, the assessee was not given opportunity to raise the objection against the notice issued under section 148 of the Act. The learned AR has further submitted that even the AO has passed the impugned orders without

considering the relevant record and explanations of the assesseees for source of capital introduced in the partnership firm during the year. He has pointed out that all the partners filed the return of income in response to notice under section 148 except in case of Shri. Shashi Bala Singh's which is not clear from the order of the AO and CIT(A). He has further pointed out that since the income of these assesseees was below the taxable limit therefore, they have not filed any return of income under section 139(1) of the Act. He has thus pleaded that the AO may be directed to supply the reasons recorded for reopening of the assessment and then decide the objections to be filed by the assessee against the notice under section 148 of the Act.

4. On the other hand, the learned DR has vehemently opposed to the plea of the assessee to supply the reasons recorded and then raised the objections against the notice under section 148 on the ground that the assesseees have not raised such objection during the assessment proceedings. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as relevant materials available on record. It is apparent from the assessment order that the AO reopened the assessment to assess the income assessable to tax on account of a sum of Rs. 7,90,266/- as capital introduced by these assesseees in the partnerships firm M/s Jay Ambe Cold Storage. The notice under section 148 was issued in all these five cases on 01.06.2012 based on the identical reasons for assessing the income on account of capital introduced in the partnership firm M/s Jay Ambe Cold Storage. During the assessment proceedings, the AO has accepted the facts that the amount of Rs. 7,90,266/- is actually the opening capital of the partners as on 01.04.2008 which includes interest on capital. Once this fact is accepted then the question arises about the validity of the reopening of the assessment. Since the Assessing Officer has not supplied the reasons recorded for reopening of the assessment to the assesseees therefore, the objections if any to be raised by the assessee remained undecided.

Further the AO has made the addition on account of unexplained investment by estimating Rs. 3 lacs out of 6 lacs introduced by each assessee. Only in the case of Shri. Shashi Bala Singh, the AO made the addition of full amount of Rs. 6 lacs towards the unexplained investment for introduction of the capital in the partnership firm. Therefore, in the facts and circumstances of the case and in the interest of justice, the impugned orders of AO and CIT(A) are set aside and all these matters are set remitted to the record of the AO with the direction to supply the reasons recorded for reopening of the assessment to the assesseees and then decided the objections to the filed by the assesseees against the notice under section 148 of the Act. It is pertinent to note that when the assessee challenged the validity of the notice issued under section 148 before the CIT(A) as well as before this Tribunal then there is no bar for raising this issue and demanding the reasons recorded by the AO at this stage. Further, the AO shall dispose off the objections by a speaking and separate order and then re-adjudicate the issue on merits of addition on account of capital introduced in the partnership firm after considering the explanation and source of fund to be furnished by the assessee.

6. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 16.12.2020 through video conferencing.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 16/12/2020

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order