

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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 Nos. 200 & 201/JP/2023
निर्धारण वर्ष /Assessment Years : 2014-15 & 2015-16

Giriraj Prasad Goyal 1 Goyal Bhawan, Housing Board Coloni Bus Stand, Tonk	बनाम Vs.	ITO, Tonk
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGFPG 9679 N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. Shrawan Kumar Gupta (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 31/05/2023
उदघोषणा की तारीख /Date of Pronouncement: 05/07/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals filed by the assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 10/03/2023 & 08.03.2023 [here in after (NFAC)] for assessment years 2014-15 & 2015-16 which in turn arise from the order dated 28.07.2019 passed under section 143(3) r.w.s 147 of the Income Tax Act, by the ITO, Ward, Tonk.

2. Since the issues involved in the assessee's appeal for both the years are almost identical and are almost common, except the difference in figure

of additions disputed, therefore, both these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA no. ITA No. 200/JP/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in other assessment year. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. ITA No. 200/JP/2023 is taken as a lead case. Based on the above arguments we have also seen that for both the appeals grounds are similar, facts are similar and arguments were similar and therefore, were heard together and are disposed by taking lead case facts, grounds, and arguments from the folder in ITA No. ITA No. 200/JP/2023.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 200/JP/2023 on the following grounds;

“1. The impugned assessment order u/s 147 rws 143(3) dated 28.06.2019 as well as the notice u/s 148 and the action taken by the Id. AO u/s 147 are bad in law and on facts of the case, for want of jurisdiction, barred by limitation, without proper approval or satisfaction and various other reasons and hence the same may kindly be quashed.

2. The Id. CIT(A) has erred in passing the order without taking in to consideration the material and facts and without providing adequate and reasonable opportunity of being heard in the gross breach of law. Hence the additions so made by the Id. AO may kindly be quashed and delete.

3. Rs.3,15,000/- : The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.3,15,000/-(70 % of Rs.4,50,000/- as gross rental income) on account of alleged excess rental income of Rs.4,50,000/-, only on the basis of third party statement, which have been retracted later on by the third party person himself. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the addition may kindly be deleted in full.

4. The Id. CIT(A) has also grossly erred in law as well as on the facts of the case in not directing to the Id. AO for giving the credit or setoff of the extra income of Rs.3,60,000/- (30 percentage of Rs.12,00,000/-) declared by the assessee under PMGKY Scheme 2016 as the assessee had declared gross rental income/amount of Rs.12,00,000/- in place of Rs.8,40,000/-(70 percentage of Rs.12,00,000/-) after deduction u/s 24(a) by mistake and as per law assessee is entitled 30 percentage deduction u/s 24(a). Hence the Id. AO may kindly be directed to give credit or setoff of Rs.3,60,000/- and hence the addition so made may kindly be deleted in full.

5. Rs.52,916/- : The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.52,916/- made by the Id. AO on account of disallowance of expenses at the rate of 10.00 percentage on the entire expenses claimed in the income and expenditure account without any material. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence same may kindly be deleted in full.

6. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A,234B and 234C,. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

7. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

5. The fact as culled out from the records is that in this case, original return of income u/s 139 of the I.T. Act was filed by the assessee on 30.03.2015 declaring total income of Rs. 4,09,210/-. The assessee is an advocate and practicing in lower court in Tonk City. On perusal of the original return of income filed by the assessee for the year under consideration, it was gathered that assessee has shown the rental income from M/s Kohinoor Hostel at 104, Rajiv Gandhi Nagar, Kota building in co-ownership with his wife Smt. Madhu Goyal and gross rent of Rs. 3 lacs is stated to have been received from the tenant for the year under consideration in which assessee's share being 50% at Rs. 1,50,000/- has been disclosed in the original ITR filed.

5.1 As a consequences of the survey action u/s 133A on 6.2.2017 in consequence to search proceeding in Allen Group of Kota, statement of Sh. Nirmal Agarwal (tenant) was recorded u/s 131 of the I.T. Act. In answer to question no. 38, he categorically admitted that annual rent of Rs. 19.50 lacs was paid in cash to the landlord (assessee) for the year under consideration. In answer to question no.33, he has admitted that there is no

least/rent agreement for hiring this building and no receipt is taken from the assessee (owner).

5.2 In the reply filed on 3.6.2019, assessee admitted 100% ownership of this property. He also admitted that no rent agreement or lease deed, whatsoever, has been prepared for this property. He admitted to have received rent of Rs. 15 "lacs for the year under consideration. He further explained that against rent of Rs. 15 lacs, he had disclosed Rs. 12 lacs in PMGKY 2016 as undisclosed income and balance amount of Rs. 3 lacs has been shown in his TTR filed u/s 148 on 21.5.2019. Copy of form No.1 (declaration form), copy of affidavit dtd.4.6.2019 with respect of above declaration, copy of form 2 being certificate issued by the Pr. Commissioner of Income-tax-3, Jaipur on 30.6.2017, copies of challan for deposit of due taxes and other evidences in respect of declaration of income have been filed which are placed on record.

5.3 The Id. AO noted that assessee offered Rs. 28 lacs being undisclosed rental income for AY 2014-15 and 2015-16 under PMGKY 2016 vide declaration in the prescribed form No.1 dtd. 31.3.2017 which was accepted by the competent authority and a certificate to this effect was issued on

30.6.2017. Out of above disclosed amount of Rs. 28 lacs, amount of Rs. 12 lacs pertain to AY 2014-15 and Rs. 16 lacs pertains to AY 2015-16. Now, considering gross rent of Rs. 15 lacs, assessee declared balance amount of Rs. 3 lacs in his ITR filed u/s 148 on 21.5.2019. This way, assessee has disclosed rent less by Rs. 4.50 lacs (Rs. 19.50 lacs - Rs. 15 lacs).

5.4 The said declaration of gross rent of Rs. 15 lacs by the assessee under PMGKY 2016 and u/s 148 is contrary to the actual rent amount of Rs. 19.50 lacs received by assessee from Sh. Nirmal Agarwal. The assessee has also not disproved the fact of receipt of rent of Rs. 19.50 lacs as admitted by Sh. Nirmal Agarwal, with any cogent material evidence. Vide note sheet entry dtd. 3.5.2019, AR of the assessee was asked to explain and show cause as to why the different amount of Rs. 4.50 lacs should not be added back to the gross rent shown. The AR of the assessee explained that actual amount of rent received has been disclosed in the return of income. However, he did not furnish any documentary evidence in support to rebut the contrary statement given by Sh. Nirmal Agarwal during course of survey which is primary evidence and has evidentiary value in the eyes of law. The assessee has neither controverted the admission of Sh. Nirmal Agarwal with concrete material evidence nor filed any explanation with

evidence in support of his claim and as such he has failed to discharge the onus lies upon him to establish the fact of rental income disclosed in the ITR It is also fact that there was no written agreement in the form of rent agreement or lease deed between two parties and entire payment of rent was made in cash. Here, it is also pertinent to mention that the assessee has disclosed gross rent of Rs. 27.50 lacs in his returns filed u/s 148 for the AY 2016-17 and 2017-18 in accordance with the statement given by Sh. Nirmal Agarwal for these years. Hence, why the assessee has not agreed for the rent amount stated by Sh. Nirmal Agarwal for the year under consideration is best known to him. The facts of the case and circumstantial evidences indicate concealment of Income in the hands of the assessee to the tune of Rs. 4.50 lacs. Accordingly, gross rent from hostel building, after considering surrender of Rs. 12 lacs under PMGKY 2016, is increased by Rs. 4.50 lacs over & above Rs. 3 lacs shown by the assessee in his ITR filed in response to notice u/s 148 of the Act. As such, after allowing deduction @30% u/s 24(a) of the IT Act, net addition on this account works out to Rs. 3,15,000/- (70% of Rs. 4,50,000) which is made to the total income declared.

5.5 As per profit and loss account filed, gross receipt from the profession has been shown at Rs.10,70,925/-. Against this, assessee has also claimed various expenditures at Rs. 5,29,162/- such as salary new papers, electricity, travelling, stationary & petrol etc. resulting in net profit of Rs. 5,41,763/-. Vide notice u/s 142(1), assessee was asked to furnish documentary evidences in support of expenses claimed. However, no evidence or any type of record has been filed or produced for verification of correctness of the claim made. Vide note sheet entry dated 03.06.2019, assessee was asked to explain and show cause as to why the claim on account of expenses should not be restricted in absence of evidences. No reply or explanation has been filed by the assessee in this regard. The Id. AO disallow 10% of the expenses claimed being excessive and unjustifiable to cover up possible leakage of revenue.

6. As the assessee is aggrieved with the above order of the Id. AO passed u/s 143(3) r.w.s 147 of the Act, has preferred an appeal before Id. CIT(A) and the same was dismissed. The relevant finding of the Id. CIT(A) apropos to the grounds so raised by the assessee is reproduced here in below:-

“5.1 The assessee is on appeal before this office against the order passed under section 143(3) r.w.s 147 of the Income Tax Act.

5.2 The assessee was provided multiple opportunities by this office to submit documents and make submissions in response to the appeal filed. However, the assessee has not exercised this option despite multiple reminders. The table below indicates the dates and the compliance status of the various notices issued.

Date of notice	Compliance Date	Remarks
06/01/2021	13/01/2021	No details furnished nor any petition for adjournment was received.
08/10/2021	18/10/2021	Adjournment
12/02/2023	20/02/2023	No details furnished nor any petition for adjournment was received.
27/02/2023	06/03/2023	No details furnished nor any petition for adjournment was received.

The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant is not interested in prosecuting the Appeal.

5.3 The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known Latin dictum, VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT. The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

5.3.1 The Hon'ble Income Tax Appellate Tribunal Kolkata in the case of Pradeep Kumar Jhavar Kolkata vs. DCIT- CCXXI (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asstt. Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.

5.3.2 The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) held as under 480) held as

"If the party, at whose instance the reference is made, fails to appear at the hearing. or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

5.3.3 Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT [(2008) 296 ITR 495] returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

5.4 In view of the above, it is clear that the Appellant is not aggrieved with the assessment order impugned herein and is not interested in prosecuting the same. Accordingly, the additions/disallowances as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to dismiss this appeal. Accordingly the appeal of the assessee stands dismissed.

6. Accordingly, the appeal of the Appellant for AY 2014-15 is dismissed.”

7. As the assessee did not find any favour from the order of the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he has filed the written submissions and the same is reproduced herein below.

“FACTS: 1. The brief facts of the case are that the appellant-assessee is a regular I.T assessee from last so many years. The appellant assessee is lawyer having income from advocate profession, there apart he is also having income from rental income from Rajiv Gandhi Hostel Kota and other sources. The assessee has filed his return of income declaring the total income of Rs. 409210/- on dt.30.03.2015(PB1-5).

The Id. AO on the basis of information received from DCIT Central Circle Kota that during the course of search in M/s Allen Group Kota, a survey u/s 133A was also carried out on 06.02.2017 in case of M/s Kohinoor Hostel at 104, Rajiv Gandhi Nagar Kota, which was being run by Sh. Nirmal Agarwal and statement of Sh. Nirmal Agrawal was recorded u/s 131, in which he admitted owner of this hostel is Sh. Giriraj Agarwal (assessee) and Annual rent of Rs. 19.50 was paid in cash to him. He also stated that no lease or rent agreement or no any type of receipts is taken.

The Id. AO has further noted that in original return the assessee has shown this hostel building in Co-Ownership with his wife Smt. Madhu Goyal. And gross rent of Rs.3.00 Lakhs is stated to be received in which the assessee's share being 50% at Rs.1,50,000/- has been disclosed.

On the above basis the Id. AO has issued the notice u/s 148 on dt. 22.03.2019. In response to the notice u/s 148 the assessee has filed Return of income on dt.

21.05.2019 declaring the total income of Rs.3,82,600/-. In this return gross rent of Rs.3.00 lacks (by admitting 100% share) in from above hostel has been shown in addition to rent from property at 252, Gaytri Nagar Jaipur, professional and interest income has been shown. The Id. AO also reproduced part statement of Nirmal Agarwal in the assessment order at page 4-7. Copy of statement is also enclosed(PB19-40).

During the course of assessment proceeding the assessee filed reply and stated that he had received rent of Rs.15.00 for this year. The assessee has submitted that against this rent of Rs.15.00 lacs he had disclosed rent o Rs.12.00 in PMGKY 2016 as undisclosed rental income(PB52-57). And the assessee filed all the supported documents related to this scheme. The Id. AO noted that the assessee has offered Rs. 28.00 lacs being undisclosed income for A.Y. 2014-15 and 2015-16 under PMGKY scheme. Rs.12.00 Lacs pertains to A.Y. 2014-15 and Rs.16.00 pertains to A.Y. 2015-16.

The Id. AO has stated that the assessee has shown less rent of Rs.4.50 Lacs (Rs.19.50 lacs less Rs.15.00 lacs).

The Id. AO of the view that the rental income shown by assessee of Rs.15.00 lacs (Rs.12.00 lacs under PMGKY and Rs.3.00 under 148) is contrary to actual rent of Rs.19.50 received by the assessee from Nirmal Agarwal. The Id. AO has asked to the assessee to explain as to why difference amount of Rs.4.50 should not be added in the gross rent shown. In response thereto the assessee has submitted that actual rent received has been shown in the return of income.

The Id. AO has stated that the assessee has not submitted anything to rebut the contrary statement given by Sh. Nirmal Agarwal during the course of survey. The Id. AO has stated that the assessee has neither controvert the statement of Sh. Nirmal Agarwal. Thus the Id. AO only on the basis of statements of Sh. Nirmal Agarwal added Rs.4,50,000/- in the gross rent of the assessee and made the addition of Rs.3,15,000/-(70% of Rs. 4,50,000/-) in the total income of the assessee.

In first appeal due to some communication gape the reply could not be filled and the Id. CIT(A) not provided sufficient opportunity of being heard. And he confirmed the additions made by the Id. AO. Hence this appeal.

SUBMISSIONS:

1. Already taxed excess rental income or double tax: At the very outset it is submitted that the assessee had shown the rental income of Rs. 1,50,000/- in the original return filed u/s 139. Thereafter in the return filed u/s 148 he has shown the rental income of Rs.3,00,000/-. There apart to these assessee has also shown or declared the rental income of Rs.12,00,000/- in the PMGKY 2016. Thus the assessee has shown total rental income of Rs.15,00,000/- (3,00,000/- + 12,00,000/-). And the Id. AO has taken the rental income of Rs.19,50,000/-. As per the AO the net rental income amount of Rs. 13,65,000/- (19,50,000/- less 30%) after deduction 30% on which tax was to be charged by the revenue as per law. However against this the revenue or AO has charged the tax on amount Rs.17,25,000/- (Rs.5,25,000/- after 30% deduction of Rs.7,50,000/- (3,00,000/- shown by the assessee + 4,50,000/- added by the Id. AO) + 12,00,000/- declared by the assessee under PMGKY 2016 on which no deduction of 30% has been provided by the revenue or AO despite the facts that the income admittedly was rental income or assessed rental income and the Id. AO himself has less this declared PMGKY amount from the alleged rental income of Rs.19.50 lacs. Thus now again taxing this income is double tax of the same income. The Id. AO has not given credit of that 30% excess income of Rs.3,60,000/- (30% of 12,00,000/-) declared and taxed under PMGKY 2016, which is more than to Rs.3,15,000/-, thus the addition has been made by the Id. AO invalidly and wrongly taxed again which is tantamount of double tax, which is not permissible in law.

The Id. AO was ought to require to give of setoff that excess income of Rs.3,60,000/- for this A.Y. against the addition of Rs.3,15,000/- being the same nature of income. On this preposition kindly refer the decision of Honble Rajasthan High Court in the case of CIT v/s Tyaryamal Bal Chand 165 ITR 453(Raj.), Dhandia Jewellers v/s CIT 214 ITR 712(Raj.). Because as per the AO himself there were availability of Rs.3,60,000/- from the deduction u/s 24 on rental income. The AO has not shown these income from other sources except to rental income.

1.2 It is fundamental rule of taxation that unless provided, same income cannot be taxed twice. In this preposition kindly refer the decision of this Honble Bench in the case of Sh. Avdesh Dangayach V/s ACIT Cir.6 in ITA No. 464/Jp/2016 dt. 23.02.2017 vide page 10. Also Kindly refer Laxmipat Singhania v/s CIT 72 ITR 291(SC), CIT v/s M.P. JayaRam 100 Taxman 544(Kar), Gyan Chand Jain v/s ITO 73 TTJ 859(Jd). Gem Palace v/s CIT 168 ITR 543(Raj.), Ramanlal Madan Lal v/s CIT 116 ITR 657(Cal.), Jain Brothers v/s UOI 77 ITR 107(SC), Further the Honble ITAT in the group case of M/s Gowadia Jewellers in ITA No. 776/Ju/05 at page 8-para 15 dt. 30.09.2008 deleted certain additions, mainly on the reasoning that

such income was already disclosed in the hands of the working partner and as such same income cannot be brought to tax as undisclosed income of the firm.

2. Further the assessee has paid so much higher tax because if the assessee could not have declared the Rs.12,00,000/- under PMGY, then the Id. AO at the worst could have charged the tax on the rental income of amount of Rs.13,65,000/- at the normal slab rate which is maximum of 30%. Here the revenue has charged the taxed on amount of Rs.5,25,000/- at the normal slab rate and Rs.12,00,000/- they charges 49.9% around 50%. This shows so much injustice with the assessee.

Hence the addition so made is prima fasci is illegal, incorrect, wrong and liable to be deleted in full.

3. Further the Id. AO has made the addition only and only on the basis of third party statements, which has not been provided cross examination The Hon'ble Supreme Court in decision dated 02.09.2015 in case of Andaman Timber Industries Vs. CCE 127 DTR 0241 held that denial of opportunity to the assessee to cross-examine the witnesses whose statements were made the sole basis of the assessment is a serious flaw rendering the order a nullity in as much as it amount to violation of principles of natural justice. The Honble Supreme Court has held while dealing with the issue has held in para 5 to 8 as under:

"5. We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.

6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses.

Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The

Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.”

1.3 Covered by the Honble Raj. High Court: Recently the Honble Raj. High Court in the case of Pr. CIT, Jaipur-2 v/s Sh. Sanjay Chhabra in DBIT No. 22/2021 dated 06.04.2022, the Honble HC held that :-

“ The Tribunal by impugned order has categorically held that the material information received by the Assessing Officer from the investigation wing along with certain statements recorded by DBIT Investigation, Calcutta could not be taken into consideration as that material was not disclosed nor an opportunity was accorded for cross-examination of the Assessee. This finding recorded by the Tribunal cannot be said to be perverse or suffering from any patent illegality. Learned counsel for the Revenue could not satisfy us with reference to any judgment on this aspect that even without disclosing any material to the Assessee and without allowing him proper cross-examination, such undisclosed and unverified material could be taken into consideration for the purposes of addition.

The Tribunal’s findings are based on material placed on record. The aspect of human probability, in the present case, only goes against the Revenue because in

the present case, a raid was conducted and in that process, statement is said to have been recorded under Section 132(4) of the I.T. Act, which was, later on, retracted by the Assessee. In a situation like this, where the office premises are sealed for many days and during that period, a statement is said to have been recorded under Section 132 (4) of the I.T. Act, the Tribunal's view that only the basis of such retracted statement, addition could not be justified without any other material admissible in evidence, warrants no interference as it is not a substantial question of law.

In the case of Commissioner of Income Tax Versus Harjeev Aggarwal reported in (2016) 290 CTR (Del) 263 and Kailashben Manharlal Chokshi Versus Commissioner of Income Tax reported in (2010) 328 ITR 411 (Guj) various High Courts have held that addition based solely on statement later on retracted, without anything more, could not be justified in law. Thus, the view taken by the Tribunal cannot be faulted.

In view of the above consideration, we are of the view that this appeal does not involve any substantial question of law and is, therefore, dismissed."

4. It is the settled legal position of the law that no addition can be made only on the assumption, presumption and suspicion kindly, Dhakeshwari cotton Mills 26 ITR 775 (SC), Uma Charan Shaw v/s CIT 37 ITR 271 (SC).

As in the present case there was no documentary evidences with the revenue that Nirmal Agrawal has paid this amount of Rental except the statements and there is no evidently value of statements given under survey u/s 133A until and unless there is no cogent and corroborative material and evidence is found. During the course of search survey also there was no evidence were found which proves that such alleged mount of rent was paid to the assessee except the statements

5. Further there is evidence on record whether the revenue has taxed this alleged undisclosed expenditure in the hands of Sh. Nirmal Dhakar or how much expenses has been allowed against rent expenditure in his hands.

6. Hence in view of the above facts, circumstances and legal position of law the addition so made may kindly be deleted in full.

GOA:3 Disallowance of Rs.52,916/- on account of expenses:

FACTS: The Id. AO has noted that the assessee has shown gross receipts from profession of Rs.10,70,925/- and claimed various expenses of Rs.5,29,162/- and shown net income of Rs.5,41,763/-. The Id. AO alleged that the assessee has not

filed or produced any record for verification of expenses. The Id. AO disallowed the 10% expenses which comes to Rs.52916/-. Thus the Id. AO made disallowance of Rs.52916/-.

In first appeal due to some communication gape the reply could not be filled and the Id. CIT(A) not provided sufficient opportunity of being heard. And he confirmed the additions made by the Id. AO. Hence this appeal.

SUBMISSIONS:

1. Firstly it is submitted that in the entire order of the AO on all the disallowance of expense the only allegation is that no evidences of expenses has been filed no any record produce. Only on these basis no disallowance can be made without bring any material, evidence, instance or proof on record. The nature of business of the assessee is not considered by the AO while making the disallowance. And the Id. CIT(A) has also not accepted the same despite all the facts.

2. Mere suspicion: A bare reading of the order of the AO shall reveal that the disallowances of expenses have been made on ad hoc basis, simply on mere suspicion, surmises and conjectures and on wrong method, without verifying or looking to the nature of profession. No single specific instance of any nature whatsoever has been given by the AO in the impugned order to support his contention with the help of documentary evidence that the expenditures were incurred for non-business purposes, excess and element of personal user etc were there. An allegation remains a mere allegation unless proved. Suspicion may be strong however cannot take the place of reality, are the settled principles kindly refer Dhakeshwari cotton Mills 26 ITR 775 (SC), Uma Charan Shaw v/s CIT 37 ITR 271 (SC). All the disallowances deserve deletion on this submission alone.

3. Businessman is the best judge: It is settled that a businessman is the best judge to take care of its own interest & to take decisions and the AO is not supposed to intervene therein nor he can replace the assessee. Here, whatever decisions were taken by the assessee, has to be understood as taken out of commercial expediency. Kindly refer T.T. Pvt Ltd v/s CIT 121 ITR 551 (Kar), 139 ITR 827 (MP) JK Woolen Manufacturers 72 ITR 612 (SC).

4. Wrong basis at all: It is further submitted that the Id. AO has taken own imaginary basis which is not a good basis looking to the nature of expenses or profession of the assessee and made higher estimated disallowance. The AO has not brought any other single evidence or material on record before making disallowance. Therefore, also the entire disallowance, so made may kindly be

deleted in full. And it is settled that no disallowance and addition can be made without any basis and material.

5. Covered Matter: Further the Id. AO has not rejected the books of account rather accepted when there was no defects in the books of account how the disallowance can be made from the same books, which shows contradictory approach of the Id. AO and CIT(A). The Honble ITAT in the case of Shankar Lal Gokulka v/s ITO Ward Neemkathan in ITA No. 894/Jp/2018 dt 30.04.2019 has deleted the 50% disallowance under the same facts and circumstance.

Here also the position is same because here also the Id. AO has neither rejected the books of accounts nor invoked the provisions of sec. 145(3), as the Id. AO indirectly increased the profit by 10%. Hence the entire disallowance may kindly be deleted in full. Copy of order is enclosed.

6. Reasonable Claim made: It is submitted that looking to a receipts of more than Rs. 10.70 lacks (approx), claim of above expenditure is otherwise very reasonable or meager looking to the profession or as per provisions of Sec. 44ADA . Thus such a claim to achieve such a receipts is not at all unjustified.

7. Professional Purpose: All these expenses were incurred exclusively for the purpose of profession and are under the provisions of the Act. On bare perusal of the expenses it shall reveal that the expenses has been claimed for the profession and on these account there is no expenses which can be said as personal and looking to the nature of the profession these expenses are not higher. The AO blindly disallowed expenses without going on the facts, nature of exp., comparable cases and the Id. AO has blindly ignored these very vital facts and made the disallowance without any basis and hence, the same may kindly be deleted in full.

7.1 In the case of Madnani Construction (P) Ltd V/s CIT 296 ITR 45 (Gau) it has been held that without pointing out any error in the P&L account and audit report, the power of the best judgment assessment could not be invoked and low profit in a particular year itself cannot be a ground for invoking power of best judgment assessment.

7.2 In the case of ACIT v/s Sarv Prakash 24 DTR 91 (Agr)TM it has been held that AO was not justified in disallowing 50% of expenditure debited to the construction account and CIT(A) was justified in deleting the same on the ground that profit rate of 12% declared by the assessee was quite reasonable.

7.3 In CIT v/s Ranichhera Tea Co. 207 ITR 979 (Cal), it has been held that Assessee filing loss return and failing to produce books of accounts on requisition by the ITO- ITO rejecting loss return and determining the income at nil without assigning any reasons – ITO not justified . Here also the AO disallowed 20% disallowance by not assigning any reasons only on the imaginary basis, when the assessee has produced the books of accounts.

7.4 In the case of CIT vs. Swaminarayan Vijay Carry Trade (P.)Ltd. (2013) 84 CCH 311 (Guj) “it has been held that Business expenditure, Allowability of Freight and transportation expenses. Assessee-company was engaged in business of transport —AO having found that assessee had debited huge sum towards freight and transportation expenses, and many of expenses were not authentic and also not supported by evidences, disallowed 2 per cent of such expenses—CIT (Appeals) deleted impugned disallowance made by AO holding that expenses incurred were proved by duly supported vouchers with complete details of expenses as also with name of payee, registration number of truck, etc and AO had no evidence in making any disallowance out of freight and transportation expenses—Tribunal upheld order of CIT (Appeals) holding that findings of CIT(Appeals) could not be controverted by revenue—Held, both authorities have thoroughly considered entire evidence presented before them—On being satisfied that there was cogent material available on record to sustain say of assessee and in absence of any reason to disallow such claim both of them concurrently held in favour of assessee—No question of law much less any substantial question of law arises

Assessee made payments to drivers towards their food and miscellaneous expenses in cash and claimed deduction of such expenses—AO disallowed 10 per cent of expenses—CIT (Appeals) deleted impugned disallowance made by AO holding that AO had failed to bring on record any evidence suggesting that any portion of such expenses was non-genuine or not for purpose of business—Tribunal upheld order of CIT(A)holding that it was impossible for drivers to maintain proper supporting evidences and vouchers in respect of various small expenses incurred by them—Held, both authorities below have dealt with issue of disallowance of 10 percent daily allowance given to drivers appropriately on basis of substantive material available in support thereof—Tribunal was right in holding that it is next to impossible to expect these drivers and helpers to maintain supporting evidences and vouchers in respect of their food and miscellaneous expenses—There was nothing on record to hold such expenses as non-genuine or not for business—No question of law arises

7.5 In the case of CIT vs. PORRITS & SPENCER (A) LTD. (2010) 324 ITR 260 (P&H) It has been held that Disallowance of Rs. 2,91,774 made by the AO on account of personal use of cars/telephones was to be deleted, Business expenditure—Disallowance of Rs. 77,552 made by the AO on account of foreign tour expenses incurred on purchase of gifts was deleted as the same was admissible on the principle of business expediency

8.1 Further it is not disputed that the assessee is professional being lawyer and not required to maintain the books of account if as per sec. 44ADA he can declare the 50% profit or income of the gross receipts and in the present case the assessee has already declared more than to 50%. Assessee has shown 50.60% income. Hence no further disallowance is required to be made.

9. Further the Id AO has doubted the expenses only due to the reasons that the no evidences has been furnished except these he has not made any allegation and he has not brought on record any evidence on the record that the expenses are bogus or has not been incurred rather he has accepted.

7. Hence the addition so made by the AO may kindly be deleted in full and oblige.”

8. In addition to the above written submission the Id. AR of the assessee vehemently argued before us that when the revenue has not disputed the fact that the assessee is a regular income tax payer from last so many years. The assessee is lawyer having income from advocate profession, there apart he is also having income from rental income from Rajiv Gandhi Hostel Kota and other sources. The income that has been assessed to tax is illegal and the assessee should be given the relief in accordance with the law.

9. The Id DR is heard who has relied on the findings of the lower authorities.

10. We have heard the rival contentions and perused the material placed on record. The Bench noted that the assessee is an advocate doing practice in lower courts. It is not disputed that the assessee sought an adjournment on 08.10.2021. That application was not disposed off. Thereafter after a gap of 16 months two notices were issued in the month of February 2023 which were remained non complied. The period were two notices issued was a period where the economic activities were settling down to normal. As there was nationwide Covid 19 Pandemic situation which is beyond the control of the human being and the assessee is prevented by sufficient cause in not filing the reply in that period. The Id. CIT(A) should have considered this aspect of the case and two notices were issued giving very shorter time to assessee. Keeping in view the present facts and circumstances of the case we are of the considered view that while dismissing the appeal of the assessee Id. CIT(A) should have taken the lenient view of the matter and should have considered the appeal filed by the assessee on its merits while disposing it merely on technical reasons. Based on these set of facts we feel that the assessee has not received justice and appeal of the assessee has been dismissed merely on

the ground that the reply of the notices issued in February 2023 were not complied with. Considering this set of aspect we deem it fit the interest of justice to restore the matter to the file of Id. CIT(A) to decide on the merit of the case. Therefore, we set a side the matter to the file of Id. CIT(A) to decide the appeal of the assesses on merits. The assessee is also directed to co-operate with the Id. CIT(A) in deciding the appeal on merits and without sufficient reason, not to take further adjournments. Before parting, we may make It clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having an reflection or expression on merits of the dispute, which shall be adjudicated by the learned Commissioner of Income Tax, (Appeals) independently in accordance with the law.

In terms of these observations, the appeal of the assessee in ITA no. 200/JP/2023 is allowed for statistical purpose.

11. The fact of the case in ITA No. 201-JP-2023 is similar to the case in ITA No. 200-JP-2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 201/JP/2023 is equally similar on set of facts and grounds except for one ground of allowing deduction u/s

80C. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 200/JPR/2022 for the Assessment Year 2014-15 shall apply mutatis mutandis in the case of Giriraj Prasad Goyal in ITA No. 201-JP-2023 for the Assessment Year 2015-16 and as regards the deduction u/s 80 C also the assessee is directly to place on record relevant material before Id. CIT(A) as the other issues we are set a side to his file to decide on merits.

In the result, both appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 05/07/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/07/2023

*Ganesh Kumar

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

1. The Appellant- Sh. Giriraj Prasad Goyal, Tonk
2. प्रत्यर्थी / The Respondent- ITO Ward, Tonk
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 200 & 201/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar