

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 137/JP/2023
निर्धारण वर्ष/Assessment Year : 2011-12.

Rajasthan Advance Joint Care Trust, B-56, Unnati Tower, Central Spine, Vidhyadhar Nagar, Jaipur.	बनाम Vs.	The Income Tax Officer (Exemptions), Ward-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABTR 5387 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal (CA)

राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27/04/2023

उदघोषणा की तारीख / Date of Pronouncement: 7/06/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 17.01.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2011-12. The assessee has raised the following grounds :-

1. That the Id. CIT (A) has erred seriously in law and on facts in sustaining the action of the Id. AO in not granting refund to the appellant by denying to grant credit of TDS and Self Assessment Tax Payment in the assessment passed under section 147/143(3) of the Income Tax Act, 1961 on the ground that application for refund had not been made within time prescribed under section 239 and also on the ground that reassessment proceedings are for the benefit of the department.

2. That the Id. CIT (A) as well as the Id. AO have acted in violation to article 265 of the Constitution by not granting refund of the excess tax payment made by the appellant.

2. The brief facts of the case are that the assessee trust has been established for the purpose of providing health services in the field of Orthopedics. During the year under consideration, the assessee had not filed its return of income under section 139(1) of the I.T. Act, 1961. However, later on it received notice under section 148 of the IT Act and in response there to Income tax return was filed and the assessment was completed under section 147/143(3) vide order dated 13.11.2018. The assessee had made deduction of TDS amounting to Rs. 1,39,001/- and self assessment tax payment of Rs. 500/- and, therefore, claimed refund as the returned income as well as the assessed income was Nil. The AO did not allow the credit of such sums while passing the assessment order. Therefore, assessee moved an application under section 154 of the IT Act for allowing credit of TDS and self assessment tax paid, but the same was declined by the AO by holding that as per section 239(1) the claim of refund was required to be made by the assessee within one year from the last day of relevant assessment year and action initiated under section 148 of the IT Act is for the benefit of the revenue only and assessee cannot take advantage of the same. Aggrieved by the order of the AO, assessee preferred appeal before Id. CIT (A). However, the Id. CIT (A) also dismissed the appeal of the assessee.

3. Now the assessee has filed the present appeal before us.

4. We have heard the rival submissions, perused the material on record and gone through orders of the revenue authorities and the case laws cited therein. We

have meticulously gone through the facts of the case and also case laws cited by both the parties. From the record, we noticed that it is an admitted fact that initially the assessee had not filed any return of income but subsequent to the receipt of notice under section 148 of the IT Act, the assessee had duly filed its return of income under section 139 and after filing of the return, the AO also framed assessment as per provisions of section 143(3) of the IT Act. Before proceeding further, it is necessary to evaluate the provisions of section 143(3) of the Act as the same goes to the root of the case, therefore, the same is reproduced herein below :-

143(3) : " On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment."

From the plain reading of the above provisions of section 143(3) of the Act, it clearly authorizes the AO to determine the sum payable by assessee or refund of any amount due to him on the basis of such assessment. Therefore, in our view, the assessee was clearly within his power to claim refund of excess payment of tax whether in the form of TDS or in the form of Advance/Self-Assessment tax. But in the present case, the AO while denying the refund of any amount due to the assessee on the basis of assessment had rather stated that the proceedings of reassessment are not for the benefit of assessee and it is for the benefit of

department only. We have gone through the judgment cited in the orders passed by the revenue authorities as well as cited by both the parties before us. Upon considering the judgments in the cases of Sun Engineering Works Pvt. Ltd. 198 ITR 297 (SC), K. Sudhakar S. Shanbhag, 241 ITR 865 (Bombay) and CIT vs. State Agro Development Corporation, 248 ITR 487 (J&K), we find that all the above judgments are of the opinion that the reassessment proceedings are not for the benefit of the assessee and thus the assessee cannot seek review of his original assessment or cannot raise any claim not related with the issues on which assessment proceedings have been initiated. However, the fact of the present case are altogether different as none of the above judgments (supra) addresses the issue of granting credit of excess TDS/Tax deposited and, therefore, paramateria contained in these judgments are different from the paramateria contained as per the present case and thus the same are distinguishable and not found applicable in the present case. Whereas on the contrary, the Id. A/R relied upon the decision of Hon'ble Allahabad High Court in the case of CIT vs. Vali Brothers, 282 ITR 149 (Allahabad) in which the assessee had filed return in response to notice under section 148 of the Act in which he had claimed refund of advance tax paid by him. The proceedings were dropped and no amount was worked out as refundable to the assessee. Therefore, Hon'ble High Court while sustaining the view of the ITAT had held that excess amount be refunded to the assessee. As per the facts of the present case, the present controversy before us is on better footing as in the case of CIT vs. Vali Brothers (supra) the Hon'ble High Court while sustaining the view of the ITAT that excess amount be refunded to the assessee had held that dropping of reassessment proceedings is equivalent to passing of an order. However, in the instant case, the

case of the assessee was properly assessed by accepting the ITR filed and order was consequently passed under section 143(3) of the Act. Therefore, in our view the principles laid down in the case of CIT vs. Vali Brothers (supra) are squarely applicable to the facts of the present case and thus excess amount deposited by the assessee in the form of TDS and Self-assessment tax deserves to be refunded to the assessee along with interest as per law.

5. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 7/06/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 7/06/2023.

Das/

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

1. अपीलार्थी / The Appellant- Rajasthan Advance Joint Care Trust, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Exemptions Ward-1, 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. 137/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

