

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH :: RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.200/RPR/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Nishant Jain, M/s.Landmark Engineer, Flat No.27, Shantinagar, Ring Road No.2, Bilaspur(C.G.) PAN: AGEPJ 9793 M	V s	The Joint Commissioner of Income Tax, Range-1, Raipur.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri R.B.Doshi – AR
Revenue by	Shri G.N.Singh – Sr.DR
Date of hearing	24/11/2022
Date of pronouncement	27/12/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the by Assessee i.e. Nishant Jain for A.Y. 2011-12 against the order of Id.CIT(A)-Bilaspur dated 21.03.2016, emanating from order of the Assessing Officer under section 143(3) of the Act dated 12.03.2014. The Assessee has raised the following grounds of appeal:

- “1. That the order passed by the learned CIT (Appeals) is bad in law as well as on facts.
2. That the learned CIT (Appeals) has erred in disallowing Finance Charges paid to NBFC without deducting TDS of Rs. 1,59,714/-.

3. *The learned CIT (Appeals) has erred in disallowing Security Deposits received from Subcontractor Vidya Prasad Patel of Rs.2,00,000/-.*

4. *The learned CIT (Appeals) has erred by confirming Rs. 1,00,000/- on account of low withdrawal for household expenses on estimate basis even though there is sufficient withdrawal by family members.*

5. *The learned CIT (Appeals) has erred by confirming Rs. 3,42,283/- on account of non-proved receipt of LIC refund even though the necessary proof were submitted before the CIT(Appeals).*

6. *The learned CIT (Appeals) has erred by confirming Rs. 50,000/- made on estimate basis for non-production of Sales & Purchase Deed of agricultural land.”*

2. Brief facts of the case are that the ld.Authorised Representative(ld.AR) of the assessee submitted that Ground No.1 is not pressed. The ld.AR submitted that Ground No.2 and 3 are covered by Hon’ble ITAT’s order in assessee’s own case for A.Y. 2010-11 in ITA No.199/RPR/2016. The ld.AR read out the relevant paragraphs of the ITAT orders. Regarding the Ground No.5, the ld.AR submitted that assessee had filed additional evidence, but ld.CIT(A) rejected the additional evidence on technical grounds that separate application was not filed for admitting additional evidence. Therefore, the ld.AR submitted that Ground No.5 may be set-aside to the AO or ld.CIT(A) for proper verification of the documents. For Ground No.6, the ld.AR submitted that he is not pressing for it.

3. The ld.Departmental Representative(ld.DR) for the Revenue relied on the orders of the Assessing Officer(AO) and ld.CIT(A).

4. We have heard both the parties and perused the records.

Ground No.2

5. It is about disallowance of Rs.1,59,714/- for not deducting TDS. The ld.CIT(A) has observed that appellant had paid interest of Rs.1,59,714/- to NBFC namely M/s.Indiabulls without deducting any TDS. The ld.CIT(A) also submitted that no challan was filed before him or no proof of TDS deduction was filed before him. It is observed that ITAT in assessee's own case for A.Y.2010-11 in ITA No.199/RPR/2016 has decided the identical issue regarding non-deduction of TDS on interest paid to Indiabulls Financial Services Ltd., The relevant discussion is at para 13 of the same order. The same is reproduced here as under:

“13. In view of the aforesaid conditions of the section 201(1) read with section 40(a)(ia), the assessee is required to furnish a certificate from an accountant in the prescribed form i.e form 26A to prove that the assessee is not deemed to be an assessee in default, but since the assessee has failed to furnish the same till the hearing of this appeal on 4th August 2022, a more than reasonable time has already elapsed, since the matter belongs to AY 2009-10, any further opportunity as requested if granted, would tantamount to defy the judicial discipline. Therefore, request of the assessee to restore the matter to AO is rejected and thus this ground of appeal of the assessee is dismissed.”

5.1 Since the issue involved is same and before us also assessee has not filed any proof. The disallowance made by the AO is upheld, accordingly assessee Ground No.2 is dismissed.

Ground No.3

6. Security Deposit of Rs.2 lakhs. The Id.CIT(A) has given a finding that identical issue was there in A.Y.2010-11. The Id.CIT(A) has upheld that addition of Rs.2 lakhs following his own order for A.Y. 2010-11. According to the Id.CIT(A), the assessee failed to prove the identity, genuineness and credit worthiness with reference to deposit of Rs.2 lakhs from Shir Vidya Prasad.

The ITAT in assessee's own case in A.Y. 2010-11 has decided said issue in favour of the assessee. The ITAT in para 19 has held that assessee has discharged its onus to prove the identity, creditworthiness and genuineness of the creditors by providing all the necessary information and evidences in compliance. The relevant part of the ITAT order is as under:

“We are of the considered view that in present case, the assessee has discharged its onus to prove the Identity, credit worthiness and genuineness of the creditors/transactions by providing all the necessary information and evidences in compliance towards dislodging the contentions of the revenue in making addition u/s 68 on account of unexplained cash credits, no evidence or material could be brought on records by the revenue to controvert this

contention, therefore the additions sustained by the Ld CIT(A) is liable to be delete and we do so.”

7. In A.Y. 2010-11, there was security deposit from Vidya Prasad. Since assessee has proved identity genuineness creditworthiness in A.Y. 2010-11, respectfully following the ITAT's decision for A.Y.2010-11, the AO is directed to delete the addition of Rs.2 lakhs. Accordingly, ground no.3 of the assessee is allowed.

Ground No.4

8. Low Household Withdrawal Rs.1 lakhs: The AO has made addition of Rs.1 lakh stating that assessee's withdrawal came down from Rs.2,71,000/8- in A.Y. 2010-11 to Rs.2,07,216/-. The AO stated that assessee failed to explain and therefore made an estimated addition of Rs.1 lakh. The ld.CIT(A) upheld that same. It is observed that assessee submitted before the ld.CIT(A) and AO that assessee is staying in joint family. The assessee also submitted that in addition to his own withdrawals of Rs.2,07,016/- there were following withdrawals by family members.

i)	Richa Jain	-	Rs.30,000/-
ii)	S.C.Jain	-	Rs.1,00,000/-
iii)	Beena Jain	-	<u>Rs.54,000/-</u>
	Total Household withdrawal	-	<u>Rs.3,91,216/-</u>

9. We are of the opinion that the AO has not given any specific reason for making an addition of Rs.1 lakh. In our opinion, the

withdrawal of Rs.3,91,216/- is reasonable, therefore, the AO is directed to delete the said addition. Accordingly, the Ground No.4 of the assessee is allowed.

Ground No.5

10. LIC of Rs.3,42,283/-: The ld.AR submitted before us that assessee had submitted documents of surrender of policy of Bajaj Alliance and ICICI Prudential, however, the ld.CIT(A) has not admitted these additional evidences. The assessee has also submitted these documents in the paper book. The ld.CIT(A) has rejected the additional evidence on super technical reasons. In the interest of justice, we are of the opinion that these documents should have been admitted. It is observed from the additional evidence that these amounts were deposited in bank account of the assessee. Therefore, it was easy for the AO to verify during the assessment proceedings. However, AO failed to verify the respective bank account of the assessee, hence, we set-aside the issue to the AO with a direction that he will verify the evidences filed by the assessee and decide the issue after giving opportunity to the assessee. The AO will restrict his enquiry to the extent of addition of Rs.3,42,383/- only; made on account of LIC. It is possible that in the capital gain, assessee has classified these amounts as LIC, actually these may be pertaining to other Insurance Companies. As long as these amounts have been

received from Insurance Companies, there is no reason for AO to add it. Accordingly, Ground No.5 is allowed for statistical purpose.

Ground No.6

11. Addition of Rs.50,000/-: The ld.AR of the assessee has not pressed for the Ground No.6, hence, this grounds is dismissed as not pressed.

12. To sum up, appeal of the assessee is Partly Allowed.

Order pronounced under Rule 34(4) of Appellate Tribunal Rules, 1963.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 27th Dec, 2022 / SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Applicant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Raipur.
4. The Pr. CIT-I, Raipur.
5. DR, ITAT, "Raipur" Bench.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.