

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 23/Ind/2023
(Assessment Year:2013-14)

Rajpal Jain Indore	Vs.	ITO-3(3) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AKYPJ 3794 L		
Assessee by	Shri Girdhar Garg AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2023	
Date of Pronouncement	25.07.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 11.11.2022 of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi for Assessment Year 2013-14.

2. The registry has pointed out the delay of 14 days in filing the present appeal. At the time of hearing ld. AR has submitted that initially the appeal was filed online through e-filing portal on 09.01.2023, a copy of the e-filing acknowledgement is filed along with appeal papers however, subsequently on 27.01.2013 the appeal was also filed physically. Therefore, the appeal i.e. within the period of limitation as filed on 09.01.2023.Ld. DR has fairly submitted that once the appeal is filed online within the period of limitation then the same is within the period of

limitation. Accordingly, once the appeal was filed online on 09.01.2023 within the period of limitation then subsequent filing of appeal physically on 27.01.2023 would not alter the original filing hence, same is considered as within the period of limitation.

3. The assessee has raised following grounds of appeal:

“01. That the CIT(A) is in erred into not considering the facts that the all the three brothers had taken loan of Rs. 25,00,000/- for purchase of house on the basis of non-providing of evidence of loan to him.

2.Ground02. That the CIT(A) is in erred into not considering the 0 evidence attached by the assessee during the hearing of the case and held that in absence of application for the provision of rule 46A the documents submitted is not considered for hearing.

3.Ground03. That the CIT(A) is in erred into misinterpreted the head of income for salary income of Rs. 2,59,200/- and held that there is no change in the taxable income therefore no adjustment is required.

4.Ground04. That the CIT(A) is in erred into not considering the plea 0 of the assessee that if the stamp duty paid is considered as income than the payment of stamp duly for purchase of house is also eligible for deduction under section 80C.

5.Ground05. The levy of interest u/s 234-B & 234-C is arbitrary, illegal and bad-in-law on the facts and circumstances of the case.

6.Ground06. That no proper and reasonable opportunity was given to the appellant to prove his case and lead evidence in support of his claim through the video conferencing.

7.Ground07. The Appellant craves, to leave, to add, to alter or amend any grounds of appeal at the time of or before final hearing of this appeal.”

4. At the time of hearing Ld. AR of the assessee has submitted that the AO has passed *ex-parte* order u/s 144 of the Act. The assessee challenged the order of the AO before Ld. CIT(A) and also requested for admission of the additional evidence for want of the same the AO made disallowance but the Ld. CIT(A) has rejected plea of the assessee for admission of additional evidences. The Ld. AR has pointed out that the assessee has purchased property in question along with two brothers in joint name for a consideration of Rs.32,11000/- out of which a sum of Rs.25,00,000/- was

taken as loan from bank for purchase of this property and further sum of Rs. 5,00,000/- was taken as loan from Cooperative Society M/s Jay Bharat Cooperative Society. The Id. AR has submitted that all relevant record was produced before the AO except loan taken from Cooperative Society. The entire payment was made through Cheque for the purpose of consideration except a sum of Rs.2,24,800/- towards stamp duty and registration charges paid in cash which is explained by the assessee from loan taken from bank as well as from Cooperative Society. The AO in the order passed u/s 154 has accepted the loan taken from bank but since the record of the loan taken from the society was not available on the assessment record therefore, the AO refused to accept the said plea while passing the order u/s 154 of the Act. The Id. CIT(A) has confirmed the addition made by the AO for want of evidence and refused to accept additional evidence in the absence of proper application under Rule 46A of the Income Tax Rules. Thus, Ld. AR has submitted that once the assessee has brought on record the supporting evidence to show the source of the purchase consideration the addition sustained by the Id. CIT(A) is not justified and the same may be deleted.

5. On the other hand Ld. DR has submitted that the AO has already allowed the claim of the assessee to the extent which is supported by the evidence filed before the AO. In the proceeding u/s 154 the AO cannot conduct a fresh inquiry in respect of the evidence which was not filed by the assessee during the assessment proceedings. He has relied upon the orders of the authorities below and submitted that the additional evidence sought to be filed by the assessee requires verification and examination. Therefore, the matter may be remanded to the record of the AO for verification and examination of the additional evidences sought to be filed by the assessee.

6. We have considered rival submission as well as relevant material on record. Initially the Assessing officer has made the addition by considering loan amount of Rs.11,25,000/- however, in the rectification order passed u/s 154 of the Act on 27.06.2019 the AO accepted the loan amount of

Rs.25,00,000/- and consequently addition of Rs.3,11,933/- was made by the AO. Ld. AR of the assessee has submitted that the AO has not considered the loan of Rs.5 lac taken by the assessee from Cooperative Society namely M/s Jay Bharat Cooperative Society and therefore, the addition sustained by the Ld. CIT(A) is not justified. It is pertinent to note that the assessment order was passed ex-parte u/s 144 when there was no compliance on behalf of the assessee to the notices issued by AO. Though the AO in the rectification order has accepted the claim of loan from bank of Rs.25 lac which was part of the assessment record but did not entertain the claim of loan from cooperative Society. Before the Ld. CIT(A) the assessee made a request of admission of the additional evidence however, no formal application was filed and consequently the Ld. CIT(A) has confirmed the addition made by the AO as under:

“6.2.2 The assessee submitted that the consideration was paid by different family members as per details submission. However, these details were not filed before AO therefore, these details should have been filed along with the application for admission of additional evidence as per provisions of Rule 46A. As no such application was filed the evidence cannot be admitted for consideration.

6.2.3 The assessee also submitted that part of the money was financed from his salary. This also is an additional evidence and as cited above cannot be considered. Moreover, as the assessee has not offered any salary income even if the source is concerned it will have no impact on the total income of the assessee as on one hand part of the investment will be treated as explained being out of salary income on the other hand the same would be added under the head 'Salary'.”

7. We find from the record that the assessee has made a request/plea for admission of additional evidence however, the Ld. CIT(A) did not consider the said request in the absence of formal application. The Ld. AR has filed a copy of request made by the assessee before the Ld. CIT(A) dated 11.10.2022 wherein the assessee has specifically made a prayer for consideration of additional evidence which is relevant and crucial for deciding the issue. Accordingly in the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of the Ld.

CIT(A) and remand the matter to the record of the AO for verification and consideration of the additional evidence filed by the assessee and consequently decide the issue of availability of funds after giving an opportunity of hearing to the assessee.

8. In the result, appeal of assessee is allowed for statistical purposes.

Order is pronounced in Open Court on 25 / 07/2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 25.07.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*