

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. 194/JP/2018  
निर्धारण वर्ष / Assessment Year : 2007-08

|   |             |                                 |
|---|-------------|---------------------------------|
| Shri Dharma Singh Sangha,<br>1-PA-25, Vigan Nagar,<br>Kota. | बनाम<br>Vs. | A.C.I.T.,<br>Circle-1,<br>Kota. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFEPS 4509 P        |             |                                 |
| अपीलार्थी / Appellant                                       |             | प्रत्यर्थी / Respondent         |

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya &  
Shri Dewang Gargieya (Advs)  
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/10/2021  
उदघोषणा की तारीख / Date of Pronouncement : 13/10/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Kota dated 10/11/2017 for the A.Y. 2007-08 in the matter of order passed U/s 143(3)/254 of the Income Tax Act, 1961 (in short, the Act) wherein the assessee has raised following grounds of appeal:

- "1. *The impugned additions and disallowances made in the order u/s 143(3)/254 of the Act dated 31/07/2014 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.*
- 2.1 *The Id. CIT(A) further erred in law as well as on the facts of the case in not admitting & considering the evidences submitting before him alleging that there did not exist any circumstance as prescribed u/r 46A. The evidences so produced/furnished but not admitted being contrary to the provisions of law and facts, the additional evidences*

*so furnished kindly be admitted, considered and the addition be deleted.*

*Alternatively, the Id. CIT(A) kindly be directed to consider the same.*

*2.2 Rs. 14,82,450/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the assessment of income earned from investment made in mutual funds under the head "business income" as against "Short Term Capital Gain" (for short "STCG") as declared by the appellant. The treatment so given by the A.O. and confirmed by the Id. CIT(A) is contrary to the provisions of law and facts of the case. Hence, the income declared as STCG be directed to assess as such.*

*3. The Id. A.O. further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C and 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/ withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.*

*4. The appellant prays your honours indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing."*

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

3. Briefly stated facts of the case are that the assessee claims to be engaged in business of installation of Electrical Equipment. During the year under consideration, the assessee filed its return of income and in the first round of assessment U/s 143(3) of the Act, it was completed vide order dated 30/09/2009 thereby making certain additions/disallowances.

4. Aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), however, the Id. CIT(A) also sustained the additions made by the A.O.
5. Aggrieved by the order of the Id. CIT(A), the assessee preferred appeal before the Tribunal being ITA No. 214/JP/2013 and after hearing the parties, the Tribunal vide order dated 21/08/2013 had restored the matter back to the file of the A.O.
6. On the set aside proceedings, the A.O. again sustained the additions vide order dated 31/07/2014 passed U/s 143(3) r.w.s. 254 of the Act.
7. Aggrieved by the order of the A.O. U/s 143(3) r.w.s. 254 of the Act, the assessee preferred appeal before the Id. CIT(A) and the Id. CIT(A) again dismissed the appeal of the assessee and upheld the additions. Thereafter, the assessee again approached the ITAT by way of filing the present appeal before us.
8. At the outset, we noticed that the assessee has raised two modified grounds and the same are reproduced below:

*"2.1. The Id. CIT(A) further erred in law as well as on the facts of the case in wrongly alleging that the assessee submitted certain additional evidences w.r.t. the mutual fund transactions despite the fact that no such additional evidences has been filed by the assessee even no any application u/r 46A was filed. Therefore, the findings of facts recorded by the Id. CIT(A), is contrary to the facts available on*

*record. Consequently, the addition so confirmed by the Id. CIT(A), kindly be deleted in full.*

2.2 *Rs. 14,57,125/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the action of the AO in treating the gain of Rs. 14,57,125/- on account of investment made in shares and mutual funds under the head "business income" as against "Short Term Capital Gain" (for short, STCG) as declared by the appellant. The treatment so given by the A.O. and confirmed by the Id. CIT(A), is contrary to the provisions of law and facts of the case. Hence, the income declared as STCG be directed to assess as such."*

9. We have considered the rival contentions and carefully perused the material placed on record. The only dispute in the present case revolves around the fact that as to whether the assessee acted as an investor or a trader while dealing with sale and purchase of shares and mutual funds. In this regard, we have meticulously gone through all the orders placed on record by the parties and from the details of the case, we noticed that initially the matter in question was restored back by the Coordinate Bench of the ITAT in ITA No. 214/JP/2013 to the file of A.O. for fresh decision by holding that the authorities below ought to have applied their mind on the facts of the case as non-consideration of the transaction being transactions in mutual funds ex-facie depicts the non-application of mind. The A.O. was directed to verify the claim of the assessee and decide the issue afresh by allowing an opportunity of being heard to the assessee. The Id AR submitted that the assessee had filed details of redemption of mutual funds alongwith a detailed statement showing computation of short term capital

gain in shares and mutual funds. However, it was observed by the A.O. as well as Id. CIT(A) that during the year under consideration, the assessee entered into substantial and frequent sale and purchase of shares which was listed into short term capital gain of Rs. 14,57,125/-. Although, it was specifically pleaded by the Id. AR that income from shares and mutual funds were not a business income but was an investment income and it was further contended that the figure of Rs. 14.57 lacs also included some income on the redemption of mutual funds thus, in this way, it was argued that no additions could have been made in the case of assessee. It was specifically pleaded that the short term capital gain of Rs. 14,57,125/- includes short term capital gain of Rs. 8,98,817/- on account of mutual funds and Rs. 5,83,633/- on account of shares. Therefore, in order to verify the same, the matter was restored back to the file of the A.O. by the Coordinate Bench of the ITAT and thus, in this way, the matter which was restored was not confined to only consider the mutual fund transactions but the basic issue involved was whether the assessee acted as an investor or as a trader which was to be decided by the A.O. afresh. However, after appreciating the orders of the lower authorities in the second round of litigation, we found that the basic issue i.e. the business income or investment income was confined to the gain from the mutual funds only whereas on the contrary, the entire matter of Rs. 14.57 lacs was restored

back for a fresh decision which comprises of the income from sale of shares and also redemption of mutual funds. The lower authorities completely ignored the specific ground taken by the assessee before the ITAT and had confined its findings only to the redemption of mutual funds and that too was decided against the assessee on the ground that no evidence of investment in the mutual fund was furnished by the assessee. Whereas on the contrary, the Id. AR strongly relied upon his submissions made before the lower authorities and drawn our attention to the fact that the assessee had already placed on record the various evidences which are drawn in the paper book at page No. 264 to 268 and page No. 278 which were sufficient to reach to a conclusion by the revenue authorities but as per the Id. AR, all the evidences filed by the assessee were ignored by the lower authorities by giving a finding that no evidence to corroborate the investment in mutual funds was furnished by the assessee.

10. Be that as it may considering the totality of facts and circumstances of the case, we restore the matter back to the file of the A.O. with direction to decide the same afresh by taking into consideration the transactions in the mutual funds as well as shares carried out by the assessee.

11. Before parting, we may make it clear that our decision to restore the matter back to the file of the A.O. shall in no way be construed as having

any reflection or expression on the merits of the dispute, which shall be adjudicated by the A.O. independently in accordance with law.

12. In the result, this appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 13<sup>th</sup> October, 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:- 13/10/2020

\*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Dharma Singh Sangha, Kota.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-1, Kota.
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. 194/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar