

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.571/Jodh/2018  
Assessment Year: 2009-10**

Aameen Belim Prop. M/s Asian Trading Co. Osian Choraha, Station Road Tinwari, Distt. Jodhpur. [PAN:AKHPB7625H] <b>(Appellant)</b>	Vs.	Income Tax Officer, Ward-2(2), Jodhpur.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Goutam Chand Baid, CA.
<b>Respondent by</b>	Ms. Nidhi Nair, JCIT DR

<b>Date of Hearing</b>	09.10.2023
<b>Date of Pronouncement</b>	12.10.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals)-1, Jodhpur, [in brevity the 'CIT (A)'], order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y. 2009-10. The impugned order was emanated from the order of the ld. Income Tax Officer Ward-2(2), Jodhpur,[in brevity 'the AO'] order passed u/s 143(3)/147of the Act.

2. The assessee has taken the following ground:

*“1. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in upholding the validity of assessment framed u/s 143(3)/147 after issuance of notice u/s 143(2), despite the fact that assessee has not filed any return of income in response to the notice u/s 148.,. Upholding the validity of assessment order on the of provision of section 124(3)(b) and section 292B is erroneous and contrary to the provision of Law. Assessment framed u/s 143(3) in consequence to the notice issued u/s 143(2) in violation of statutory provisions may kindly be held void.*

*2. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in sustaining the addition of Rs. 9,67,591/- out of addition made for Rs. 20,30,585/-. The addition so made may kindly be deleted.*

*3. The appellant craves liberty to add, amend, alter, modify, or delete any of the ground of appeal on or before its hearing before your honour.”*

3. The appeal of the assessee was filed with delay of 3 days. As the delay is short her time which is negligible. The ld. DR had not made any objection against the delay. Accordingly, the delay for 3 days is condoned.

4. Brief fact of the case is that the assessment was completed u/s 143(3)/147 of the Act and notice u/s 148 was initiated due to deposit of cash in the bank

account. The ld. AO confirmed the addition amount to Rs.20,30,585/- for depositing cash in the bank account and addition was made u/s 69. Also the additions are made related to income from agriculture amount to Rs.69,875/- and peak credit in the bank deposit amount to Rs.3,15,207/-. Aggrieved assessee filed an appeal before the ld. CIT(A). The assessee made the application for acceptance of additional evidence under Rule 46A of the Income Tax Rule, 1962 before the ld. CIT(A). Without considering the same the ld. CIT(A) passed the order and allowed part relief. The addition is restricted amount to Rs.9,67,591/-. Being aggrieved assessee filed an appeal before us.

5. The ld. AR vehemently argued and submitted a written submission which is kept in the record. The ld. AR argued that ground no. 1 for jurisdiction of assessment u/s 143(3) without considering the section 144 of the Act.

5.1 The ld. AR further argued that the application for acceptance of additional evidence was prayed before the ld. CIT(A) during the appeal proceeding by a letter dated 29.08.2017. Copy of the application with the additional evidence is duly annexed in **APB page 1 to 46**. The ld. AR placed that the reasonable opportunity was denied without considering the additional evidence the appeal order was passed by the ld. CIT(A).

6. The ld. DR vehemently argued and relied on the order of the revenue authorities. The ld. DR further placed that related to Ground No. 1, the ld.

CIT(A) had clearly discussed the issue in the appeal order. The relevant paragraph is duly reproduced as below:

*“4.1. I have considered the submissions of the appellant and assessment order. It is noted that the issues which emerge are:*

*(i) Appellant never raised the objection before the AO that, when he had not complied to the notice u/s148, why was he being issued the notices u/s143(2)*

*(ii) Rather the appellant kept on responding to the notices and complied to the questions/queries put to him and; cooperated in the proceedings.*

*(iii) When notice u/s148 was not complied with, AO also issued notice u/s142(1) on 24.5,2016.*

*(iv) It is also noted that, when the appellant did not comply to his notice u/s148, the AO duly issued show cause notice u/s144 on 28.11.2016 and.*

*(v) Still the appellant chose to not file the return and; started replying to queries put to him.*

*From the above, three possibilities arise. First, it appears that the appellant had well in mind that by not filing the return in response to notice u/s148 or stating that the return filed earlier may be treated as return in compliance to notice u/s148, but replying to the queries put to him shall enable him to seek the annulment of the assessment later on, which precisely has been done vide this ground No.1, or; Secondly, appellant might have believed that filing of return in response to notice u/s148 or stating that the return filed earlier may be treated as return in compliance to notice u/s148, had no much relevance as he had been cooperating in the assessment proceedings. Thirdly, raising this ground to an appellate level is simply an afterthought.*

*Judgments relied upon the appellant do not come to his help, as the facts of this case are that the AO was in possession of precise information that certain amounts were deposited in his bank account and he had due reasons to believe that the same had escaped assessment thus, the question of examining the return, filed in response to notice u/s148, before issuance of notice u/s143(2) is not relevant anymore.*

*Section — 124(3)(b), Income-tax Act, 1961-2018 is worth mentioning here which reads a under:*

*(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—*

*(6) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;*

*This has further been affirmed by the Hon'ble ITAT Agra in the case of Shri Ram Jhanwar Lai vs I T O Bikaner &Ors [2018] 91 [taxmann.com](http://taxmann.com) 185 (Agra - Trib.)/[2017] 190 TTJ 870 (Agra - Trib.) Not only this, it is also clear that the show cause was also issued to the appellant for completing the assessment u/s144. Merely stating that the proceedings were u/s143(3)/147 does not make the assessment void, it is case also covered u/s2928 of the Act.*

*It is also noted that the provision u/s u/s292BB also apply in this case of appellant who fully cooperated/participated in the proceedings. AO's Jurisdiction cannot be challenged after assessment completion. There are numerous judgments also on the issue that the appellant has no case before the CIT (A) if he has not raised objection/ challenged the opening of case s148, before the Assessing Officer. In view of above, it is clear that the appellant has no case vide this ground and the appellant fails in this ground. Accordingly, the ground is dismissed.”*

7. We heard the rival submission and consider the documents available in the record. The ground-wise adjudication is as follows:-

**Ground No. 1**

Related to ground no. 1, the ld. CIT(A) had made a detailed discussion. The assessee has not filed the return u/s 148 so that should not be the reason for completion of assessment u/s 144 of the Act. We find that the ld. CIT(A) had made a proper observation in the appeal order. We find no infirmity in the order related to this legal point. Accordingly, **ground no. 1** of the assessee is dismissed.

**Ground No. 2**

7.1 Related to ground no. 2 the ld. AR claimed that the additional evidence which was filed before the ld. CIT(A) was not duly considered before passing the order. Even in the appeal order the ld. CIT(A) is silent related to the acceptance of additional evidence of the assessee. The ld. DR had not made any strong objection against the submission of the ld. AR. We accept that the opportunity was denied for the assessee for admission of additional evidence under Rule 46 A of the Income Tax Rule, 1962. Accordingly, the ground no. 2 is duly remanded back to the file of the ld. CIT(A) for considering the additional evidence of the assessee during appeal proceeding. The assessee is

directed to be diligent with the revenue in proceeding. Needless to say, the assessee should get reasonable opportunity for hearing in set aside proceeding,

In the result, the **ground no. 2** of the assessee is allowed for statistical purposes.

**Ground No. 3 & 4**

7.2 **Ground nos. 3 and 4** are general in nature.

8. In the result, the appeal of the assessee bearing **ITA No. 571/Jodh/2018** is partly allowed for statistical purposes.

**Order pronounced in the open court on 12.10.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

(On Tour)

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order