

**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. Nos. 334 & 339/Jodh/2019
Assessment Year: 2012-13**

Sh. Kailash Chandra Moondra 22,Shripal Nagar, Saket Ashram Road, P.O. Sumerpur. [PAN: ABAPM5943K] (Appellant)	Vs.	Income Tax Officer, Sumerpur. (Respondent)
--	------------	---

Appellant by	Sh. Kailash Chandra Moondra & Sh. Mukul Moondra, CA
Respondent by	Sh. S.M. Joshi, JCIT. DR

Date of Hearing	19.10.2023
Date of Pronouncement	10.11.2023

ORDER

Per:-Anikesh Banerjee, JM:

Both appeals of the assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals)-1,Jodhpur,[in brevity the ‘CIT (A)’] order passed u/s 250 (6) and 154 of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2012-13.The impugned order was emanated from the order of the Income Tax Officer, Ward Sumerpur, order passed u/s 147/144 of the Act.

2. The assessee filed the appeal with delay of 240 days. The assessee filed the condonation petition. The reason of delay for filing the appeal is that after getting the appeal order U/s 250(6) of the Act, the assessee filed petition u/s 154 and waiting for the rectification of appeal order. After receiving the rectification order u/s 154/250(6) of the Act, the assessee filed the appeal with the delay of 240 days. The ld. DR had not made any strong objection against the condonation of delay. Accordingly, the delay for 240 days of the assessee is duly condoned.

3. In the outset, one appeal of the assessee is filed against the appeal order passed u/s 250 (6) of the Act and another appeal against the order which was passed u/s 154 related to rectification of the main appeal order for the impugned assessment year. The issue of both appeals is common. So, for the sake of convenience, both the appeals are taken together for passing a common order. **ITA No. 334/Jodh/2019** is taken as lead case.

ITA No.334/Jodh/2019

4. The assessee has taken the following grounds:

“1. Ld. CIT (Appeals)-I erred in law in confirming the initiation of proceedings u/s 148 against the appellant whereas

the proceeding was the result of fabrication, forgery and conspiracy and on the basis of unverified, unsigned, unauthenticated, fabricated and forged documents and therefore, proceedings u/s 148 and the resultant order u/s 147 / 144 should be quashed.

2. *Ld. CIT (Appeals)-I erred in law in confirming the assessment order u/s 147 / 144 with addition of Rs. 1,00,00,000/-whereas the addition was result of fabrication, forgery and conspiracy and on the basis of unverified, unsigned, unauthenticated, fabricated and forged documents and without providing reasonable opportunities of hearing, certified copies and opportunity to cross examine Mr. Mukesh Modi and other witnesses completely. This addition was made in absence of any valid and lawful evidence and therefore, the resultant order u/s 147 / 144 should be quashed.*

3. *Ld. A.O. erred in law in passing the assessment order on the basis of false reasons and without following the principles of natural justice.*

4. *Ld. CIT (Appeals)-I erred in law in mentioning the date 16.04.2016 (In the Serial No.2 in the column No.3 of the chart on page No.2) by mistake in the appeal.*

5. *Ld. CIT (Appeals)-I erred in law in mentioning, "Submissions dated 23.03.2018 received in office on*

23.03.2018" (In the Serial No.9 in the column No.4 of the chart on page No.2) by mistake in the appeal order and by not considering the Paper Book of 419 in support of Ground No. 1 to 3.

6. Ld. CIT (Appeals)-I erred in law in not considering a Grievance Petition cum Request letter dated 01.09.2018 by mistake while passing the Appeal Order.

7.

8. Ld. CIT (Appeals)-I erred in law in mentioning, "Letter dated 01.10.2018 received by post seeking adjournment" (In the Serial No.14 in the column No.4 of the chart on page No.2) by mistake because this letter was with reference to a Complaint dated 01.09.2018 and it's para-2 was not considered in the appeal order.

9. CIT (Appeals)-I erred in law in passing an ex parte order by mistake and all of sudden after 2 months of latest last hearing on 11.12.2018 / 30.11.2018 without providing any opportunity despite impliedly accepting the application dated 01.10.2018.

10. Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering complete statement as well as particular Answers in Statement Of

Mukesh Modi dated 15.05.2015 recorded by Addl. S.P., Bali u/s 202 CR.PC under the directions of Court of AOM, Sumerpur.

11. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering fabricated and forged 'Appointment Letter' dated 16.02.2010 given to CBI.*

12. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering 'Cash in Hand Book from 01.04.2010 to 31.03.2012' which was not produced before Ld. A.O. but produced before Addl. S.P., Bali u/s 202 CR.PC under the directions of Court of ACJM, Sumerur.*

13.

14. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without providing opportunity to complete the partial cross examination of Mukesh Modi and without considering complete cross examination statement as well as particular Answers in Cross Examination of Mukesh Modi.*

15. *Interest so levied u/s 234 A / B / C is excessive and therefore, it should be deleted or reduced reasonably.*

16. *Appellant also reserves her rights to add / alter any grounds of appeal till the disposal of appeal.”*

5. The ground of this appeal is also reproduced as below:

“1. Ld. CIT (Appeals)-I erred in law in mentioning the date 16.04.2016 (In the Serial No.2 in the column No.3 of the chart on page No.2) by mistake in the appeal order and by not rectifying the mistake u/s 154

2. Ld. CIT (Appeals)-I erred in law in mentioning, "Submissions dated 23.03.2018 received in office on 23.03.2018" (In the Serial No.9 in the column No.4 of the chart on page No.2) Joy mistake in the appeal order and by not considering the Paper Book of 419 pages and Ld. CIT (Appeals) erred in not making necessary Rectification u/s 154.

3. Ld. CIT (Appeals)-I erred in law in not considering a Grievance Petition cum Request letter dated 01.09.2018 by mistake while passing the Appeal Order as well as in Order u/s 154.

4. Ld. CIT (Appeals)-I erred in law in mentioning , "Letter dated 01.10.2018 received by post seeking adjournment" (In the Serial No.14 in the column No.4 of the chart on page No.2) by mistake because this letter was with reference to a Complaint dated 01.09.2018 and it's para-2 was not considered and Ld. CIT (Appeals) erred in not making necessary Rectification u/s 154.

5. *Ld. CIT (Appeals)-I erred in law in passing an ex parte order by mistake and all of sudden after 2 months on 11.12.2018 / 30.11.2018 without providing any opportunity despite impliedly accepting the application dated 01.10.2018.*

6. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering complete statement as well as particular Answers in Statement Of Mukesh Modi dated 15.05.2015 recorded by Addl. S.P., Bali u/s 202 CR.PC under the directions of Court of AGM, Sumerpur.*

7. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering fabricated and forged 'Appointment Letter' dated 16.02.2010 given to CBI.*

8. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering 'Cash in Hand Book from 01.04.2010 to 31.03.2012' which was not produced before Ld. A.O. but produced before Addl. S.P., Bali u/s 202 CR.PC under the directions of Court of ACJM, Sumerpur.*

9. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering Paper Book of total 419 pages in support of Ground No. 1 to 3.*

10. *Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without providing opportunity to complete the partial cross examination of Mukesh Modi.*

11. Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by mistake without considering complete cross examination statement as well as particular Answers in Cross Examination Of Mukesh Modi.

12. Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order by misinterpreting the provisions of sec. 154 and without providing any opportunity on principles of Natural Justice.

13. Ld. CIT (Appeals)-I erred in law in passing an ex parte and arbitrary order after 30.06.2019, the limitation of 6 months contrary to provisions to sec. 154(8), therefore, application u/s 154 should be deemed to accept in favour of assessee.

14. Appellant also reserves her rights to add / alter any grounds of appeal till the disposal of appeal.”

6. Brief fact of the case is that the assessee is a practising Chartered Accountant. The assessment proceedings u/s 148/147 of the Act was initiated by the Id. AO on the basis of information/ documents supplied by the Head of Branch, SPE, Central Bureau of Investigation (CBI), Jodhpur vide its letter No. 56/SIR/24/2013/CBI/JDP dated 31.01.2014 in the form of self-contained note and

enclosure there of which were said to be received / gathered by the CBI, Jodhpur. According to these documents, as per the assessee, the self-contained note which were in the form of three ledger account. The assessee is a Chartered Accountant by profession, was said have been paid an amount of Rs. 1,00,00,000/-(One Crore) in cash by Shri Mukesh Modi Sirohi towards Fee and other Expenses which was not disclosed in the relevant return of income filed for impugned assessment year. Therefore, the reasons were recorded, and assessment was reopened for AY 2012-13.

6.1. The re-assessment u/s 147/144 of the Act in the case of assessee was completed and the income was assessed amount to Rs. 1,08,44,340/- against returned income declared by the assessee of Rs. 8,44,340/- for AY 2012-13 by making addition of Rs. 1,00,00,000/- (One Crore) on account of undeclared professional receipt during the impugned financial year. Being aggrieved with the assessment order, passed u/s 147/144 of the Act the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) passed the order and dismissed the appeal of the assessee. Being aggrieved with the impugned appeal order the assessee filed appeal before us.

7. The Id. AR filed the written submissions which are kept in the record. The assessee/AR placed that the assessee is the sufferer of the conspiracy and had not received amount to Rs.1 crore from Mr. Mukesh Modi in any form during the impugned assessment year. The entire recorded reason was duly challenged before the Id. CIT(A). The reasons were recorded on basis of the report of the CBI. As per the assessee that there is no such any tangible source that proof the assessee had taken Rs. 1crore from Mr. Modi. In written submission the assessee placed the observations which is related to the latest update in his case. The relevant paragraph is duly inserted as below:

“Latest Relevant Updates :

1. Main conspirer Mukesh Modi is facing charges of 15000 Crores Adarsh Credit Coop. Society Scam (Adarsh Scam) and he and his many family members including his wife, daughter, son-in-law and brothers etc. are either in jail or on bail for last more than 3 years And therefore, allegation of a scandalous person should not be considered as reliable. Details and virals of the ‘Adarsh Scam’ are available on internet also and various investigating agencies such SFIO, Enforcement Directorate, SOG (Raj) are working on it. Your honors may please refer few paper cuttings

(P.B. No. 308 & 404), FIR of SFIO (P.B. No. 309 - 351) and FIR of SOG (P.B. No. 352 - 403) related to this 15000 crore scam.

2. *Ld. Deputy Commissioner, Service Tax Department, Pali has also dropped/quashed the case of Rs. 1.00 crore (Income / services) against the appellant-assessee vide order dated 31.01.2022 (Addl. P.B. No. 443 – 461 / Para-19 on 453 and Para-24(G) on 460).*

3. *3 members bench of Hon'ble Board of Discipline of the Institute Of Chartered Accountants Of India (ICAI), New Delhi (having equal status / rank to Hon'ble ITAT) in it's decision / order dated 18.07.2019 (P.B.No. 278 - 282), held the assessee-appellant 'NOT GUILTY of any misconduct' and quashed the complaint on the issue of evasion of tax on alleged 1.00 Cr which was made by Mr. T.C.Gupta. This order has reached to its finality as no appeal was filed by the complainant or by any Income Tax Authority.*

Issues are common before Hon'ble Board Of Discipline, Ld. A.O., CIT (Appeals), and Service Tax Deptt. and in hierarchy, Hon'ble Board Of Discipline is higher than the Dy. Commissioner of S.T., an ITO and the CIT (Appeals). It is also very important to submit here that the order of Disciplinary Board was signed by three members in which one was appointed by Government Of India (Government nominee) who is also an IRS.

4. *Conspirer Mukesh Modi has withdrew his alleged allegation related to cash payment of Rs. 1.00 crore to the respondent vide his letter dated 04.09.2018 sent to the ITO, Sumerpur (P.B. No. 113). The case was initiated on the basis of alleged and forged documents prepared / submitted by the conspirer Mr. Mukesh Modi and now again after the assessment, Mr. Mukesh Modi suo-moto submitted his version by withdrawing his allegations vide letter dated 04.09.2018.*

5. *During the inquiry in this case by court, on the court order appellant first time could get the copies of Mukesh Modi's bank and account statements of two years (P.B. No. 143 - 159) whereas alleged assessment order was passed merely on the basis of unsigned and fabricated 3 papers of one month without knowing the sources of the Mukesh Modi.*

6. *During the proceeding before Service Tax Authorities after the assessment by Ld. A.O., appellant first time could get the copy of Self Contained Note of CBI No. SIR/24 dated 10.12.2013 (Addl. P.B.No.437 - 442) in which there is no allegation and story of payment of Rs. 1.00 Crore to the appellant-assessee.*

7. *Appellant has also filed a criminal case/complaint No. 54/15 dated 20.03.2015 even before passing of the assessment order Under IPC*

SECTION 420,468,469,470, 471 and 120 against Mr. Mukesh Modi, his two accountants named Sudeep Singhi, Babulal Mali, Shri Rajendra Bothara (Ex-ITO, Sumerpur), Shri Jawan Singh Charan (Ex-ITO, Sumerpur), Shri Kumar Ravi Ranjan (ITO, Sumerpur), Shri R.H. Goel (Joint Comm. Income Tax, Pali), Shri K.R. Meena (Commissioner of Income Tax-I, Jodhpur), and Shri N.H. Yadav (Branch Head CBI, Jodhpur) (P.B. No. 118 - 121) which is still pending before ACJM Court, Sumerpur.

8. Appellant has also filed a separate criminal case/complaint No. 31/16 dated 07.04.2015 under IPC SECTION 420,468,469,470, 471 and 120 against Shri Rajendra Bothara (Ex-ITO, Sumerpur) (P.B. No. 160 - 162) which is still pending before ADJ Court, Sumerpur. In fact, Mr. Bothra had also made an identical complaint to ICAI against the appellant which was also quashed by the ICAI vide order dated 16.03.2018 (P.B.No. 189)”

7.1 The Id. AR further argued that the Id. CIT(A) had not taken proper cognizance of the documents filed during the appeal hearing. Accordingly, the assessee filed petition before the Id. CIT(A) for rectification of the appeal order, passed U/s 250(6) of the Act on dated 30.11.2018. But the said order was duly rejected by the Id. CIT(A) as the issues are not covered under the rectification apparent from the record u/s 154 of the Act.

8. The Id. DR vehemently argued and submitted the written submissions which are kept in the record. The Id. DR invited our attention in assessment order page nos. 2 and 3 which are inserted as below:

“(A) REASONS TO BELIEVE The proceedings u/s 148/147 of the I.T. Act was initiated by the then AO on the basis of information/documents supplied by the CBI, Jodhpur vide it's letter No. 56/SIR/24/2013/CBI/JDP dated 31.01.2014 in the form of Self-contained-note and enclosure(s) thereof which were said to be received/gathered by the CBI, Jodhpur during verification of some information. According to these documents (enclosure of the self-contained note), which were in the form of THREE LEDGER ACCOUNTS, the assessee, Sh. Kailash Chandra Moondra (K. C. Moondra in short) was said to be paid an amount of Rs 1 Crore in cash, by Sh. Mukesh Modi for 'Fee and Other Exp.'

Perusal of Return of Income duly filed by the assessee for A.Y. 2012-13 u/s 139(1) of the Income Tax Act, 1961 (The Return of Income Relevant to the period when the amount of Rs. 1 Crore was said to be paid in cash) revealed that receipt of the alleged amount of Rs. 1 Crore was not reflecting/shown by the assessee. Hence, the then Assessing Officer had a strong prima-

facie case to have reasons to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act.

(B) ASSESSEE'S OBJECTION:- The assessee vide his first written submission on 27-3-2014 while complying with the notice u/s 148 of the I.T. Act, objected the said proceedings by saying it as unlawful action initiated by the then A.O. This objection of the assessee followed by the detailed objection dated 22-05-2014 was filed seeking copies of certain documents/material, on the basis of which the proceedings u/s 148/147 was initiated. It was further been tried to explain by the assessee that the AO hasn't had the ledger accounts of Sh. Mukesh Modi, on the basis of which the proceedings u/s 148/147 was initiated. The assessee also clearly denied any such receipt of Rs. 1 Crore or any sum in cash during the F.Y. 2011-12. As per the point No. 1,2,3, 4 and 5 of the said objection letter said that:-

“ . 1. As alleged in your reasons so recorded u/s 148, I never received alleged amount of Rs. 1,00,00,000/- from Mr. Mukesh Modi on 15.04.2011 or any other date till today.

2. *Alleged information of payment of Rs. 1,00,00,000/- to me is totally false fake, untrue and seems to be result of malafide conspiracy of Mr. Mukesh Modi and his unofficial guide and consultant Income tax officer, Rajendra Bothara (presently posted at Bikaner).*

3. *I strongly believe that you can't have with you any lawful, true and genuine evidence in support of your false, untrue and fake allegation of payment of Rs. 1,00,00,000/- by Mr. Mukesh Modi to me.*

4. *In fact, I am continuously requesting you to issue certified copies of all the documents relied upon by you but you yourself is continuously avoiding and hiding these copies which imply that either you don't have any valid information/document in your possession or the alleged documents are false, fake or even forged and therefore, I again request you to issue copies of all above mentioned documents if those were genuinely considered by you.*

5. *I am strong enough in mentioning that your action u/s 148/143(2) is not at all lawful and not at all supported by any lawful evidence and witness and therefore, please withdraw this complete proceeding with immediate effect "*

And during concluding the said objection letter, the assessee requested to drop/withdraw the proceeding u/s 148 as he specifically denied any receipt of Rs. 1,00,00,000/-.”

9. We heard the rival submissions and considered the documents available in the record. Related **ITA No. 334/Jodh/2019**, the assessee's case was duly reopened on basis of the search conducted in the placed of Mr. Mukesh Modi. The reopening was done as per the report of the CBI that the assessee had taken Rs. 1 crore from Mr. Mukesh Modias professional charges. The ld. DR claimed that the cross-verification of the party with the assessee was conducted. As per the submission of the assessee, the cross-verification was incomplete. After the assessee's prayer the verification was not completed by the ld. AO. Further the assessee has placed that in the **APB pages 14 to 18**, the cash flow statement of Mr. Mukesh Modi is annexed where it reveals that there is no such any cash balance of the party is more than Rs.60 lacs. Mr. Mukesh Modi has no cash balance Rs. 1 crore in his cash flow statement. It is alleged that Mr. Mukesh Modi had withdrawn the cash amount from his bank a/c for more than 72 times during the period from two years but before showing entry of Rs. 1 crore. But there is no such

any specific evidence related to the assessee's bank account or relative's bank account that the said amount was deposited, or any other investment were made through cash. The Id. AR/ assessee placed the relevant updates where the DCIT, Service Tax Department, Palli has quashed the assessee's case of Rs. 1 crore service amount against the appellant assessee vide order dated 31.01.2022 **APB page 443 to 461**. There is no such substantial proof that the assessee had taken the impugned amount during the impugned assessment year. After receiving the appeal order U/s 250(6) of the Act, the assessee further submitted a petition before the Id. CIT(A) u/s 154 for rectification defect apparent from the record related to the appeal order passed on dated 30.11.2018. The assessee has taken a clear view that none of the revenue authorities has taken any cognizance on the assessee's submission. In our considered view the assessee's matter should be re-heard before the assessing authority. Accordingly, the appeal order dated 30.11.2018 is quashed. The matter is remitted back to the file of the Id. AO for *de novo* assessment considering the assessee's submission. Both the revenue and the assessee had not made any objection for remanding back the issue before the file of the Id. AO. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation

submitted by assessee in its defence shall be admitted by the AO and adjudicated on merits in accordance with law. We order accordingly.

9.1 In relation to the **ITA No. 339/Jodh/2019** is infructuous as the appeal order dated 30.11.2018 itself is quashed and the matter- is remand back to the file of the ld. AO. So, this rectification need not be required in further stage. So, the ITA 339/Jodh/2019 related to appeal order u/s 154 dated 28.08.2019 is quashed. Considering the above fact, the ITA 339/Jodh/2019 is dismissed.

10. In the result, **ITA No. 334/Jodh/2019** is allowed for statistical purpose and **ITA No. 339/Jodh/2019** is dismissed.

Order pronounced in the open court on 10.11.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

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