

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 639/Asr/2017
Assessment Year: 2011-12**

M/s R.S. Builders Hall Bazar Amritsar [PAN: AAFFR2613F] (Appellant)	Vs.	ACIT Circle-1, Amritsar. (Respondent)
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Appellant by	Sh. Ashwani Kalia, CA.
Respondent by	Sh. S.M. Surendra Nath (DR)

Date of Hearing	16.09.2021
Date of Pronouncement	21.09.2021

ORDER

Per Dr. M. L. Meena, AM:

This appeal of the assessee is directed against the order dated 05.05.2017 passed by the CIT(A), 1Amritsar. The assessee has raised the following grounds:

“1. That the ld.CIT(A)-1, Amritsar has erred in law and on facts in holding that reopening of assessment u/s 148 was rightly made.

2. That the ld.CIT(A)-1, Amritsar has erred in law and on facts in holding that AO was rightly initiating the provisions of section 148 on the basis of audit objection completely ignoring

the fact that the AO included the Pr.CIT-l, Amritsar in his allocated report to the CIT (Audit) that audit objection on the basis of which provision of section 148 were initiated at no locus standee since it was case of only clerical error in online filing of ITR 5 having no bearing on the returned income and assessed income.

3. That the ld.CIT(A)-l, Amritsar has erred in law and on facts in confirming the addition of Rs.14117217 made by AO being the amount of unexplained addition of Rs.14117217 in the capital account of the partners completely ignoring the fact that addition to the capital a/c of the partners was only Rs.1450000 which was duly explained at the time of original assessment.

4. That the order is bad in law and on facts.

5. That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”

2. The assessee submitted amended ground which is accepted by this bench:

“1. That the ld.CIT(A)-l, Amritsar has erred in law and on facts in holding that reopening of assessment U/s 148 was rightly made.

2 That the ld.CIT(A)-l, Amritsar has erred in law and on facts in holding that AO had rightly invoked the provisions of section 148 on the basis of audit objection completely ignoring the fact that the AO including the Pr.CIT-l, Amritsar in his annotated report to the CIT (Audit) had confirmed that audit objection had no locus standie since it was case of only clerical error in the e-filed of ITR 5 having no bearing of the assessed income.

3. *That the ld. CIT(A)-I, Amritsar has erred in law and on facts in confirming the addition of Rs. 14117217 on the ground that there was unexplained addition of Rs.14117217 in the capital account of the partners completely ignoring the fact that addition to the capital a/c of the partners was only Rs 1450000 which was duly explained at the time of original assessment and the balance amount was only a clerical error in the e-filed return of income.*

4. *That the order is bad in law and on facts.*

5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”*

3. The sole issue disputed as per amended grounds, in this appeal is regarding addition of Rs.1,41,17,217 confirmed by CIT(A) in reassessment proceedings on account of alleged unexplained addition to the capital account of the partners.

4. The ld. CIT(A) has confirmed the addition in summary manner while adjudicating ground no. 2 before him as follows:

“6. I have gone through the grounds of appeal, submission and assessment order.

Ground No. 1 to 3:-

As per facts the case was reopened u/s 148 by the AO after proper application of mind and not only on the basis of audit objection. Further as per Hon'ble Supreme Court in the case of Income Tax vs. PVS Beedies it was held that the reopening of the case u/s 148 may be done on the basis of any information. The action of the AO is supported by the decision of the Hon'ble Supreme Court in the above case. The Hon'ble Supreme Court in the case of CIT V/s P.V.S Beedies Pvt. Ltd. 1999 237 ITR 13 SC held in favour of revenue on the issue of reopening on the basis of audit objection. Action of the AO is further supported by the Hon'ble Supreme Court in the case of L&T (2017) 79 Taxman 267(SC) as there was no direction from

the audit party to reopen the case. Audit party only revealed the escapement of income from assessment and AO has taken action on this. In view of the above, these grounds are dismissed.

Ground No. 2: -

Assessee did not submit any evidence of capital during the course of assessment proceedings, except submitting a letter that the same was explained during the course of regular assessment proceedings. He did not bring any evidence on record regarding source of capital, genuineness of the same and bonafide explanation. In view of above the addition made by the AO was correct.

7. I have considered the assessment order and the written submissions of the appellant and the grounds of appeal are disposed off as under:

i. The ground of appeal at S.No. 1 and 2 are dismissed.

ii. The ground of appeal at S.No. 4 is general in nature and requires no adjudication.

8. In the result the appeal is dismissed.

5. The ld. Counsel for the assessee has submitted that the ld. CIT(A)-I, Amritsar has erred in law and on facts in confirming the addition of Rs. 14117217 in summary fashion, on the ground that there was unexplained addition of Rs.14117217 in the capital account of the partners completely ignoring the fact that addition to the capital a/c of the partners was only Rs 1450000 which was duly explained at the time of original assessment and the balance amount was only a clerical error in the e-filed return of income. In support, he has filed written submissions as under:

1 The basic issue in this appeal is regarding addition of Rs.1,41,17,217 confirmed by CIT(A) on account of alleged unexplained addition to the capital account of the partners.

2 At the time of original assessment it was explained that addition to capital was only Rs.1450000 and source of the same was duly explained to the AO. It was explained that balance of Rs.12667216 was only a clerical error in the e-filed return of income.

3 Copy of the capital accounts of the partners were duly filed with the AO which are placed at page 34 to 36 of Paper book. These capital accounts clearly show that increase in the capital of the three partners is only Rs.14,50,000.

4 Subsequently, the audit party raised certain audit objections vide letter dated 30.7.2015. Copy of the same is placed at page 19 to 22 of Paper book vide Para 5 page 4 of the said letter it was stated that the source of addition to the capital account amounting to Rs.1,41,17,247 was not explained at the time of original assessment.

5 The assessee in his reply to the audit objections on the issue under appeal stated that the total addition in the capital of the partners was only Rs.14,50,000 and balance amount of Rs.1,26,67,216 is on account of clerical error in filling up e-return.

6 It was explained the assessee firm have two units namely R.S. Builders (Head Office) and Hotel R.S. Residency (Branch office). Separate Balance Sheets & Profit & Loss A/c of the two units are prepared and they are duly audited. Copies of Balance Sheet & Profit & Loss A/c of two units were filed before AO & CIT(A) and they are placed at page 49 to 52 of the Paper Book.

7 It was further explained that Rs.1,26,67,216 is the "Inter Branch Balance" appearing on the Assets side of Balance Sheet of R.S. Builders against the name of Branch office R.S. Residency duly highlighted. The same amount is appearing on the Liability side of Balance Sheet of R.S. Residency under the head "R.S. Builders (Head Office) and duly highlighted.

8 Actually, while filling up the e-return Form 5 the figures of two Balance Sheet and Profit & Loss A/c are required to be

consolidated and only consolidated figures are to be given and not unit wise.

9 *And while consolidating the two Balance Sheets the Inter Branch Balances appearing on the contra side of each Balance Sheet have to be squared up against each other.*

10 *On the Liability side of Balance Sheet under the head Capital of Partners only the actual amount of capital of partner as per Balance Sheet of Head Office amounting to Rs.102710191 should have been shown and without including the Inter Branch Balance of Rs.12667216. Similarly, on the Assets side of Balance sheet in the e-return the balance shown under the head Current Assets & Loans & Advances at Rs.53478037 should have been shown at Rs.40813699 by excluding the Inter Branch Balance of Rs.12667216.*

11 *The detailed working of this mistake and reconciling the same with figures of Balance sheets of two units is duly given in our letter dated 29.11.2016 filed before AO during the proceeding's u/s 148 in Paras 10, 11 & 12. This letter is placed at page 47 & 48 of the Paper Book.*

12 *From the perusal of this working your honor will appreciate that actually the addition in the capital account of the partners was only Rs.14,50,000 whereas the amount of Rs.1,26,67,216 was an inadvertent error in the filling up e-return and nothing else.*

13 *The source of addition of Rs.14,50,000 in the capital account of partners was duly explained to the AO at the time of original assessment.*

14 *From the perusal of above details it will be appreciated by your honor that addition of Rs.1,41,17,217 has been made simply on the basis of clerical error while filling up the e-return which comprises of Rs.1,26,67,216 being the contra inter branch balance appearing in the two balance sheets of the two units and the actual addition of capital of Rs.14,50,000 which*

was duly explained to the AO during the course of original assessment proceedings.

15 *Hence the addition needs to be deleted.*

6. Per contra, the Ld. DR supported the impugned order and he contended that proceedings u/s 148 were not initiated on the basis of audit objections but after proper application of mind by AO. The Id.CIT(A) while upholding the initiation of proceedings u/s 148 relied upon the decisions of Hon'ble Supreme Court in the case of CIT V P.V.S Beedies Pvt Ltd 237 ITR 13 and in the case of L & T (2017) 79 Taxman 267 (SC).

7. In rebuttal, the Id. Counsel submitted that the Id. CIT(A) is absolutely wrong in holding that the case was not reopened on the basis of audit objection and further, the reliance placed on the judgments of Hon'ble Supreme Court cited supra by CIT(A) is also totally misplaced. The sequence of events narrated above fully justify that the proceedings u/s 148 were initiated only under the pressure of audit wing. There was no independent application of mind by AO but the proceedings u/s 148 was initiated under the persistent pressure of audit wing.

8. We have heard the rival contentions and perused the documents filed on record. It is seen that the Id. CIT(A) has confirmed the addition of Rs.1,41,17,217/-

in absolutely summary manner by simply stating that the assessee did not submit any evidence as regard to addition of capital during the course of assessment proceedings.

9. From the impugned order it is evident that it 3 line order passed in casual manner with total disregard to the facts of the case and the written submissions filed before CIT(A) along with all details of accounts and evidences by the assessee. Copy of the written submissions alongwith supporting evidences filed before CIT(A) filed before us are placed on record.

10. The Ld. AR contended that the assessee had filed a letter dated 12.11.2015, explaining in depth that the addition to capital was only Rs.1450000 and it was due to a clerical error in the return of income e-filed where in the Inter Branch Balance of Rs.12667216 was inadvertently included in the capital of partners. The assessee had also filed copies of capital accounts of partners as well as copies of Balance Sheets of Branch and Head Office, copy of e-filed return of income.

11. Thus, the Id. CIT(A) without considering the assessee's submissions and the necessary evidence filed, has confirmed the addition by simply passing a summary order involving addition Rs.1,41,17,217 holding that the assessee did not submit any evidence of capital during the course of assessment proceedings. In our view,

the CIT(A) ought to have examined and verified the veracity of the assessee's written submissions/evidences explaining the alleged difference in the capital account of partners pointed out by the Audit Party and as assessed by the AO during the proceeding's u/s 148. Whether it was just a clerical error in the e-filed return where the inter branch balance of Rs.1,26,67,216 appearing in the Balance Sheet of "Head Office" was inadvertently included in the capital balance of partners in the e-filed return of income Form No.5? This fact is required to be examined and verified by the CIT(A) while adjudicating the issue of addition of unexplained capital addition to the partners' capital account.

12. In view of the above facts, we can not approve such a cryptic and summary fashion order passed by the CIT(A). At the same time, the factual verification of the accounts is required to be done by the Ld. CIT(A) regarding the alleged unexplained addition Rs.1,41,17,217 to the books of the assessee's as claimed to be explained by the appellant that in case the inter branch balance amounting to Rs.12667216 is excluded from total capital of partners in the "e-filed return" the addition in the capital of partners will come to only Rs.1450000 which is duly reflected in the capital accounts of the partners which is duly explained being withdrawals from the bank accounts and the other firms by the partners. In our view, this is a fit case, to be restored to the CIT(A) to pass a speaking order afresh,

adjudicating all the grounds of appeal after granting adequate opportunity being heard to the assessee and considering the documentary evidences filed on record or to be filed in the course of proceedings before him. No doubt, the assessee shall cooperate in the proceedings before the CIT(A).

13. In result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 21.09.2021

Sd/-
(Laliet Kumar)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

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Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order