

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1323/JP/2019  
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Ravi Shastri 31-B, Jadon Nagar-B, Durgapura Jaipur	बनाम Vs.	The ACIT Circle-3 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BOMPS 9455 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anil Kumar Sharma, CA  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 24/07/2023  
उदघोषणा की तारीख / Date of Pronouncement: 29 /09/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the ld. CIT(A)-4, Jaipur dated 18-09-2019 for the assessment year 2017-18 wherein the assessee has raised the following grounds of appeal.

“1.1 Under the facts and circumstances of the case the AO is not justified in making the addition of Rs.31.00 lacs to returned income u/s 69 of the I.T. Act, 1961 towards the cash found during the course of search conducted on 23-12-2016 holding the same taxable @ 60% u/s 115BBE of the Act.

1.2 Under the facts and circumstances of the case the AO is not justified in ignoring the surrender made by the assessee in PMGKY 2016 by depositing due tax and making due investment in PMGKY Bonds within the period prescribed for the same.

2 Under the facts and circumstances of the case the AO is not justified in estimating the turnover of the assessee of Rs.1,09,91,178/- against declared turnover of Rs.81,58,178/- and in making addition of Rs.1,69,980/- to returned income by estimating the net profit u/s 44AD of the Act of 6,59,471/- against that of Rs.4,89,491/- by the assessee.

2.1 During the course of hearing, the ld. AR of the assessee has not pressed the Ground No. 2. Hence, the same is dismissed being not pressed.

3.1 The Ground Nos. 1.1 and 1.2 are interrelated and interconnected and also relate to challenging the order of the AO who made an addition of Rs.31.00 lacs . Brief facts of the case are that the assessee is engaged in the trading of building material in the proprietorship concerns M/s. Vijavargiya Infra Projects & MVJ Infra projects. A search was conducted on 23-12-2016 in the case of Shri Ravi Shastri alias Ravi Vijayvargia, Jaipur to which the assessee belongs. Various assets/books of accounts and documents were found and seized as per annexure prepared during the course of search. It is noted that the assessee e-filed his return of income on 31-03-2018 for the A.Y. 2017-18 declaring total income at Rs.4,04,680/-. In this case, the AO completed the assessment u/s 143(3) r.w.s. 153B(1)(b) of the Act vide order dated 24-12-2018 at a total income of

Rs.36,74,660/-. During the course of assessment proceedings, the assessee explained that the above said cash of Rs.31.00 lacs found and seized in search operation was surrendered in PMGKY 2016 on account of undisclosed income for A.Y. 2017-18 and paid tax thereon and also deposited 25% of above income in PMGKY bonds. It is also noted that in support of the same, copy of affidavit, challan of 25% deposition, challan of Rs.15.46 lacs adjustment from PD account for the above undisclosed income had been filed. However, the AO on verification of assessment records found that the assessee did not file PMGKY certificate in which he had surrendered undisclosed income of Rs.31.00 lacs which was found and seized during the search. Therefore, a show cause notice dated 19-12-2018 was issued and served upon the assessee for furnishing certificate of PMGKY alongwith copy of Form No. 1 & 2 for necessary compliance. The AO thus observed at para 4.1 of his order that *though the assessee had claimed to have deposited the cash seized in PMGKY scheme but on perusal of record, PMGKY certificate was not issued and even the form was not submitted. Hence, claim of the assessee is not acceptable in the light of CBDT's notification dated 16-12-2016 wherein it was clearly mentioned that a declaration of income in the form of cash or deposit in an account maintained with a specified entity under sub-section (1) of Section 199C shall be made in Form -1 but no such form was filed by the*

*assessee*. Thus the AO made an addition of Rs.31.00 lacs by observing at page 4, as under:-

“As per the above circular, the assessee was required to file/ furnish the declaration Form No. 1 under PMGKY on or before 31-03-2017 but the same was not filed by the assessee. In view of the above, the claim of PMGKY for cash seized during the search is hereby rejected and the addition of Rs.31,00,000/- is hereby added in his total income on account of undisclosed money u/s 69A r.w.s. 115BBE of the I.T. Act and taxed @ 60% and added to this total income for the A.Y. 2017-18 accordingly....”

3.2 In first appeal, the ld. CIT(A) took into consideration the written submission of the assessee which has been reproduced at para 5 of the ld. CIT(A)'s order, however, the ld CIT(A) confirmed the action of the AO by observing as under:-

“Decision

6. I have perused the written submissions submitted by the . A/R and the order of AO. I have also gone through various judgements cited by the ld. A/R and those contained in the order of AO. I have also gone through the relevant pages in the paper book filed by the ld. A/R.

6.2 I have carefully gone through the ld.AO order specially para 4 an 4.1 and also submissions made. I am of the view there is no certificate from the jurisdictional PCIT issuing certificate for stated filing of PMGKY. On the facts and in the circumstances of the case, the addition by the ld. AO is confirmed.

7. In the result, the appeal is dismissed.”

3.3 During the course of hearing, the ld. AR of the assessee filed the written submission with the prayer that the assessee is quite hopeful to succeed in writ petition and to obtain certificate of acceptance of PMGKY 2016 and also requested to send back the matter to the file of AO to provide an opportunity to the assessee.

The contents of the written submissions are as under:-

“12. The assessee after completion of assessment proceedings vide letter dated 11.03.2019 requested the Department to issue the certificate of acceptance of PMGKY 2016.(PB No.36-37)

13. The Department on Technical Ground that the Declaration has not been filed in prescribed Form No.1 refused to issue the certificate of acceptance.

14.The assessee has filed a writ petition before Hon. High Court for issuing directions to the department towards acceptance of declaration of the assessee in PMGKY 2016 and issuance of certificate of acceptance.(PB No.57-71).

15. The Hon. High Court vide order dated 27.09.2021 admitted the Writ petition and issued notice to the department with directions for early listing of the case, however the case though listed certain times could not be heard and disposed.

16. The assessee is quite hopeful to succeed in Writ petition and to obtain certificate of acceptance of PMGKY 2016.

17. Therefore case of the assessee may kindly be sent back to the file of the AO to provide an opportunity to the assessee:

(i) to submit Certificate of acceptance of PMGKY 2016 or otherwise as directed by Hon. High Court in this connection.

(ii) Alternatively to explain Source of cash found during the course of Search on merits if the declaration filed in PMGKY 2016 is liable to be treated as never been filed.”

3.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.5 We have heard both the parties and perused the materials available on record.

The crux of the issue is that the AO observed at para 4.1 of his order that though the assessee had claimed to have deposited the cash seized in PMGKY scheme but on perusal of record, PMGKY certificate was not issued and even the form was not submitted. Hence, claim of the assessee is not acceptable in the light of CBDT's notification dated 16-12-2016 wherein it was clearly mentioned that a declaration of income in the form of cash or deposit in an account maintained with a specified entity under sub-section (1) of Section 199C shall be made in Form -1 but no such form was filed by the assessee. Thus the AO made an addition of Rs.31.00 lacs by observing at page 4, as under:-

“As per the above circular, the assessee was required to file/ furnish the declaration Form No. 1 under PMGKY on or before 31-03-2017 but the same was not filed by the assessee. In view of the above, the claim of PMGKY for cash seized during the search is hereby rejected and the addition of Rs.31,00,000/- is hereby added in his total income on account of undisclosed money u/s 69A r.w.s. 115BBE of the I.T. Act and taxed @ 60% and added to this total income for the A.Y. 2017-18 accordingly....”

In first appeal, the ld. CIT(A) has confirmed the action. Hence, from the entire conspectus of the case, the Bench comes to conclusion that the ld. CIT(A) as well

as the AO passed the well reasoned order because of non-submission of required documents by the assessee and thus dismiss the ground no. 1.1. and 1.2 raised by the assessee. However, the ld. AR of the assessee placed on record a Civil Writ Petition No. 9052/2019 and also submitted that the assessee had requested the department to issue the certificate of acceptance of PMGKY 2016 but the department on technical ground had refused to issue the required certificate of acceptance. Under such circumstances, the assessee filed a writ petition before the Hon'ble Rajasthan High Court, Jaipur Bench, Jaipur for issuing a direction to the Department towards acceptance of declaration of the assessee in PMGKY 2016 and issuance of certificate of acceptance. It is further submitted that the assessee is quite hopeful to succeed in writ petition and obtain certificate of acceptance of PMGKY 2016. After perusal of the copy of the writ petition, we find that Hon'ble Rajasthan High Court , Jaipur Bench, Jaipur vide order dated 27-09-2021 admitted the writ petition and issued notice to the department with the direction for early listing of the case. However, nothing has been placed on record to show that the case filed by the assessee has been heard and disposed off by the Hon'ble Rajasthan High Court , Jaipur Bench, Jaipur. Therefore, taking a lenient view the assessee has approached /filed petition before the Hon'ble Rajasthan High Court , Jaipur Bench, Jaipur for required relief, we direct the AO that in the event of being successful before the Hon'ble Rajasthan High Court, Jaipur Bench, Jaipur and in

that eventuality the AO would be bound by the direction of Hon'ble Rajasthan High Court , Jaipur Bench, Jaipur, if issued in favour of the assessee.

4.0 In the result, the appeal of the assessee is dismissed

Order pronounced in the open court on 29 / 09/2023.

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29 /09/2023

\*Mishra

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

1. The Appellant- Shri Ravi Shastri, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-3, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 1323/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar