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 No. 90/JP/2023
निर्धारण वर्ष/Assessment Years : 2014-15

Bhim Singh Brij Raj Bhawan, Civil Lines Kota	बनाम Vs.	DCIT, Circle-02, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAHB 7814 B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. B. V. Maheshwari (CA)
राजस्व की ओर से/ Revenue by : Sh. R. S. Meel (JCIT)

सुनवाई की तारीख/ Date of Hearing : 08/06/2023
उदघोषणा की तारीख/Date of Pronouncement: 17/07/2023

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 30/12/2022 [here in after (NFAC)] for assessment year 2014-15 which in turn arise from the order dated 30.06.2020 passed under section 154 of the Income Tax Act, by DCIT, Circle-02, Kota.

2. In this appeal, the assessee has raised following grounds: -

"1. That the Ld. AO grossly erred on law and facts in rejecting the application u/s 154 for rectification of apparent mistake in order u/s 154 dated 30.06.2020" That the Ld. CIT(A) also erred in not considering the ground of the assessee.

2. That the ld. AO grossly erred on law and facts in not accepting the orders and decision of higher authorities, where as he is ought accept the order of higher authorities without any reservation" That the Ld. CIT(A) also erred in not confirming the ground which is against the law.

3. That the Ld. AO grossly erred on law and facts in treating the income from Sarovar Complex Rs. 5,36,340.00 in place of Rs. 3,75,477.00 as decided by the Hon. CIT(A) and Hon. ITAT difference Rs. 160863.00. The Ld. CIT(A) also erred in not considering the ground & submission of assessee.

4. That the ld. AO grossly erred on law and facts in not allowing the TDS credit of Rs. 3,25,267.00 the Assessee claimed TDS Rs. 8,77,903.00 the Ld. AO allowed Rs. 5,52,636.00 for this the Hon. CIT(A) have given clear direction in appeal No. 05/17-18 order dtd. 28.03.2019. That the Ld. CIT(A) also erred in not deciding the issue & set aside for AO which is beyond the power of CIT(A).

5. That Appellant, craves to leave, add, alter the grounds of Appeal."

3. Succinctly, the fact as culled out from the records is that in this case, appeal effect order u/s 143 read with section 250/254 of the I.T. Act was passed on 06.03.2020 at total income of Rs. 52,55,860/- & agricultural income of Rs. 15,000/-. Subsequently, the assessee has filed rectification application on 25.06.2020 and stated that rental income of Rs. 5,36,436/- should be considered as commercial income of Rs. 3,75,477/- as per the CIT(A)'s order. The CIT(A) has given finding that appellant would not be entitled for deduction @ 30% under section 24 of the I.T. Act, 1961. From the computation of the total income of the assessee AO noticed that

assessee has declared rental income of Rs. 3,75,375/- after claiming 30% deduction of Rs. 1,60,875/-. The CIT(A) has directed to treat this income as business income instead of income from house property. Based on these observation the application made by the assessee was disposed off by the DCIT/ACIT, Circle-2, Kota.

4. Aggrieved from the order of the DCIT/ACIT, assessee preferred and appeal before the ld. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below:-

> "5. Decision: I have considered the order passed by the LAJO and submissions made by the appellant. This appeal is against order u/s 154 of the Income Tax Act, passed by the Assessing Officer. The appellant has declared rental income of Rs. 3,75,375/- after claiming 30% deduction of Rs. 1,60,875/-. The Commissioner of Income Tax (A) has directed to treat the income as business income instead of income from house property.; Hence, rectification application u/s 154 was rejected by the Assessing Officer.
>
> 5.1 The appellant is in appeal before me. The appellant has argued that proper order giving effect of the order of Ld. Commissioner of Income Tax (A) and Hon'ble Income Tax Appellate Tribunal has not been given. Relevant extract of both the orders have been submitted. I have gone through the same. I find no infirmity in the order of the Assessing Officer. Hence, the order of the Assessing Officer, rejecting the petition u/s 154 is sustained, and the appeal of the appellant is dismissed on these grounds. Accordingly, grounds of appeal No. 1 to 3 are disposed off as dismissed.
>
> 6. Ground No. 4 is regarding TDS credit not given to the appellant as per the order of Hon'ble Commissioner of Income Tax (A). The appellant will produce the TDS certificates before the Assessing Officer and after due verification and as per law, Assessing Officer will allow credit on this accordingly. For statistical purpose, the ground of appeal No. 4 is allowed.

7. In the result, the appeal of the appellant is partly allowed."

5. Feeling dissatisfied from the ld. order of the ld. CIT(A) the assessee has preferred this appeal on the grounds as raised and reproduced here in above. A propose to the grounds so raised the ld. AR appearing on behalf of the assessee has placed his written submission which is extracted in below;

"That based on the appeal order decided by Hon. CIT(A) and then by Hon. ITAT the assessee's income from Sarovar Complex was to be considered Rs. 3,75,477.00. The Ld. A.O. taken the income Rs. 5,36,340.00. The Ld. CIT(A) have given clear direction, that income is to be taken Rs. 3,75,477.0. we filed application u/s 154 which has been rejected.

Further the assessee claimed TDS credit of Rs. 8,77,903.00 whereas it was allowed Rs. 5,52,636.00 i.e. short allowed by Rs. 3,25,267.00.

On both the above issues the rectification u/s 154 was filed which has been rejected.

GROUNDS OF APPEAL

1. *"That the Ld. A.O. grossly erred on law and facts in rejecting the application u/s 154 for rectification of apparent mistake in order u/s 154 dtd. 30.06.2020''*

   That the Ld. CIT(A) also erred in not considering the ground of the assessee.

2. *''That the Ld. A.O. grossly erred on law and facts in not accepting the orders and decision of higher authorities, where as he is ought accept the order of higher authorities without any reservation''*

   That the Ld. CIT(A) also erred in not confirming the ground which is against the law.

3. *That the Ld. A.O. grossly erred on law and facts in treating the income from Sarovar Complex Rs. 5,36,340.00 in place of Rs. 3,75,477.00 as decided by the Hon. CIT(A) and Hon. ITAT diference Rs. 160863.00.*

   The Ld. CIT(A) also erred in not considering the ground & submission of Assessee.

4. *That the Ld. A.O. grossly erred on law and f acts in not allowing the TDS credit of Rs. 3,25,267.00 the Asssessee claimed TDS Rs. 8,77,903.00 the Ld. A.O. allowed Rs. 5,52,636.00 for this the Hon. CIT(A) have given clear direction in appeal No. 05/17-18 order dtd. 28.03.2019."*

   That the Ld. CIT(A) also erred in not deciding the issue & set aside for A.O. which is beyond the power of CIT(A).

5. That Appellant, craves to leave, add, alter the grounds of Appeal.

SUBMISSIONS:

Ground 1:

"That the Ld. A.O. grossly erred on law and facts in rejecting the application u/s 154 for rectification of apparent mistake in order u/s 154 dtd. 30.06.2020''

That the Ld. CIT(A) also erred in not considering the ground of the assessee.

SUBMISSIONS :

That on finalizing the appeal from Hon. CIT (A) Kota in Appeal No. 326/16-17 and then order passed by the Hon. ITAT in ITA No. 821/JP/2017 that as regards the ground no. 7 of order of Hon. CIT(A), the order of Hon. CIT(A) have got finality and no interference was done by the Hon. ITAT on the said ground. The said ground No. 7 is reproduced here as well the decision of CIT (A).

Ground No. 7

"The assessing officer erred in law as well as on facts in assessing income of commercial shop Rs. 5,36,340/- gross (Net Rs. 375477) as property income instead of business income.

The said income is from "commercial Property" of "Sarovar Complex" is a business income.

The same be assessed as business income as per past appellate orders.

As per Ld. CIT(A)

As regards Ground of appeal no. 7, as per the order of my predecessor CIT(A) referred in ground no. 6 above, on this issue in the earlier assessment year and my own order in appeal no. 626/14-15 for A.Y. 2012-13 vide my order dated 23.01.2017 and for A.Y. 2013-14 vide Appeal No. 448/15-16, order dated 24.01.2017, I hold that the net income from commercial property of Rs. 3,75,477/- is to be assessed as business income & not as income from property.

Even after the above clear order the Ld. A.O. have taken the Business income from properties Rs. 5,36,340/- whereas the CIT (A) has clearly stated that income be taken Rs. 3,75,477/- the assessee objected on this wrong appeal effect & an rectification application was filed u/s 154, but the Ld. A.O. have rejected the same, by stating that the 30% have already been allowed, whereas there is no question of 30% when the CIT(A) have determined the income Rs. 375477/- as such since it was the apparent mistake of calculation but the Ld. A.O. have not considered our application.

We thus request you to allow the ground of appeal & direct the Ld. A.O. give proper appeal effect and accept the application filed u/s 154 of I.T. Act, 1961.

The Ld. CIT(A) faceless have rejected the ground without any reasons by stating as under

"5.1 The appellant is in appeal before me. The appellant has argued that proper order giving effect of the order of Ld. Commissioner of Income Tax (A) and Hon'ble Income Tax Appellate Tribunal has not been given. Relevant extract of both the orders have been submitted. I have gone through the same. I find no infirmity in the order of the Assessing Officer. Hence, the order of the Assessing Officer, rejecting the petition u/s.154 is sustained, and the appeal of the appellant is dismissed on these grounds. Accordingly, grounds of appeal No.1 to 3 are disposed off as dismissed."

That when there was a clear order of Ld. CIT(A) & Hon. ITAT the Ld. A.O. & CIT(A) faceless to allow the appeal effect as per order of Higher Authorities.

Ground 2:

'That the Ld. A.O. grossly erred on law and facts in not accepting the orders and decision of higher authorities, where as he is ought accept the order of higher authorities without any reservation''

That the Ld. CIT(A) also erred in not confirming the ground which is against the law.

SUBMISSIONS:

In this case there is a clear order of Hon. CIT(A) as well as ITAT and the Ld. A.O. have no authority to interfere in the decision of higher authorities. He is ought to have accepted the order of Higher authorities. The A.O. cannot bring back his mistakes after the order of Higher authorizes.

It has been held in the case of Kamlakshi Finance Ltd's Case AIR19925C711, 1994 (46) that the A.O. is bound to accept the order of higher authorities without any reservation. The relevant citation is given here in under.

Union of India and other v/s Kamlakshi Finance Corporation (AIR 1992 SC 711, 1994 (46) supreme Court. THAT THE Ld. A.O. as well as the Ld. CIT(A) his rejected our plea on these issues means they are not allowing the order of Higher Authorities.

Ground 3:

That the Ld. A.O. grossly erred on law and facts in treating the income from Sarovar Complex Rs. 5,36,340.00 in place of Rs. 3,75,477.00 as decided by the Hon. CIT(A) and Hon. ITAT diference Rs. 160863.00.

The Ld. CIT(A) also erred in not considering the ground & submission of Assessee.

SUBMISSIONS:

That the assessee filed income under this head Rs. 374477/- and it was considered as business income the Ld. A.O. Held it to be income from house property and the Ld. CIT(A) held it to be business income thus the income is not changed from original assessment to Appeal but while allowing the appeal effect the Ld. A.O. have brought the income of Rs. 536340/- whereas there is no change in income either in original assessment or as per order of CIT(A) the only change was that the CIT(A) decided it to be Business Income. Whereas the A.O. held as income from House property.

In view of above we submit that the income be taken Rs. 375361/- as business Income not Rs. 536340.00.

Ground 4:

That the Ld. A.O. grossly erred on law and f acts in not allowing the TDS credit of Rs. 3,25,267.00 the Asssessee claimed TDS Rs. 8,77,903.00 the Ld. A.O. allowed Rs. 5,52,636.00 for this the Hon. CIT(A) have given clear direction in appeal No. 05/17-18 order dtd. 28.03.2019."

That the Ld. CIT(A) also erred in not deciding the issue & set aside for A.O. which is beyond the power of CIT(A).

SUBMISSIONS:

That as per income of the assessee the assessee claimed taxes paid (TDS + Advance Tax) Rs. 8,77,903/- however the Ld. A.O. allowed credit of Rs. 5,52,336/- It was also a matter of rectification, but the Ld. A.O. rejected without any finding we are submitting the details of Taxes paid. TDS along with relevant income declared in the return, kindly allow the proper credit.

The Ld. CIT(A) decided as under

"6. Ground No.4 is regarding TDS credit not given to the appellant as per the order of Hon'ble Commissioner of Income Tax (A). The appellant will produce the TDS certificates before the Assessing Officer and after due verification and as per law, the Assessing Officer will allow credit on this accordingly. For statistical purpose, the ground of appeal No.4 is allowed."

But the Ld. A.O. have not allowed the credit of TDS though we submitted the details of income as well as relevant TDS deducted by the Persons

On this issue there is a clear order of Hon. ITAT that credit be given to the person who has taken income in his return.

It has been decided in the following case

Anil Ratanlal Bohra v/s ACIT

(2023) (1) TMI 862 ITAT Pune

ITA No. 675/Pune/2022

order dtd. 19.01.2023 A.Y. 2021-23

Which is as under

FACTS

Assessee, an individual, filed his return of income wherein he interalla claimed credit for TDS of 2,80,456 being proportionate amount deducted at source by State Rank of India from the interest on fixed deposits placed by his wife with the State Bank of India. This amount of 7280,456 was in respect of interest attributable to fixed deposits which were placed by the wife of the assessee with State Bank of India out of the funds gifted by the assessee to her. Accordingly, in terms of section 64 of the Act, the income thereon was includible in total income of the assessee. The assessee included such income in the return of income and also claimed corresponding credit.

The CPC, in intimation denied credit of TDS claimed since the same was not reflected in Form No. 26AS of the assessee.

Aggrieved, the assessee filed an appeal to CIT(A) who held that the provisions of Rule 37BA(2) were not complied with and as a result, the assessee was not entitled to the credit for deduction of tax at source.

Aggrieved, the assessee preferred an appeal to the Tribunal.
HELD

The Tribunal noted the provisions of section 199 and observed that sub-Rule (2) of Rule 37BA is significant for deciding the appeal.

It noted that a careful perusal of sub-rule (2) indicates that where the income, on which tax has been deducted a source, is assessable in the hands of a person other than deductee, then credit for the proportionate tax deducted at source shall be given to such other person and not the deductee. The proviso to sub-rule (2) provides for deductee filing a declaration with the deductor giving particulars of the other person to whom credit is to be given. On receipt of such declaration, the deductor shall issue certificate for the deduction of tax at source in the name of such other person.

The crux of section 199 read with Rule 37BA(2) is that if the income, on which tax has been deducted at source, is chargeable to tax in the hands of the recipient, then credit for such tax will be allowed to such recipient. If, however, the income is fully or partly chargeable to tax in the hands of some other person because of the operation of any provision, like section 64 in the extant case. The proportionate credit for tax deducted at source should be allowed to such other person who is chargeable to tax in respect of such income, notwithstanding the fact that he is not the recipient of income.

It is with a view tO reqularise the allowing of credit for tax deducted at source to the person other than recipient of income, that the proviso to Rule 37BA(2) has been enshrined necessitating the furnishing of particulars of such other person by the recipient for enabling the deductor to issue TDS certificate in the name of the other person. The proviso to Rule 37BA(2) is just a procedural aspect of giving effect to the mandate of section 199 for allowing credit to the other person in whose hands the income is chargeable to tax.

One needs to draw a line of distinction between substantive provision [section 199 read with Rule 37BA(2) without proviso] and the procedural provision [proviso to Rule 37BA(2)). Non compliance of a procedural provision, which is otherwise directory in nature, cannot disturb the writ of a substantive provision.

The Tribunal held that merely because the assessee's wife did not furnish declaration to the bank in terms of proviso to Rule 37BA(2), the amount of tax deducted at source, which is otherwise with the Department, cannot be allowed to remain with it eternally without allowing any corresponding credit to the person who has been subjected to tax in respect of such income. As them substantive provision of section 199 talks of granting credit for tax deducted at source to the other person, who is lawfully taxable in respect of such income, we are satisfied that the source must also be allowed to him.

The Tribunal held that the credit for deducted on 2.80,656 actually interest income of 37.42 lakh be allowed to the assessee who has been taxed on such income."

That the facts of this case are similar the appellant, Sh. Bhim Singh took the credit of TDS on the income which is booked by him in his return and the credit showing the same was submitted by us i.e. a table was submitted that what is the income & its corresponding TDS. That due to mistake of Bank the income tax was deducted on wrong PAN.

As such kindly allow the credit of TDS However we also state that we have not taken credit of amount of TDS at any were except in the case of Assessee Bhim Singh (PAN : AAAHB7814B).

6. In addition to the written submission the ld. AR of the assessee submitted in the first round of litigation the appeal of the revenue was dismissed by the ITAT in ITA no. 821/JP/2017 the appeal filed by the

revenue was dismissed. Thus, the ld. AO should give the relief to the assessee but while do so the ld. AO has not followed the direction of the ld. CIT(A) that income to be considered at Rs. 3,75,477/-. Even though there was specific direction the income was computed considered the income at Rs. 5,36,340/. As regard the granting of the credit of TDS ld.AR of the assessee submitted that the ld. AO be directed to follow the earlier direction of the ITAT for granting the credit of the TDS if the income is offered by the assessee.

7. The ld DR is heard who has relied on the findings of the lower authorities and submitted that the in fact there is no mistake apparent on record so far as income to be determined and granting of credit of the TDS.

8. We have heard the rival contentions and perused the material placed on record. We have also gone through the order of the CIT(A) and order of the coordinate bench in the first round of litigation. The bench noted the ld. CIT(A) in appeal no. 326/16-17 dated 11.08.2017 at page 74 recorded following finding so far as ground no. 3 is concerned :

> "As regards the ground no. 7, as per order of my predecessor CIT(A) referred in ground no 6 above, on the issue in the earlier assessment year and my own order in appeal no. 626/14-15 for A.Y. 2012-13 vide my order dated 23.01.2017 and for A. Y. 2013-14 vide appeal no. 448/14-15 order dated 24.01.2017, I hold that the

> net income from commercial property of Rs. 3,75,477 is to be assessed as business income & not as income from house property. As a corollary, the appellant would not be entitled for deduction @ 30 % u/s. 24 of the Act."

8.1 The bench noted that the ld. AO has followed the direction of the CIT(A) and there is no mistake on this aspect.

8.2 As regards, the ground of appeal no. 4 (in original appeal ground no. 10) raised by the assessee the relevant finding of the ld. CIT(A) in appeal no. 326/16-17 dated 11.08.2017 at page 75 recorded following finding so far as ground no. 3 is concerned :

> "As regards the ground no 10, the AO in directed to allow credit for all prepaid taxes paid by the assessee including on TDS deduction. Hence allowed.

8.3 Before us, the ld. AR of the assessee has not demonstrated as to how much credit is granted and how much not. Therefore, we resort this matter to the file of the ld. AO and direct the ld. AO to grant the TDS credit in accordance with the law. Therefore, ground no. 4 raised by the assessee is allowed for statistical purpose.

9. The Ground no 1 & 2 being technical challenging the rectification application which we have dealt on merits and therefore, these grounds of appeals are treated as dismissed.

In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 17/07/2023.

Sd/-	Sd/-
(संदीप गोसाई)	(राठौड कमलेश जयंतभाई)
(Sandeep Gosain)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 17/07/2023
*Ganesh Kumar, PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Bhim Singh, Kota
2. प्रत्यर्थी / The Respondent- DCIT, Circle-02, Kota
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 90/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar