IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM

ITA Nos. 389/Jodh/2019
(ASSESSMENT YEAR- 2008-09)

Sh. M.P. Poonia Sector-26, Opp. Blind Institute, National Institute of Tech. Teacher Training and Research, Chandigarh-160019.	Vs	Income Tax Officer, Bikaner.
(Appellant)		**(Respondent)**
PAN NO. ACPPP3629 R		

(Virtual hearing)

Assessee By	Shri T.C. Gupta -C.A.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	12/07/2023
Date of Pronouncement	04/10/2023

O R D E R

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax- Bikaner [herein after "Ld.CIT(A)"] dated 27.09.2018 for the assessment year 2008-09.

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

"1. Order passed by the CIT (A) rejecting the application filed u/s 154 is barred by limitation. As per section 154(8) the authority shall pass order within 6 months on any application filed (u/s 154) after 1.6.2001.

2. The CIT(A) has rejected the application without providing opportunity of being heard, in spite of specific request for the same.

3. The CIT(A) has passed illegal and void order in violation of the relevant decisions of the jurisdictional High court and the Supreme Court. He has confirmed assessment order, passed without issuing notice u/s 143(2), after filing the return u/s 148.

4. The CIT (A) has rejected the application relying on the irrelevant decision of the P&H High Court in Anil Goel Vs. CIT(A), 306 ITR 212.

5. The CIT(A) has erred in not deleting the addition of Rs. 1,18,000/- made on account of alleged low house hold withdrawal, in spite of the fact that the CIT (A) at page 21 and 22 of the appeal order dated 27.9.2018 and in para 2 (5) at page 3 and 4 of the appeal order dated 22.10.2019, has accepted/not disputed that against the estimated house hold expenditure of Rs. 3,60,000/- by the AO, the assessee has declared withdrawals of Rs. 3,91,585/- for house hold expenditure."

3. Brief facts of the case are that the assessee is an individual filed its return of income on 18.07.2008 u/s 139(1) of the Act declaring total income at Rs. 5,32,766/- which was processed u/s 143(1) of the Act. In this case, the ld. AO made an addition of Rs. 1,18,000/- made on account of low house hold withdrawals by observing that the assessee is Principal officer of reputed engineering College and according to his status and living standard, the given withdrawals are not plausible. Looking at the status of the assessee as well as schooling of the children and contemporary price index the ld. AO estimated the household expenses of the assessee at Rs. 30,000 per

month. Accordingly, the addition of Rs. 1,18,000/- (Rs. 3,60,000- Rs. 2,42,000/-) was made in the hands of the assessee as unexplained income of the assessee.

4. The assessee feeling dissatisfied with the finding of the ld. AO filed an appeal before the ld. CIT(A). Apropos to the grounds so raised the relevant findings of the ld. CIT(A) is as under:-

> "I have considered the facts of the case and appellant's submissions and I find that the AO estimated the assessee's household expenses for the relevant period at Rs. 3,60,000/- p.a. (Rs. 30,000/- p.m.) by observing that the household expenses declared at Rs. 2,42,193/- were not adequate to maintain assessee's family. It is a fact that the appellant did not provide head wise details of household expenses, in that situation it was difficult for the AO accept the assessee's claim of household expenses declared at Rs. 2,42,193, particularly in the light of fact that the appellant holds good status in society and his children were studying in reputed schools. In the written submissions filed before me, the appellant made contradictory submissions, as on one side he is requesting for deletion of addition. made on account of low household withdrawal, on the other side he is stating that "Now the assessee has calculated the actual HH expenses and it is found that he withdrew cash of Rs. 2,42.845/- from the bank for HH expenses. Other than cash the assessee further withdrew Rs. 1,48,740/- for HH expenses from his bank account by cheque. The detailed chart of cash and cheque withdrawal for HH expenses was filed. As per the chart the assessee had withdrawn Rs. 3,91,585/- from bank for HH expenses as against the estimation of Rs. 3,60,000/- made by the AO". Thus, from the appellant's own submissions it is clear that the appellant had spent more on account of household against what has been declared by him. Moreover, the estimation at Rs. 30,000/- does not appear to be unreasonable for the family like appellant.
> In view of the above, the addition made at Rs. 1,18,000/- is sustained. The ground of appeal is dismissed."

5. As the assessee did not receive any favor from the appeal filed before ld. CIT(A). The present appeal filed against the said order of the ld. CIT(A) dated 27.09.2018 before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has reiterated the written submission filed and the same is reproduced here in below:

> "1.The order passed by the CIT (A), rejecting the application filed u/s 154, is barred by limitation. As per section 154(8) the authority shall pass order within 6 months on any application filed (u/s 154) after 1.6.2001.
>
> The assessee filed application u/s 154 before the CIT(A) on 22.11.2008. The CIT(A) passed order u/s 154 on 22.10.2019, that is beyond prescribed period of six months. The order passed by the CIT(A) is barred by limitation and null and void.
> 2. The CIT(A) has rejected the application without providing opportunity of being heard, in spite of specific request for the same.
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> The CIT(A) rejected the application without providing any opportunity of being heard, in spite of specific request made by the assessee.
>
> 3. The CIT(A) has passed illegal and void order in violation of the relevant decisions of the jurisdictional High Court and the Supreme Court.
>
> (1). That for issue of notice u/s 148 dated 25.2.2013 the AO recorded certain reasons, copy enclosed as Annexure-1.
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> The jurisdictional Rajasthan High Court in decision in the case of CIT Vs. Ram Singh, 306 ITR 343 held that "the proceedings for reassessment under section 148/147 were initiated by the Assessing Officer, on non-existing facts, because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held that the income, with respect to which he had entertained reason to believe to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment".
>
> In this case after the appeal order, the reasons recorded by the AO have failed; therefore, any other addition made by him does not survive. Accordingly, legally

the addition under HH expenses cannot survive and thus sustained in appeal is erroneous.

(2)(1). The AO in the notice u/s 148, dated 25.3.2013 has mentioned that "I therefore propose to assess/reassess the income/loss.... The AO has not specified in the notice u/s 148 as to whether the notice is to assess or reassess the income.

(ii). The finding of the CIT(A) that not to tick/strike of proper limb of notice u/s 148, to assessee or reassess, is not mandatory and binding for the AO is not as per law. The Hon'ble Supreme Court in judgment dated 9-2-2016 in appeal arising out of SLP (C) No. 13512/2012 in the case of Standard Chartered Finance Limited vs. CIT has held that "If no assessment order is passed, there cannot be a notice for re-assessment or reopening inasmuch as the question of re-assessment or reopening arises only when there is an assessment in the first instance."

The Court in this decision relied on its earlier decision dated 16.2.2000 in Trustees Of H.E.H. The Nizam'S... vs CIT.

The Supreme Court in decision dated 17.4.2015 in Civil Appeal No. 6758 of 2004 in DCIT Vs Zuarl Estate Development & Investment Company Limited held that processing u/s 143(1)(a) is not assessment but only scrutiny assessment made u/s 143(3)/144 and 147 is assessment for purpose of reopening of the assessments. In the case of the assessee no assessment was made before issue of notice u/s 148, therefore there cannot be any reassessment or reopening of the assessment. The case is squarely covered by the above judgment. Therefore, to complete assessment on the basis of illegal notice is illegal and void.

On the similar principals, the order of the Karnataka High Court in the case of Manjunath Cotton Corp andand M/s SSSA Emerald Meadows, is apparently, illegal, erroneous and an apparent case of judicial indiscipline. In the case of M/s SSSA Emerald Meadows the Supreme Court in the case of notice u/s 271(1)(c) has clearly held that not to strike proper limb of the notice makes the notice illegal and issued without application of mind and all proceedings based on that notice as null and void. The CIT(A)'s simply mentioning that the facts are different is not legal.
As per Supreme Court decision 305 ITR 227 in the case of Saurashtra Kutch Stock Exchange "Non-consideration of a decision of Jurisdictional High Court or of the Supreme Court is a mistake apparent from the record which could be rectified."

Delhi High Court decision in the case of PCIT-08 vs. Shri Jai Shiv Shankar traders Pvt. Ltd. reported in 383 ITR 448 (Delhi) has also held that not to consider and rely on the Supreme Court decision is illegal and erroneous. Therefore, on the issue there was rectifiable mistake in the order.

The CIT(A), Bikaner in para 4.5 of the appellate order dated 6.7.2022 in appeal No. 10882/2017-18 in the case of Ram Kumar has allowed appeal of the assessee relying on the Hon'ble Supreme Court decision in Standard Chartered Finance

Limited vs. CIT on the ground of not selecting proper limb of the notice u/s 148. Copy of the CIT(A) order dated 6.7.2022 is enclosed as Ann.2.

(3)(1). During hearing of the appeal, the assessee took plea that the AO/ITO completed assessment without monetary jurisdiction because the returned income in one of the assessment years, AY 2011-12, pending with the ITO was Rs. 19,58,143/-, that is, more than Rs. 15,00,000/- prescribed by the CBDT instruction dated 31.1.2011. The CIT(A) in his order has mentioned that Monetary jurisdiction of the ITO was revised vide CBDT instruction dated 8.4.2011. The CIT(A) relied on the Madras High Court decision in the case of C. Krishna Vs. ITO (2014), 52 Taxmann.com 30 (Madras), wherein, the Court held that as per CBDT instruction dated 8.4.2011 the CCIT/DGIT was empowered to adjust the monetary limit by Rs. 5,00,000/- for equal distribution of workload among the Assessing Officers,

(II). But in this case the CCIT/DGIT never assigned the case of the assessee to the AO/ITO in view of the CBDT instruction dated 8.4.2011. When there was no adjustment made by the CCIT regarding monetary limit of the ITO, the ITO had no jurisdiction over the case of the assessee, where in one of the pending assessment years the income was more than Rs. 15,00,000/-. From the facts of the case, it is clear that the CIT(A) did not verify the facts of the case regarding monetary jurisdiction and illegally, without any basis and erroneously relied on the CBDT instruction dated 8.4.2011 and the Madras High Court decision, giving rise to the mistake apparent from the records.

The CIT(A) further committed mistake, while mentioning that the returned income for AY 2008-09 was Rs. 5,75,282/- which was below Rs. 15,00,000/- given in the CBDT instruction dated 31.1.2011. At the time, the AO had pending assessment/return for AY 2011-12 with returned income of more than Rs. 15,00,000/-, therefore, the reliance of the CIT(A) on returned income for AY 2008-09 is factually and legally incorrect and erroneous, as per the records.

To quote an instruction and its applicability are two different matters. The CIT(A) has only quoted the CBDT instruction but totally failed to discuss its applicability in the case of the assessee, making the order erroneous, illegal and faulty.

(4)(1). Regarding contention of the assessee that the AO did not issue notice u/s 143(2) after filing return of income in response to notice u/s 148, the CIT(A) has relied on the Kerala High court decision in the case of K.G. Thomas Vs. CIT, 301 ITR 301 and held that non issue of notice u/s 143(2), and held that non issue of notice u/s 143(2) before completion of assessment is immaterial.

(ii). The finding of the CIT(A) and his reliance on Kerala High court decision is illegal and erroneous. The assessee relied on the Supreme Court decision dated 2.2.2010 in Civil appeal No. 1198/2010 in the case of Hotel Blue Moon, 321 ITR 362 holding that issue of notice u/s 143(2) is mandatory and the assessment completed without issue of notice u/s 143(2) is invalid and void. Rajasthan High Court in a recent decision dated 10.7.2018, DB ITA No. 197/2018 in the case of

PCIT Vs. Kamla Devi Sharma, relying on the decisions of the Supreme Court in Hotel Blue Moon 321 ITR 362, 390 ITR 167 (Ker) Travancore Diagnostics (P) Ltd. Vs. ACIT, 323 ITR 249 Delhi High Court DIT V/S Society for Worldwide Inter Bank Financial Telecommunications,) 90 DTR 289 Saptha Giri Finance & Investments V/S ITO (Madras High Court), Delhi High Court in the case of M/s Alpine Electronics Asia PTE Ltd., Allahabad High Court decision in CIT v. Salarpur Cold Storage (P) Ltd., and has held that after filing of return, the issue of notice u/s 143(2) is mandatory before completion of the assessment. Without notice u/s 143(2) assessment was quashed.

(iii). Not to consider the Supreme Court, jurisdictional High Court and favourable to assessee, decisions of other High Courts but to rely on obsolete and superseded decision of Kerala High Court is not only erroneous but also arbitrary, absurdity and a case of judicial indiscipline.

Delhi High Court decision in the case of PCIT-08 vs. Shri Jai Shiv Shankar traders Pvt. Ltd. reported in 383 ITR 448 (Delhi) has also held that not to consider and rely on the Supreme Court decision is illegal and erroneous.

4. The CIT (A) has rejected the application relying on the irrelevant decision of the P&H High Court in Anil Goel Vs. CIT(A), 306 ITR 212.

In this case it was held that in an ex-parte order passed by the CIT(A) for non presence of the assessee, non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. Vs. ITAT [2001] 248 ITR $77, has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority.

Therefore, the ratio of this decision is not applicable in the case of the assessee. The reliance placed by the CIT(A) On this decision is illegal and misplaced. Copy of the High Court decision is enclosed as Annexure-3.

5. The CIT(A) erred in confirming the addition of Rs. 1,18,000/- on account of low house hold expenses.

In the appellate order the CIT(A) has stated that "The detailed chart of cash and cheque withdrawal for HH expenses was filed. As per the chart the assessee had withdrawn Rs. 3,91,585/- from bank for HH expenses as against the estimate of Rs. 3,60,000/- made by the AO. Thus from the appellant's own submission it is clear that the appellant had spent more on account of household against what has

been declared by him. Moreover, the estimation at Rs. 30,000/- does not appear to be unreasonable for the family like appellant. In view of the above, the addition made at Rs. 1,18,000/- is sustained. The ground of appeal is dismissed."

The statement of the CIT(A) is self-contradictory. First of all, the assessee did not declare HH expenses of Rs. 2,42,845/- in the return of income. Then, when the assessee has filed details of HH expenses of Rs. 3,91,585/- before the CIT(A) and the CIT(A) is not disputing the same, still, to confirm the addition is self contradictory and a mistake apparent from the records.

6. The same CIT(A) in his order has deleted all other additions made in the income, accepting and meaning thereby that the assessee has no income other than the declared in the return of income. And still sustaining the addition of low house hold expenses is self contradictory and erroneous.

Still if we go by the estimation of the AO, the assessee during the assessment proceedings replied/informed the AO that the assessee is residing in government house and his rent etc is being deducted by the government and that major part of HH expenses is not included in the expenses shown by the assessee. He was also provided free vehicle, telephone etc facilities by the employer. Thus not to consider that major part of expenditure on house etc by the AO/CIT(A) is erroneous.

Therefore, the order passed by the CIT(A) is time barred, illegal and void, therefore deserves to be quashed and appeal of the assessee allowed."

6. Per contra, the ld. DR relied upon the findings of the ld. CIT(A) and based on that observation he prayed to sustain the addition.

7. We have heard the rival contentions and perused the materials available on record. The ld. AR of the assessee submitted that the assessee is living a simple life. The assessee has one cow at his home so the milk and ghee purchase expenditure is not incurred. The assessee has not paid any house loan, living in a government allotted house. The assessee was not examined these contentions before the estimation of the expenditure on

household. The Revenue has not disputed the fact that the assessee has already withdrawn the expenditure of Rs. 2,42,845/- from the bank account to meet the expenditure incurred. Considering the conspectus on the issue and the contentions and circumstantial of evidence advanced before us we do not find any material to sustain the addition of Rs. 1,18,000/- merely based on conjuncture and surmises. Therefore, the addition made by the lower authorities is vacated. Thus, ground no. 5 raised by the assessee is allowed. Ground no. 1 to 4 are on technical reasons and since we have allowed the appeal of the assessee on merits, the other ground becomes educative in nature.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-	*Sd/-*
(RATHOD KAMLESH JAYANTBHAI)	(DR. S. SEETHALAKSHMI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated : 04/10/2023

**Santosh*
Copy to:
1. The Appellant
2. The Respondent
3. The CIT

4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench