

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 515/JP/2023
निर्धारणवर्ष/Assessment Years : 2017-18

The ITO Ward 6(1) Jaipur	बनाम Vs.	Smt. Indu Rathore 11,Ayuwan Singh Nagar Maharani Farm, Durga Pura, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACDPR 7167 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Abhishek Dalmia, C.A.
राजस्व की ओरसे / Revenue by: Shri Anup Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 02/11/2023
उदघोषणा की तारीख / Date of Pronouncement : 12/12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal filed by the Revenue is directed against the order of the ld. CIT(A) dated 12-06-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 wherein the Revenue has raised the following grounds of appeal:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) NFAC, Delhi is justified ignoring the facts that the assessee neither could justify the source of cash deposits of Rs 3,51,35,700/- nor

could produce documentary evidence as specifically called for by the AO during the assessment proceedings, and resultantly the same was treated as unexplained income of the assessee during the year under consideration.

2. On the facts and circumstances of the case and in law, the learned Ld. CIT (A) NFAC Delhi erred in admitting the additional evidences in contravention of Rule 46A of the Income-tax Rules, 1962 without seeking remand report from Assessing Officer or giving him an opportunity to rebut additional evidence filed by Assessee, ignoring the provisions of the said sections and the request for same made by Assessee during appellate proceedings.

3. On the facts and in the circumstances of the case and in Law: learned Ld CIT (A) NFAC Delhi erred in completely ignoring the provisions of Rule 46A of the IT. Rules, 1962. The CIT(A) has further erred in admitting the above-mentioned additional evidences in violation of Rule 46A and in not recording any reason as to why he was admitting the additional evidences”

2.1 Brief facts of the case are that the case of the assessee was selected for scrutiny for the assessment year under consideration through CASS. The AO noted that the assessee E-filed his return of income declaring income of Rs.1,98,160/- on 02-08-2017. The assessee declared the income under the head “Income from Business or Profession”, Income from short term capital gain” and income from other sources. The notice u/s143(2) of the Act was issued on 09-08-2018 which was served upon the assessee through registered post and online ITBA portal and e-mail id. It is noticed that during the assessment year under consideration 07

notices /letters from time to time whose details are mentioned at page 2 of the assessment order. It is also notable that these notices/ letters were issued to the assessee from time to time which were served upon the assessee through registered post and online through ITBA portal and Email-id. The assessee is working for finance company as a collection agent. During the assessment proceeding for the assessment year under consideration, the AO required the assessee to submit the information/ documents for verification of the facts of the case which has been complied with by the assessee. The AO also required from the assessee to produce the books of accounts and other relevant documents for verification of the fact of the case but the same was not produced like cash book, ledger, sale book and purchase book, stock register and other relevant documents during the assessment proceedings. The AO noted that during the year under consideration, the assessee deposited cash in the following bank accounts.

S.N.	Bank's Name & Address	Account No.	Amount
1.	Punjab NationalBank	395000100042850	11,27,500/-
	Punjab NationalBank	3953005700000028	3,19,08,200/-
	Punjab National Bank	3953005700000028	20,10,000

During the assessment proceeding, the AO asked the assessee to explain the source of cash of Rs.3,51,35,700/- deposited by her in her above Bank account vide show cause notice dated 15-1-2019 which was served upon the assessee through registered post and online ITBA for which assessee submitted reply but no documentary evidence for verification of the cash deposits was made available to the AO for verification of the same and thus the assessee did not explain the source of cash deposits of Rs.3,51,35,700/- made during the year. Hence, in such a situation, the AO made the addition in the hands of the assessee amounting to Rs.3,51,35,700/- u/s 69A of the Income Tax Act. It is also noteworthy to mention that the AO initiated penalty proceeding by issuing notice separately u/s 271A, 271B and 271AAC of the Act because of non-submissions of required books of accounts as mentioned in the assessment, the order.

2.2 In first appeal, the Id CIT(A), the Id. CIT(A) deleted the addition amounting to Rs. 3,51,35,700/- u/s 69A of the Act made by the AO and he also dismissed the ground as to initiation of penalty u/s 271A, 271B and 271AA of the Act with following narration.

‘‘6.3 Decision:

From the elaborate documentation, it is clear that the AO failed to appreciate the nature of activities of the appellant even though he recorded that she was acting as a collection agent. The AO took note of only the cash credits in the impugned bank accounts but ignored to look into the immediate corresponding debits and also failed to ascertain the facts by causing enquiries to be made with ITZ CASH.

For the reasons stated above and taking into account the outcome of the scrutiny assessment for the immediately succeeding assessment year, the addition made by the AO on the score that the appellant failed to explain the nature and source of deposit is directed to be deleted. Ground number 1 is therefore allowed.

Ground number 2, 3 and 4 are with respect to initiation of penalty proceedings u/s. 271A, 271B and 271AAC of the Income Tax Act, 1961. Initiation of penalty proceedings is only consequential in nature. Since, full relief is given on quantum addition, no cause of action arises for deciding these grounds. Hence, these grounds are treated as dismissed.”

2.3 During the course of hearing, the ld. DR supported the order of the AO and submitted that the learned Ld. CIT (A) NFAC Delhi erred in admitting the additional evidences in contravention of Rule 46A of the Income-tax Rules, 1962 without seeking remand report from Assessing Officer or giving him an opportunity to rebut additional evidence filed by Assessee, ignoring the provisions of the said sections and the request for same made by Assessee during appellate proceedings and further erred in admitting the additional evidence in violation of

Rule 46A and not recording any reason as to why he was admitting the additional evidences.

2.4 On the other hand, the Id AR of the assessee relied upon the order of the Id.CIT(A). He vehemently argued that the assessee has not submitted any additional evidence but relying the page 72 wherein the details given AO, same has been submitted in the written submission given to the Id. CIT(A) so the plea of the revenue that the Id. CIT(A) admitted and relied the additional evidence is not correct as the evidence submitted before AO relief has been granted by the Id. CIT(A). To support the contentions he relied upon the written submission controverting the arguments of the Department as under:-

4.1. Submission made before Id. CIT (A), also reproduced by him in his order from page 6 to 13 may please be considered in correct perspective.

4.2. It is undisputed that the assessee is authorized agent of Interactive Financial and Trading Services Private Limited (ITZ Cash). Commission was received from ITZ for collecting the cash and transfer to the account of the ITZ and TDS was deducted on commission income. Point wise replies along with documents were submitted to the AO as per

4.3. the notice issued to the assessee. The assessee was acting as an agent of the ITZ. The activities under taken by the assessee on behalf of ITZ is remittance service. The assessee can collect the cash of the entities appearing on the portal of the ITZ ie assessee collects the cash from the persons authorized by the ITZ on behalf of their parties only, issue the cash receipt to them, deposit the cash in the assessee bank account, transfer the

amount from her bank account to ITZ bank account to recharge the wallet for further activities. Once amount has been transferred to the ITZ account, they recharge the account of the assessee and assessee can again issue the cash receipt after collection from the authorized agents of the ITZ. The assessee was only authorized to collect cash from the person appearing in the ITZ portal. She was not authorized to open the account of any person by herself in the ITZ Portal. More over amount collected as agent has been transferred to the account of the ITZ only hence the assessee is not the end user of cash deposited in her bank account.

4.4. Assessee submitted copy of bank account, bank deposit slip, bank certificate for cash deposit in the bank, cash book, ledger of the ITZ, cash receipt issued against cash deposit. The assessee also explained that the major activities were carried out before and after demonetization period. Certificate from bank was also furnished to the AO that cash deposited in the bank during demonetization period was only in legal tenderable currency. More the assessee submitted the ledger of ITZ where total cash collected was 4,55,64,600.00 and deposited in the bank account but AO made addition of Rs. 3,51,35,700.00.

4.5..Ld. AO even though alleged that the assessee did not explain the source of the above cash deposits of Rs.3,51,35,700/- during the year under consideration. Hence, the same is added to the total income of the assessee under provisions of section 69A of the Income Tax Act, 1961.

4.6. Lower authorities committed error in verification of the documents and understanding the nature of activities of the assessee. Cash collected and deposited in the bank account of the assessee is as an agent of the ITZ for which commission was received. Details and documents submitted at the time of assessment were completely overlooked by the Ld. AO and made addition of cash deposited in the bank account of the assessee.

4.7.Ld. CIT (A), accepted the claim of the assessee by deleting the additions made by the AO. Decision of the Ld. CIT (A), have also been reproduced here that "From the elaborate documentation, it is clear that the AO failed to appreciate the nature of activities of the appellant even though he recorded that she was acting as a collection agent. The AO took note of only the cash

credits in the impugned bank accounts but ignored to look into the immediate corresponding debits and also failed to ascertain the facts by causing enquiries to be made with ITZ CASH. For the reasons stated above and taking into account the outcome of the scrutiny assessment for the immediately succeeding assessment year, the addition made by the AO on the score that the appellant failed to explain the nature and source of deposit is directed to be deleted."

4.8. Under such circumstances, the source of cash deposit in bank account is explained and properly documented, hence addition made by the AO is not justified. Hon'ble ITAT, Delhi Bench in the case of ITO VS Ravindra Kumar Mantoo (AY 2006-2007) ITA No 3908 del/2010, held that "the necessary details were filed with the CIT(A) and CIT (A) perused the documents and has accepted the source of deposit. Since the source of cash deposit in the bank is explained, hence order passed by the CIT(A) is valid.

In view of the above factual and legal position, addition of Rs. 3,51,35,700 made by the Id. AO deserves to be deleted and relief given by the Id. CIT(A), u/s 69A may be confirmed."

2.5 We have heard both the parties and perused the materials available on record. The crux of the case is that the AO made an addition of Rs.3,51,35,700/- u/s 69A of the Act in the hands of the assessee holding that the assessee did not explain the source of cash deposited in Bank account of Punjab National Bank during the year under consideration and also not submitted any reply/ submission along with relevant documents for verification of the same. In first appeal, the Id. CIT(A) has deleted the addition made by the AO with following findings.

“ From the elaborate documentation, it is clear that the AO failed to appreciate the nature of activities of the appellant even though he recorded that she was acting as a collection agent. The AO took note of only the cash credits in the impugned bank accounts but ignored to look into the immediate corresponding debits and also failed to ascertain the facts by causing enquiries to be made with ITZ CASH.

For the reasons stated above and taking into account the outcome of the scrutiny assessment for the immediately succeeding assessment year, the addition made by the AO on the score that the appellant failed to explain the nature and source of deposit is directed to be deleted. Ground number 1 is therefore allowed.

Ground number 2, 3 and 4 are with respect to initiation of penalty proceedings u/s. 271A, 271B and 271AAC of the Income Tax Act, 1961. Initiation of penalty proceedings is only consequential in nature. Since, full relief is given on quantum addition, no cause of action arises for deciding these grounds. Hence, these grounds are treated as dismissed.

In this case, it is noticed that AO issued the show cause notice on dated 09.08.2019 to provide final opportunity to the assessee to reply all pending points and produce books of account. The assessee was acting as commission agent on behalf of the ITZ and all the transaction were conducted on the Portal of ITZ. The assessee provided all the bank account statement, provided ledger account/ journal account of ITZ where all day to day transaction were reflecting, provided cash book, submitted bank certificate, bank deposit slip, copy of receipt issued in lieu of cash deposit. The assessee being a senior citizen lady submitted all the reply to the best of her knowledge and information online through IT portal in support of the return

of income filed by her. The assessee has submitted all the books available with her through online portal. The assessee requested the AO to verify the documents submitted online. It was not mentioned in any of the notice to produce the books of account physically. The assessee at the time of assessment submitted all the relevant information to the AO but without the facts of the case AO passed the order against the assessee and made the addition of Rs. 3,51,35,700.00 to her total Income. Details of cash deposited by assessee and addition made by the AO on cash deposit in below mentioned bank accounts is as below

Sr No.	Banks name and address	Account no.	Amount accepted by AO	Actual Amount of Cash deposited during the year
1	PUNJAB	3953000100042850	1127500.00	1021100.00
2	NATIONAL	3953005700000020	31998200.00	35211500.00
3	BANK	3953009300010720	2010000.00	9332000.00
			35135700.00	45564600.00

It is very clear that the bank statements and explanation of source submitted by the assessee has not been verified. Moreover the cash deposited during the demonetization period was Rs. 1,24,81,600.00 and bank certificate was also submitted that the cash deposited *during the demonetization period was legally tenderable currency only* but the above facts were also not accepted by the AO. On verification of bank accounts it is very clear that the entire amount credited to bank

accounts were transferred to Interactive Financial and Trading Services Private Limited (ITZ Cash) through RTGS / Payu gateway. For example it can be verified from the bank account statement of account no. 3953005700000028 that Rs.475000 and 200000 on 20.01.2017 and 21.01.2017 respectively were transferred to Interactive Financial and Trading Services Private Limited (ITZ Cash). Likewise the amount transferred through Payu gateway reflects in the system generated journals submitted by the assessee. All the transfer entries through RTGS / Payu gateway are transferee to Interactive Financial and Trading Services Private Limited (ITZ Cash) and the same amount appearing in the Distributor journals submitted. This facts narrated by the assessee several times. It is noticed that assessee pleaded before the Id. CIT(A) that the AO has not verified the documents submitted while completing the assessment and give justice to a senior citizen women assessee who was engaged in a small activity like an E Mitra and earning very small amount as commission only. It may be mentioned that the Id. CIT(A) accepted the claim of the assessee by deleting the additions made by the AO in view of the documents produced before, in the form of evidence placed before the AO [page 72 of the paper book] and produced before us. Thus, we have deeply gone through the case of the assessee and we noticed that there is no

infirmary in the order of the ld. CIT(A) deleting the addition of Rs3,51,35,700/-, based on the various evidence placed before him and as discussed the assessee has acted as collection agent, even the money deposited in the demonitisation period is also of legal tender money and there is no controverting arguments or evidence placed before us by the revenue. Thus, considering the overall facts, evidences placed on record we are of the considered view that the source of cash deposit has been cleared discharged by the assessee and therefore ground no 1 raised by the revenue stands dismissed.

2.6 As regards the ground no 2 & 3 the ld. AR of the assessee that the decision of the ld. CIT(A) is based on the evidence placed before the AO [page 72 of the assessee's paper book] and when the decision is purely based on the set of facts available before the ld. AO we see no merits in the ground no 2 & 3 raised by the revenue and the same are dismissed as revenue could not demonstrate as to which documents which are relied upon are not available before the AO when the same is already placed in the paper book by the ld. AR and we see that the ld. CIT(A) based on that evidence and TDS deducted by the same company for whom the assessee is working as commission agent merely the agreement in furtherance of the TDS cannot be considered as additional evidence and therefore, the ground no

2 & 3 raised by the revenue stands dismissed. In the light of the discussion so recorded we see no merits in the arguments and the grounds and view of the matter and facts & circumstances of the case, the appeal of the revenue stands dismissed.

3. In the result, appeal of the revenue is dismissed

Order pronounced in the open Court on 12/12/2023.

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/12/2023

* Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

अपीलार्थी / The Appellant- The ITO, Ward 6(4), Jaipur

1. प्रत्यर्थी / The Respondent- Smt. Indu Rathore, Jaipur
2. आयकरआयुक्त / CIT
4. आयकरआयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्डफाईल / Guard File {ITA No.515/JP/2023}

आदेशानुसार / By order

सहायकपंजीकार / Asst. Registrar