

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. 105/JP/2020
निर्धारण वर्ष / Assessment Years : 2014-15

The DCIT, Circle-2, Jaipur.	बनाम Vs.	Shri Vinit Kumar Bora 3 rd Crossing, 2532, Oswal Sadan, MSB Ka Rasta, Johri Bazar, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AHCPB 0047 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. No. 06/JP/2020
(Arising out of ITA No. 105/JP/2020)
निर्धारण वर्ष / Assessment Years : 2014-15

Shri Vinit Kumar Bora 3 rd Crossing, 2532, Oswal Sadan, MSB Ka Rasta, Johri Bazar, Jaipur.	बनाम Vs.	The DCIT, Circle-2, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AHCPB 0047 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri B.K. Gupta (Pr.CIT)
निर्धारिती की ओर से / Assessee by : None (W.S.)

सुनवाई की तारीख / Date of Hearing : 20/10/2021
उदघोषणा की तारीख / Date of Pronouncement : 08/11/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue and the Cross Objection filed by the assessee against the order of the Id. CIT(A)-1, Jaipur dated 29.11.2019 pertaining to assessment year 2014-15 wherein the respective grounds of appeal are as under:-

ITA No. 105/JP/2020:

"1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 3,46,55,469/- made u/s 41(1) of the Act on the ground that the assessee has offered income of Rs. 3,46,70,618/- in A.Y. 2019-20 after detection of the same by the Assessing Officer in A.Y. 2014-15?

2. Whether on the facts and in the circumstances of the case and in law the CIT(A) was justified in admitting new facts filed by the assessee in November, 2019 without providing an opportunity to the AO as prescribed under Rule 46A of the I.T. Act?"

CO No. 06/JP/2020:

"1. Whether the liabilities relating to advance received from the foreign buyers as accepted in the order for A.Y. 2010-11 to 2013-14 passed u/s 143(3) are in the nature of trading liability ceased to exist as concluded by the A.O. to tax u/s 41(1) and also not adjudicated by the CIT(Appeals).

2. Whether the provisions of section 41(1) of the Act be invoked in case of liabilities of advances received without establishing that any benefit thereof or for expenditure was claimed in earlier years.

3. Whether the amount of Rs. 346,55,469/- be subject to tax arbitrarily without establishing that how the same is in the nature of trading liability and whether provisions of section 41(1) can be

invoked in respect of any liability appearing in the Balance Sheet despite being admitted in the earlier assessment years in orders u/s 143(3) that the outstanding amount is being not in the nature of trading liability."

2. None appeared on behalf of the assessee. However, it is noted that the Id. AR of the assessee, Shri S.C. Jain has submitted an application stating that he has undergone major spinal surgery and Doctors have advised him against any physical movement and therefore, he has prayed that his written submissions prepared and filed in respect of grounds of appeal taken by the Revenue and Cross objection filed by the assessee may be considered while disposing off the respective appeals.

3. During the course of hearing, the Id. Pr.CIT/DR has submitted that the Id. CIT(A) has deleted the additions of Rs.3,46,55,469/- made by the Assessing Officer U/s 41(1) of the Act on the ground that the assessee has offered income of Rs. 3,46,70,618/- in subsequent assessment year i.e. A.Y. 2019-20. It was submitted that the assessee has taken said action of offering income after detection of the same by the Assessing Officer while passing the assessment order for the impugned assessment year i.e. 2014-15. It was further submitted that the Id. CIT(A) has admitted certain new facts by way of additional evidences which have been filed by the assessee during the course of appellate proceedings in November, 2019 without providing an opportunity of examination by the Assessing officer as prescribed under Rule 46A of the Income Tax Rules and thereby, violating the principles of natural justice and our reference was drawn to the findings of the Id. CIT(A) at para 3.1.2 (ii), (viii) and (ix) and it was submitted that from

the said findings of the Id. CIT(A), it cannot be noted that the assessee has made certain further submissions vide letter dated 18.11.2019 and filed certain additional documentation and information and which have not been confronted to the Assessing Officer and also no opportunity has been provided to the Assessing Officer before taking those additional submissions and documentation on record. It was accordingly submitted that the matter may be set-aside to the file of the Id. CIT(A) with the direction to decide the matter afresh after providing adequate opportunity to the Assessing officer.

4. It was further submitted by the Id. Pr.CIT/DR that the assessee in his Cross Objection have also raised the grounds as to whether advances received from the foreign buyers are in the nature of trading liability which have ceased to exist as concluded by the Assessing officer and whether the provisions of Section 41(1) of the Act have been rightly invoked by the Assessing Officer. It was submitted that the said issue has not been adjudicated upon by the Id. CIT(A) and which has also been challenged by the assessee in his Cross Objection. It was accordingly submitted that taking into consideration the entirety facts and circumstances of the case, the matter may be set aside to the file of Id. CIT(A) to decide the same afresh including grounds raised by the assessee in his Cross Objection after providing reasonable opportunity to the assessee as well as to the Assessing officer.

5. We have heard the contentions advanced by the Id. Pr.CIT/DR and have also gone through the written submissions filed by the Id. AR on behalf of the assessee and other material available on record. We

agree with the contentions advanced by the Id. Pr. CIT/DR that the matter deserves to be set aside to the file of Id. CIT(A) for the reason that firstly, legality of invocation of provisions of Section 41(1) have not been adjudicated upon by the Id. CIT(A) though assessee took a specific ground of appeal before the Id CIT(A) and which has now been contested by the assessee in his cross objection. Secondly, the fact that certain additional facts and documentation/information have been brought on record by the assessee during the appellate proceedings pertaining to the subsequent assessment year which were not available on record at the time of passing of the assessment order and thus, clearly in the nature of additional evidence produced and brought to the notice of the Id CIT(A) for the first time during the appellate proceedings and which have been taken on record by the Id. CIT(A) without considering the provisions of Rule 46A especially in terms of providing an adequate opportunity to the Assessing Officer to examine such additional evidence before such additional evidences were taken on record. It is no doubt the discretion of the Id CIT(A) to consider and admit such additional evidence however, the Assessing officer should have been provided an opportunity to examine such additional evidence and taking into consideration, the report of the Assessing officer, the Id CIT(A) could have proceeded further which apparently has not happened in the instant case. Therefore, we are of the considered view that the matter deserved to be set-aside to the file of the Id CIT(A) to examine the same afresh as per law after providing reasonable opportunity to both the parties.

6. The contentions on merit in relation to respective grounds of appeal are therefore left open and the parties are at liberty, if so advised, to raise the same before the Id CIT(A) who shall consider the same as per law.

In the result, appeal of the Revenue as well as Cross Objection filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 08/11/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/11/2021.

***Santosh**

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

1. अपीलार्थी / The Appellant- DCIT, Circle-2, Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Vinit Kumar Bora, Jaipur.
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. 105/JP/2020 & CO. No. 06/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar