

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 257/JP/2020
निर्धारण वर्ष/Assessment Years : 2011-12

Sh. Rajeev Sharma S/o Sh. Prahlad Sharma, Anah Gate, LBS Park, Bharatpur.	बनाम Vs.	The Pr. CIT, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CQMPS 3186 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajendra Agarwal (C.A.)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 05/01/2021
उदघोषणा की तारीख / Date of Pronouncement : 02/03/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. Pr.CIT(A), Alwar dated 04.02.2020 for the assessment year 2011-12 wherein the assessee has taken the following grounds of appeal:-

- "1. The PCIT has erred in setting aside the assessment order passed by the AO u/s 143(3)/147 on 2.9.2018 with the directions to pass the speaking assessment order.*
- 2. The Ld. PCIT has erred in issuing show case notice u/s 263 without mentioning the DIN.*

3. The Ld. PCIT has erred in passing order u/s 263 mentioning the DIN."

2. Briefly, the facts of the case are that the assessment was completed u/s 147 r/w 143(3) at the returned income. Subsequently, a show-cause was issued u/s 263 and after taking into consideration, the submissions so filed by the assessee, the assessment order so passed by the AO was held to be erroneous in so far as prejudicial to the interest of Revenue due to failure on part of the AO to verify the source of cash deposits and the assessment order was set-aside to the file of the AO to examine the said matter and decide afresh after making proper enquiries. Against the said findings and the order of the Id Pr CIT, the assessee is in appeal before us.

3. Regarding ground Nos. 1, the Id. AR submitted that as evident from the assessment order dt.25.09.2019, the Ld.AO very clearly stated that "the assessee was asked to explain the nature and sources of the above time deposits and cash deposits. The AR of the assessee submitted reply vide letter dt.18.09.2018 in which he stated that the assessee was engaged in agricultural activity having 18 bighas of irrigated land in village Behrawali, Kurka Tehsil- Roopwas, Bharatpur in the name of himself and his brother Shri Suresh and they were living jointly. The copy of Khasra and Jamabandi is submitted. The assessee has deposited various amount in cash in saving account on different dates." Considering the above facts and details available in the assessment order itself, it is very much clear that the AO made each every inquiry and examined the detailed documentary evidences like khasra and jamabnadi before accepting the agricultural income and the

assessment made by the Ld.AO cannot be held as erroneous and prejudicial to the interest of Revenue.

4. It was submitted that the Ld. Pr. CIT has only substituted his opinion as higher authority, which is unlawful, and against the natural justice and also unwarranted harassment to the assessee. The cases laws relied by the Ld. PCIT are not relevant in the case of the assessee as the AO had already made all possible enquires in regard to the issues concerned and after examining all the facts and circumstances and evidence available on record, he completed the assessment proceedings and even mentioned the details of his enquires at para No.5 at page No.2 of the assessment order so passed by him.

5. In support, reliance was placed on the Hon'ble Apex Court decision in the case of CIT v. Max India Ltd.(2007) 295 ITR 0282 (SC) wherein it was held that the phrase "prejudicial to the interest of revenue" in section 263 of the Act, has to be read in conjunction with the expression "erroneous" order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of revenue. For example, when the AO adopts one of the two courses permissible in law and it has resulted in loss of revenue, of where two views are possible and the AO has taken one view with which he commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the revenue, unless the view taken by the AO is unsustainable in law.

6. In the case of CIT v. Girdhari Lal (2002) 176 CTR (Raj.) 0092/258 ITR 331 (Raj.), it was held by the Hon'ble Rajasthan High Court that when the AO after going through the material on record and after considering the explanation of the assessee, completed the assessment, it cannot be said that he has not applied his mind.

7. Besides the aforesaid decisions, the reliance was placed on various Coordinates Bench decision laying the same legal proposition and it was submitted that the assessment order passed u/s 147/143(3) by the Ld.AO cannot be held as erroneous and prejudicial to the interest of revenue and the order so passed by the Id Pr CIT should be set-aside.

8. Regarding ground Nos. 2 and 3, the Id. AR submitted that in terms of Circular No.19/2019 dt.14.08.2019, the CBDT "in exercise of power under section 119 of the Income-tax Act, 1961, has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication". But in the instant case, the Ld. PCIT, Alwar violating the above circular and issued show cause notice dt.11.11.2019 and order u/s 263 dt. 04.02.2020 without

generating the required DIN and without quoting the DIN in the body of the show cause notice and order u/s 263. Hence the show cause notice as well as the order u/s 263 passed by the Ld. PCIT are invalid and non est in law.

9. Per contra, the Id. CIT DR has relied on the findings of the Id. Pr CIT and submitted that it is a clear case where the source of cash deposit in the assessee's bank account has not been verified by the AO rendering the assessment order so passed as erroneous and prejudicial to the interest of Revenue. Further, regarding non-quoting of DIN in the show-cause notice and the order passed u/s 263, it was submitted that circular No. 19/2019 is intended primarily for dealing with communication relating to assessment proceedings and does not apply to revision proceedings and in any case, there was no legal mandate to issue a show-cause as held by the Courts from time to time so long as opportunity of being heard has been provided to the assessee. Further, the revision order cannot be held to be illegal and void merely due to non-quoting of DIN and it can at best be a procedural irregularity which can be cured in terms of section 292B of the Act in view of the fact that in substance, it satisfies the requirement of Section 263 of the Act.

10. In his rejoinder, the Id. AR submitted that the Circular No.19/2019 dt.14.08.2019, as evident from para 2 is applicable to each and every communication issued by the income tax authority relating to assessment, appeals, orders, statutory or otherwise to the assessee or

any other person on or after 1.10.2019 and the order u/s 263 is also an order and the Ld. PCIT, Alwar is an income tax authority in terms of section 116(ba) of the Income Tax Act,1961. The facts of the cases of the Hon'le Supreme Court and all the other case laws relied by the Ld. PCIT in his comments dt.25.09.2020 are altogether different and in no way related to the aforesaid Circular No.19/2019 dt.14.08.2019 issued by CBDT and even this circular No.19/2019 dt.14.08.2019 has been issued by the CBDT much after the pronouncement of the case laws relied by the Ld. PCIT. There is no case law relied by the Ld. PCIT which has been pronounced after considering this circular No.19/2019 dt.14.08.2019. It was further submitted that in terms of press release of PIB Delhi dt.14.8.2019, the CBDT had clarified that "Any communication which is not in conformity with the prescribed guidelines shall be treated as invalid and shall be deemed to have never been issued". Hence now it is very much crystal clear that the Ld. PCIT, Alwar violating the above circular issued show cause notice dt.11.11.2019 and order u/s 263 dt.04.02.2020 without generating the required DIN and without quoting the DIN in the body of the show cause notice and order u/s 263. Hence the show cause notice as well as the order u/s 263 passed by the Ld. PCIT are invalid and non est in law.

11. We have heard the rival contentions and perused the material available on record. In this case, the notice U/s 148 of the Act was issued on account of the reasons that the assessee has deposited certain cash in his bank account maintained with Bharatpur Urban Cooperative Bank. Thereafter during the course of assessment

proceedings, the assessee was asked to explain the nature and source of such cash deposit which was examined by the AO and the relevant findings are contained at para 4 and 5 of the assessment order passed U/s 147 of the Act dated 25.09.2018 which read as under:-

"4. As per information available with the department it is gather that the assessee had cash/time deposited Rs. 15,40,000/- in his bank account maintained with Bharatpur Urban Co-operative Bank, Bharatpur. But on going through the statement of account of the assessee it was found that the assessee has deposited following cash in his saving account:-

<i>Date</i>	<i>Amount</i>	
<i>24.05.2010</i>	<i>2,90,000/-</i>	
<i>12.06.2010</i>	<i>50,000/-</i>	
<i>19.11.2010</i>	<i>1,00,000/-</i>	<i>Rs. 4,40,000/-</i>

Thus, the assessee deposited cash of Rs. 4,40,000/- only instead of Rs. 15,40,000/-.

5. The assessee was asked to explain the nature and source of above time deposits and cash deposits. The AR of the assessee submitted reply vide letter dated 18.09.2018 in which stated that the assessee was engaged in agriculture activity having 18 Bigha of irrigated land in village Behrawali, Kurka, Tehsil Roopwas, Bharatpur in the name of himself and his brother Sh. Suresh and they are living jointly. The copy of Khasra and Jamabandi is submitted. The assessee was deposited various amount in cash in saving account on different dated in Urban Cooperative bank Rs. 2,90,000/- has been deposited on 24.05.2010 out of sale of agriculture produce during the year and remaining amount of Rs. 1,50,000/- out of withdrawal made from OD account and same has been deposited."

12. The Id. Pr.CIT has however stated that the order so passed by the Assessing Officer is erroneous so far as it is prejudicial to the interest of the Revenue as the order is based on mistaken view of law and erroneous application of provisions of the Act. It has been further stated that during the revision proceedings, it is found that the assessee failed to submit the source of cash deposit made in his bank account and the AO has not made proper investigation and verification of the issue.

13. We however find that how the order so passed by the AO is based on mistaken view of law or how the AO has erroneously applied the provisions of the law has not been spelt out by the Id Pr CIT. Further, there is a clear finding given by the Assessing Officer in the assessment order, as we have noted above, where the assessee was asked to explain the nature and source of the cash deposit in his bank account and after considering the submissions so filed by the assessee along with corroborative evidences that the source of such cash deposits are out of his agricultural produce, the cash deposits were found duly explained and the returned income was accepted. Therefore, the findings of the Id PR CIT that the assessee failed to submit the source of cash deposit made in his bank account and the AO has not made proper investigation and verification of the issue is borne out of the records and therefore cannot be accepted. In view of the same, we are of the considered view that there is no basis to hold that the order so passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue. In view of the same, other

contention raised by the Id AR regarding non-quoting of DIN is considered not necessary to adjudicate and left open.

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

Order pronounced in the open Court on 02/03/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02/03/2021.

***Santosh**

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

1. अपीलार्थी / The Appellant- Sh. Rajeev Sharma, Bharatpur.
2. प्रत्यर्थी / The Respondent- Pr. CIT, Alwar.
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. 257/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar