

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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. 661 & 662/JP/2019
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Shri Lalaram Gurjar S/o- Shri Mewaram Gurjar, Vill- Devpura, shikhwana, Ajmer-305624.	बनाम Vs.	The ITO, Ward-1(2), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APRPG 3369 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Shri Amar Singh Nehra (Add. CIT)

सुनवाई की तारीख / Date of Hearing : 12/04/2021
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the orders of the Id. CIT(A), Ajmer both dated 27.02.2019 for the assessment years 2009-10 & 2010-11 respectively. Since common issues are involved, both the appeals were heard together and disposed off by this common order.

2. In ITA No. 661/JP/2019 for A.Y 2009-10, the assessee has taken the following grounds of appeal:-

"1.1 The impugned addition and disallowances made in the order u/s 144/147/148 dated 27.12.2016 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

1.2 The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned assessment framed u/s 144/147/148 dated 27.12.2016 also kindly be quashed.

2. The Id. CIT(A) erred in law as well as on the facts of the case in partly sustaining the impugned addition upto Rs. 10,72,934/-by applying estimated not profit at the rate of 0.20% on the turnover of Rs. 53,64,67,051/-. The addition so partly confirmed by the Id. CIT(A) being contrary to the provisions of law and facts kindly be deleted in full.

3. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A & 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full."

3. At the outset, it is noted that the Id Authorised representative has withdrawn his Power Attorney as apparent from the record and in particular, order sheet entry dated 08.10.2020. Thereafter, the Registry was directed to serve the notice to the assessee through the office of Id. DR. The Id. DR vide e-mail communication dated 12.04.2021 has confirmed the service of notice on the assessee on 9.04.2021. It is noted that in spite of service of the notice to the assessee, neither the assessee nor any authorized representative has appeared on the scheduled date of hearing i.e. 12.04.2021. Given that the matter has been pending since May, 2019 when the appeal was instituted and has been adjourned from time to time, it was felt that no useful purpose would be served in adjourning the matter any further and it was

decided to hear the matter *ex-parte qua* the assessee considering the material available on record.

4. Briefly the facts of the case are that basis information received from ADIT/(Inv.)/Unit-7(4), Mumbai regarding deposits and withdrawals amounting to Rs. 10,96,58,828/- in assessee's bank account, notice U/s 148 was issued on 31.03.2016 and served on the assessee at his Mumbai address. In response, the assessee did not file any return of his income nor respond to subsequent notices issued. Thereafter, a show cause dated 03.08.2016 along with notice U/s 142(1) of the Act was issued to the assessee as to why the addition amounting to Rs. 61,13,51,505/- should not be made on account of unexplained deposits/credit entries in the bank accounts maintained by the assessee as unexplained income out of undisclosed sources and to complete assessment U/s 144 of the Act. There was no response from the assessee to the show-cause notice and thereafter, the assessment was completed *ex-parte* U/s 144 of the Act basis material/information available on record which reveals that the assessee was doing the business of goods as licensee as evident from bank statements and copy of licensee agreement available on record. The AO held that it would be fair and reasonable to consider net profit @ 8% of the total credit entries/deposits of Rs. 61,13,51,505/- and Rs. 4,89,08,120/- was determined as income from undisclosed sources and brought to tax in hands of the assessee. On appeal by the assessee, the Id CIT(A) has confirmed the addition of Rs. 10,72,934/- and remaining addition of Rs. 4,78,35,186/- was deleted. Against the said findings of the Id CIT(A), the assessee is in appeal before us.

5. We have heard the Id. DR and considered the material available on record. We have gone through the findings of the Id. CIT(A) which are contained at para 5.3 of his order which read as under:-

"5.3 I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. It is seen from the assessment order that notice u/s 148 was issued in this case on 31.03.2016, on the basis of the information received from ADIT(Invsg.), Unit- 7(4), Mumbai on 30.03.2016 in respect of deposits and withdrawal made at Rs. 10,96,58,828/- in the account number 233010200020916, 233010100364478 and 575010200003902 with Axis Bank. As the notices issued by the AO during the course of assessment proceedings could not be served on the appellant, therefore, no compliance of the notices issued by the AO was made by the appellant. Therefore, the AO completed the assessment u/s 144 by treating entire credit entries/ deposits of Rs. 61,13,51,505/- appearing in the bank accounts maintained by the appellant, as undisclosed turnover of the appellant and estimated the net profit @8% on such undisclosed turnover of Rs. 61,13,51,505/-. Accordingly, the total income was assessed at Rs. 4,89,08,120/- as income from undisclosed sources.

During the course of appellate proceedings, the appellant furnished complete details of business transactions carried on by him during the previous year relevant to A.Y. 2009-10 which was forwarded to the AO on 03.01.2019. The AO submitted the remand report dated 14.02.2019 which was revised on 27.02.2019 as under:

Kindly refer to your office letter No. CIT (A)/AJM/2018-19/4491 dated 03.01.2019, on the subject cited above.

In this connection, it is submitted that as per the direction of your honor, an opportunity vide this office. letter No. 2201 dated 31.01.2019 was provided to the assessee and he was requested

to produce all supporting details/evidences/books of accounts/documents in support of his contention/grounds raised before your honor in appellate proceedings by 04.01.2019. In compliance to the above, the AR of the assessee vide his letter dated 04.02.2019, received through mail requested to adjoin the case by 14.02.2019.

Shri Lalram Gurjar, assessee & Shri J.C. Somani, C.A. AR of the assessee appeared on 14.02.2019 & filed written submission, produce books of accounts, purchase bills, sales bills, stock register and the case was discussed with him. During the proceedings statement of the assessee were recorded u/s 131 of the I.T. Act, 1961. It was stated by the assessee that during the F.Y. 2008-09 & 2009-10 the entries which are reflecting in his bank accounts are relating to his Diamond business which he was doing on the commission basis and he was getting commission @ 0.10 paisa to 0.15 paisa per transaction, it was cleared by him that he was getting only 0.10% to 0.15% of gross commission on the said transaction which are reflecting in his bank statements. It was also submitted by the assessee in his statement that during the F Yrs. most of the trading of diamond business was deal with M/s Excellent Diamond Pvt. Ltd., Surat and branch at Mumbai.

Accordingly, Notice u/s 133(6) of the I.T. was issued through Mail to M/s Excellent Diamond Pvt. Ltd, Surat to confirm the transaction with the assessee and send the copy of ledger account of the assessee, bank statement, copy of purchase bills and copy of seale bills etc. In compliance to the above M/s Excellent Diamond Pvt. Ltd, Surat sent the desired information through Mail.

It was also submitted by the assessee that during the E. Y. 2010-11 which is pertains to the A.Y. 2011-12 are not business entries which are only debtors creditors entries of his last business

years. In this regard the Alt of the assessee submitted a copy of list of debtors and creditors.

It was also submitted by the assessee that during the year under consideration "his income was below tax limit but due to lack of technical knowledge he did not filed his ITR for the relevant period A copy of the statements of the assessee is end herewith for your kind perusal.

Brief facts of the case:-

In this case information was received from the Asstt. Director of Income- CN1 tax(Inv.), Unit-7(4), Mumbai that assessee had made huge deposit of Rs. 10,96,57,828/- in his bank account No. 233010200020916 maintained with Axis Bank Marine Lies, Mumbai during the F.Y. 2008-09 relevant to the A.Y. 2009-10. In addition to this bank account, the assessee is also reported to have maintained two more bank accounts having a/c Nos. 233010100364489 & 575010200003902 with Axix Bank, Marine Lines, Mumbai in the name of M/s Shubh Trading Company. However, on verification of the assessee's records, it is observed that he has not filed any return of income for the A.Y. 2009-10. Therefore the high value deposits of Rs. 10,96,57,828/- made by the assessee remained unverified.

Accordingly, after obtaining the prior approval by the competent authority notice u/s 148 of the I.T. Act, 1961 was issued on 31.03.2016. which was non —compliance by the assessee. Again time to time notice u/s 142(1) of the I.T. Act, 1961 was issued to the assessee which were also non-compliance by the assessee. Since, it is a time barring case, therefore, matter available with the records order u/s 144 of the I.T. Act, 1961 was passed by the A.O.

It was informed by the ADIT(Inv.), Mumbai vide his letter dated 28.03.2016 it was stated by him that summon u/s 131 of the I.T. Act, 1961 was issued to the assessee but the assessee did not comply with the summon. During the assessment proceeding as per information available on records , an information u/s 133(6) of the IT Act 1961 from the Axis Bank Mumbai in respect of account No. 233010200020916, 233010100364478 and 575010200003902 regarding the bank statements and other FDRs details and other accounts details, if any was called for on 06.05.2016. An information u/s 133(6) of the IT Act 1961 was also called from Kotak Mahindra Bank Ltd requiring the bank statement of M/s Goyal Financial (India) Ltd on 06.05.2016, Since, it is a time baring case , accordingly, a show cause letter was issued on 25.05.2016 to the assessee to finalize the assessment as an Ex- Party u/s 144 of the IT act 1961 on the basis of material available on record regarding various deposit entries /credit entries in his various bank account maintain with Axix Bank and Kotak Mahindra Bank treating as unexplained investment as undisclosed sources of income. But this show case letter was also returned back by the postal authority with the remarks "NOT K_NOW'23-A. Again a show cause letter was issued on the assessee's Thane, Maharashtra address but the same was also returned back with the postal authority remarks that "LEFT & RETURN TO SENDER".

As per KYC and opening forms of bank account of the assessee obtained u/s 133(6)0 the I.T. Act, 1961 by the undersigned from the Axis Bank and Kotak Mahindra hank of the persons regarding the business activities and outstanding balances. Accordingly, during the assessment proceedings letters were issued to all the live concerned persons but all the letters were also returned back by the postal authorities remarks "L111" NOT KNOWN" return to sender.

In view of the totality of the facts and considering the material available on records and after gathering the information u/s

133(6) of the I.T. Act. 1961 the AO I had no alternative but to complete the assessment as an ex-parte u/s 144 of the IT. Act, 1961 on the basis of material available on records. On the basis of material available with the records it is revealed that the assessee was doing the business of C.) goods as licensee as evident from the bank statements as well as license agreement CN available on records.

In view of the above facts that the assessee did not utilize the numerous opportunities given by the AO, the then AO was justified in assessing the income @ 8% of the total credit entries/deposits of Rs. 61,13,51,505/- which comes to Rs. 4,89,08,120/- as income from undisclosed sources though it nosy appears that the assessee was a only involved in providing accommodation entries on commission basis.

In view of the above facts as submitted above, which have also been discussed in the body of the assessment order. it is worthwhile to mention here that the additions were made after providing proper opportunity of being heard. It is humbly submitted that in my view the submission filed by the Id. Counsel of the appellant before your honours are not acceptable on any point as submitted above."

It can be seen from the remand report dated 27.02.2019 that during the course of remand proceedings, the appellant along with his A/R appeared before the AO on 14.02.2019 and filed written submission, produced books of accounts, purchase bills, sales bills and stock registers. The AO also recorded the statement of the appellant u/s 131, wherein the appellant explained that the entries appearing in his bank account are relating to his diamond business which he was doing on commission basis and he was getting commissions @10 to 15 paisa per transaction. The AO also conducted enquiries u/s 133(6) and received confirmation from the party. The appellant has also filed the copy of Audit Report. The AO has not found out any discrepancy in the purchase, sale or stock register produced

before him by the appellant. The AO has also not found any discrepancy in the reply received in response to notice issued u/s 133(6).

It is seen from the assessment order that the AO estimated the net profit @8% treating the entire credits/ deposits as turnover of the appellant, because no one has attended before him nor any reply/ explanation was filed. However, during the course of appellate proceedings the appellant has furnished complete details of the purchase and sales recorded by him in the books of accounts along with Audit Report explaining that entries appearing in the bank accounts of the appellant were only transactions related to the diamond business carried on by him on commission basis. The appellant himself has admitted in the statement recorded u/s 131 that he was getting commission @0.15% to 0.20%. The appellant in the rejoinder dated 27.02.2019 has also given comparative rates of gross profit of different concerns doing same kind of business which is reproduced hereunder:

S. No	Name of the Assessee	PAN	A. Y.	G.P. to Sales (In
1.	Mahak Diam Priavte Limited	AAGCM9673E	2017-18 2018-19	0.03 -1.59
2.	Darsh Exim Private Limited	AAFCD0287N	2017-18 2018-19	-0.05 -1.15
3.	Yashika Jewels Private Limited	AAACY5072H	2017-18 2018-19	-0.61 -1.15
4.	Kumkum Diamonds Private Limited	AADCK8656N	2011-12	0.18
5.	Gangotri Exim Private Limited	AADCG7410Q	2011-12	0.17
6.	Goldstone Exim Private Limited	AADCG8161E	2011-12	0.19
7.	Excellent Diamonds Private Ltd.	AACCE0160G	2010-11 2011-12	0.18 0.21

Therefore, I am of the considered view that it would be fair and reasonable to estimate the net profit @0.20% on the turnover of Rs. 53,64,67,051/-. The net profit computed @0.20% on the

turnover of Rs. 53,64,67,051/- would be Rs. 10,72,934/-. Accordingly, out of total addition of Rs. 4,89,08,120/-, addition of Rs. 10,72,934/- is confirmed and remaining addition of Rs. 4,78,35,186/- (Rs. 4,89,08,120 — Rs. 10,72,934) is hereby deleted.

As there were huge deposits/ credit entries in the bank account maintained by the appellant and no return of income was filed by the appellant, therefore, I am of the considered view that the AO had sufficient material with him to form the belief that income pertaining to A.Y. 2009-10 had escaped assessment. Accordingly, the reopening of assessment u/s 147 and issue of notice u/s 148 are held to be valid and in accordance with the provisions of law.

Further, it is seen from the assessment order that the AO had tried his best to serve the statutory notices on the addresses available with him. As no compliance of the notices issued by the AO were made by the appellant, therefore, the AO was compelled to complete the assessment u/s 144. Hence, the completion of assessment u/s 144 is also held to be valid and in accordance with the provisions of law."

6. We note that the Id CIT(A), after admitting the additional evidence submitted by the assessee under Rule 46A and calling from the remand report from the AO and submissions and rejoinder filed by the assessee, has held that the entries appearing in his bank account were related to diamond business carried on by him on commission basis and has estimated the commission @ 0.20% on total turnover of Rs. 53,64,67,051/- taking into account statement of assessee u/s 131 recorded during the remand proceedings before the AO admitting receipt of commission in range of 0.15% to 0.20% and comparative third party cases engaged in similar line of business as referred by the assessee himself during the appellate proceedings. Accordingly,

addition of Rs. 10,72,934/- was confirmed and remaining addition of Rs. 4,78,35,186/- was deleted. We therefore don't see any infirmity or perversity in the said findings of the Id. CIT(A) who has taken into consideration the entirety of facts and circumstances of the case including the additional evidence, statement of the assessee u/s 131, besides the submissions made by the assessee during the appellate proceedings. Further, the Id CIT(A) has rightly upheld the reopening of assessment u/s 147 and passing of assessment order u/s 144 of the Act. Accordingly, we are of the considered view that there is no legal or factual basis for us to interfere in the findings of the Id CIT(A) and the same are hereby confirmed and the grounds of appeal so taken by the assessee are thus dismissed. In the result, the appeal of the assessee is dismissed.

7. In ITA No. 662/JP/19 for A.Y 2010-11, we have gone through the material available on record and note that the facts and circumstances of the case are exactly identical as in ITA No. 661/JP/2019. Therefore, our findings and directions contained in ITA No. 661/JP/2019 shall apply *mutatis mutandis* to this matter as well. The appeal of the assessee is thus dismissed.

In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open Court on 30/04/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur
दिनांक / Dated:- 30/04/2021.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

***Santosh**

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

1. अपीलार्थी / The Appellant- Shri Lalaram Gurjar, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(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. 661 & 662/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar