

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाईं, 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. 31/JP/2021
Assessment Year: 2017-18

Om Prakash Sharma, Mangal Hari Bhawan, Khandela Bazar, Shrimadhapur, Distt.-Sikar-332715.	बनाम Vs.	I.T.O. Ward- Neem Ka Thana, Distt.-Sikar.
PAN No.: ATCPS 3452 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv)
राजस्व की ओर से / Revenue by :Smt.Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 02/08/2021
उदघोषणा की तारीख / Date of Pronouncement : 18/08/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 29/03/2021 for the A.Y. 2017-18. Following grounds have been taken by the assessee:

- "1. Under the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the action of the Id. AO (CPC) in passing the order U/s 154 of the IT Act, 1961.*
- 2. Under the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the action of the Id. AO (CPC) in considering the business income as 'income from other sources' of Rs. 6,49,849/- which resulted the double addition.*

3. *Under the facts and circumstances of the case, the Id. CIT(A) has erred in not considering the submission of the assessee made before him.*
4. *Under the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the addition on the ground that appellant has filed the wrong ITR form which resulted the miscarriage of justice.*
5. *The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.”*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is an individual and saving agent including LIC, post office, mutual funds and other saving schemes. The assessee filed his return of income for the year under consideration declaring total income as under: -

1. Loss from house property	Rs. (-) 59490.00
2. Business Income	Rs. 389920.00
Total	Rs. 330430.00
Less: deduction U/s 80C	Rs. 150000.00
Net Taxable income	Rs. 180430.00

The CPC has processed the return filed by the assessee by making addition in income from other source for Rs. 6,49,849/- on account of commission income reflecting in 26AS of the assessee.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the facts

and submissions, upheld the action taken by the A.O. Against the said order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

5. Grounds No. 1 to 4 of the appeal are interrelated and interconnected and mainly relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 6,49,849/-, therefore we thought it fit to dispose off by this consolidated order.

6. The Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and has submitted that the Id. CIT(A) has dismissed the appeal of the assessee by saying that the assessee has filed the wrong ITR and his income was wrongly declared under presumptive scheme. In this regard he has submitted that the assessee has filed ITR-4 which is applicable for individual who is engaged in the business and profession. The assessee's business was insurance and saving scheme's commission business income and same has been declared in the income tax return. The assessee has not opted any presumptive scheme as mentioned by the Id. CIT(A) in his appellate order. The assessee has declared the business income by showing all the income and expenditure. He has further submitted that the Id. CIT(A) was not

justified in dismissing the appeal of the assessee. The addition confirmed by the Id. CIT(A) tantamount to the double addition. The assessee is not having other income other than LIC commission and post office commission income. The TDS was also deducted on the same income which is reflecting in form no. 26AS. Therefore the addition deserves to be deleted.

7. On the other hand, the Id. DR has relied on the orders of the authorities below.

8. We have considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we noticed that the A.O. made addition in the income of the assessee by treating Rs. 6,49,849/- as income from other sources. However, as per the assessee, the said amount was earned by the assessee on account of commission and the same has been reflected in Form 26AS. As per the assessee, he had declared this commission income under the head 'business/profession' and the details carried out in Form 26AS are reproduced below:

1. LIC commission	577250.00
I Post Office commission	72599.00
Total commission	649850.00

Expenses claimed by the assessee:

Salary expenses	180000	
Conveyance expenses	36000	
Office and stationery expenses	27400	
Telephone expenses	16530	
Total	259930	-259930
		389920.00

From the record, we noticed that the assessee has declared the above business income earned from LIC and post office commission under the head profit from business & profession in ITR-4 filed by the assessee but the CPC has processed the return filed by the assessee by adding Rs. 6,49,850/- under the head income from other source. Subsequently, on an application filed U/s 154 of the IT Act, 1961, the said application was rejected. Further, the Id. CIT(A) had also dismissed the appeal of the assessee by holding that the assessee had filed a wrong ITR and his income was wrongly declared under presumptive scheme. Whereas on the contrary, the Id. AR has specifically submitted that the assessee has filed ITR-4 which was applicable for individual who is engaged in the business and profession and since, according to the Id. AR, the only source of income of the assessee was insurance and saving scheme's commission and the same has been

declared in the income tax return. It has also been specifically submitted that the assessee has not opted any presumptive scheme as mentioned by the Id. CIT(A) in his appellate order. Even the Revenue has not been able to demonstrate that at any stage, the assessee had opted any presumptive scheme as mentioned by the Id. CIT(A) in his order whereas the assessee had declared business income by showing all the income and expenditure and the same is reproduced as under:

Expenditure	Amount	Income	Amount
To Salary expenses	180000	By LIC commission	577250
To Conveyance expenses	36000	By Post Office commission	72599
To Office and stationery expenses	27400		
To Telephone expenses	16530		
To Net profit	389920		
	649850		649850

Therefore, considering the totality of facts and circumstances of the case we are of the view that the Id. CIT(A) was not justified in dismissing the appeal of the assessee and in case, the additions confirmed by the Id. CIT(A) are sustained then in that eventuality, the same tantamount to double addition and not permissible under the law. As per the record, the assessee was not having any other income other than the LIC commission and post office commission

and the TDS of the same has also been deducted on the said income which is reflected in Form 26AS, therefore, considering these peculiar facts and circumstances, we direct the A.O. to delete the addition.

9. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on 18th August, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/08/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Om Prakash Sharma, Shrimadhapur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward- Neem Ka Thana.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 31/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar