

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA. No. 429 & 430/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

Shri Pushpendra Kumar Jain Main Bazar Bubaniya, Nashirabad, Ajmer.	बनाम Vs.	Income Tax Officer Ward-2(1), Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AJVPJ0893J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Himanshu Gandhi(CA) ( V.H.)  
राजस्व की ओरसे / Revenue by: Shri Anil Dhaka (CIT)

सुनवाई की तारीख / Date of Hearing : 30/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 31/05/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

Both the above captioned appeals are based on common questions of facts and law, and as such have been taken up and heard together. For the same reasons, these appeals are being disposed off vide this common order.

ITA No. 429/JPR/2023 pertains to assessment year 2011-12. ITA No. 430/JPR/2023 pertains to assessment year 2012-13.

**ITA No. 429/JPR/2023**

In this first mentioned appeal, the assessee has challenged order dated 12.05.2023 passed by Learned CIT(A), as thereby his appeal has been dismissed, while upholding the order dated 13.12.2018 passed by the Learned Assessing officer U/s 144 r.w.s. 147 of the Income Tax Act (hereinafter referred to as the "Act"), whereby total income of the assessee was calculated at Rs. 37,64,41,000/-.

### **ITA No. 430/JPR/2023**

In this second mentioned appeal, the assessee has challenged order dated 12.05.2023 passed by the Learned CIT(A), thereby dismissing the appeal filed by the assessee and upholding the (undated) order passed by the Learned Assessing officer, U/s 147 r.w.s. 143(3) of the Income Tax Act (hereinafter referred to as the "Act"), whereby total income of the assessee was calculated at Rs. 6,64,51,000/-.

2. Arguments heard. File perused.

It may be mentioned here that during pendency of appeals, on behalf of the assessee, an application was filed to raise an additional ground. Today, in the course of arguments, Ld. AR for the assessee did not press said application to raise additional ground i.e. ground No. 7. Accordingly, said applications are dismissed as not pressed.

Ld. AR for the assessee has argued that the concerned bank accounts were neither opened nor used by the assessee, but no thorough enquiry was conducted by the authorities below to arrive at the truth as to who had actually opened and used the given bank accounts, and as to which extent the assessee was liable to pay income tax, the matter needs to be restored to the files of the Assessing Officer(s).

He further submitted that in view of abovesaid contention, he does not press the other legal grounds raised in grounds of appeals. Accordingly, he has not raised any contention as regards the other legal grounds raised in the appeals.

Accordingly, Learned DR for the Department has also restricted his arguments in reply to the abovesaid contention put forth on behalf of the assessee, without touching other legal grounds raised in the grounds of appeals.

### **ITA No. 429/JPR/2023**

3. As regards assessment year 2011-12, an information is stated to have been received by the department from DDIT (Inv.), Unit-4(4), Mumbai on 13.03.2018. It is said to have revealed that the assessee had credit transaction of Rs. 37,63,91,500/-in ING Vysya Bank Ltd., during financial year 2010-11. Thereupon, case was reopened u/s 147 of the Act, after

recording reasons and receiving prior approval from the competent authority.

When notice u/s 148 of the Act was issued to the assessee on 29.03.2018, he filed return of income of Rs. 1,05,000/- under the head 'income from other sources'.

Thereupon, notice u/s 143(2) was served upon the assessee through e-mail followed by notice u/s 142(1) of the Act. But, the assessee did not reply the said notices. A show cause notice was also issued to the assessee, but he did not comply with the same.

4. Learned Assessing Officer found that the assessee was not cooperating in the proceedings. By observing that the assessee was accepting the credit as mentioned in the show cause notice, by way of his conduct in not participating in the proceedings, Learned Assessing Officer held that it was a case of income from unexplained sources, and accordingly, added the above said amount to the total income of the assessee, while also recommending for initiation of penalty proceeding u/s 271(1)(c) of the Act .

**ITA No. 430/JPR/2023**

5. As regards assessment year 2012-13, as per assessment order passed u/s 147 r.w.s. 143(3) of the Act, total income of the assessee was computed as under:-

*"5. Subject to the above remarks, the total income of the assessee is computed as under:-*

<i>Returned income as filed in response to the notice u/s 148</i>	<i>Rs. 1,15,000/-</i>
<i>Add: Unexplained credit u/s 69A as discussed Above</i>	<i>Rs. 6,63,36,000/-</i>
<i>Total income</i>	<i>Rs. 6,64,51,000/-</i>
<i>R/o of under sec. 288A</i>	<i>Rs. 6,64,51,000/-"</i>

Thereupon, a demand notice u/s 156 of the Act was issued and proceedings for imposing penalty u/s 271(1)(c) of the Act and Section 271B of the Act were directed to be initiated.

Before passing this assessment order, notice u/s 148 of the Act is stated to have issued to the assessee as during the year, the assessee had credited huge amount i.e. Rs. 6,63,36,000/- in ING Vysya Bank Ltd, and that still he had not filed any return of income.

Notices u/s 143(2)/142(1) of the Act, came to be issued to the assessee on 15.11.2019, but, the assessee did not comply with it. Summons u/s 131 of the Act were also issued to him on 02.02.2019. Even then he did not appear. Ultimately, show cause notice dated 10.12.2019

was issued, and the assessee came up with his reply uploaded on the portal. The assessee appeared in person too, on the same date, and got his statement recorded u/s 131 of the Act.

The assessee is stated to have come up with the plea that he never opened any bank account in the name and style M/s Severa Exports or commenced any such firm.

Thereupon, Learned Assessing Officer collected KYC details from the concerned bank in addition to other information. The assessee was confronted with said details including the account opening form, having his photograph lying affixed thereon.

The assessee admitted that it was bearing his photograph and also the copy of his PAN card. However, he denied to have put forth said signatures and pleaded that someone had forged his signatures.

6. In the assessment order, Learned Assessing Officer went on to specify the claim put forth by the assessee before him. The relevant portion available in para 3 of the assessment order reads as under:-

*“He further stated that his employer Sh. Yash Jain Mumbai and his persons would have done all this by doing forgery with these documents. The assessee has been further asked vide question No.10 of his statement recorded, that why he has not made any police complaint against the said Sh. Yash Jain for mischief done with*

*him. In response he stated that though he had tried to register an FIR against him but the police authorities have denied by assigning reason that the matter pertains to income tax department.*

*The assessee has been further asked to produce Sh. Yash Jain and the other persons who have been alleged to opened the bank account and firm in the name of the assessee and made transaction therein, for cross examination. However, the assessee could not produce these persons. Further, on perusal of the material available on record, it is noticed that the assessee has shown income from Job work during the f.yr. 2011-12 in the return filed in response to the notice under sec. 148 whereas in his statement as recorded above assessee has stated that he received salary during the year from Sh. Yash Jain (prop. M/s Jabardast Collection) @ 10000/- p.m.. As such, there are various contradictions as per the statement given by the assessee and material available on record.”*

7. When the matters come up before Learned CIT(A), by way of two separate appeals against the above mentioned two individual assessment orders relating to the assessment years 2011-12 & 2012-13, the assessee came up with the above said version to have not opened or operated any such bank account and not to have done any transaction under the name and style M/s Severa Exports or in his own name.

8. Even in the other appeal, the assessee denied to have been opened any such bank account, and further pleaded that someone had misused his details.

9. In the given facts and circumstances, in the course of arguments, we enquired from Ld. AR for the assessee as to whether the assessee lodged any complaint with the police as regards the plea put forth by him before department and Learned CIT(A).

Ld. AR for the assessee has candidly admitted that no such report was lodged with the local police. However, he has submitted that efforts were made to report the matter, but the assessee could not succeed.

The fact remains that no report was lodged by the assessee with the local police, including Senior Superintendent of Police or by way of filing of any complaint before the concerned Magistrate or with any other investigating agency.

Had the assessee taken steps in reporting of the matter to set the criminal law in motion, on the basis of version put forth by him, as mentioned above, the concerned investigating agency would have proceeded to investigate the said version and taken further appropriate steps.

But the fact remains that the matter was never reported by the assessee to any of the investigating agency or police or any criminal Court. This fact speaks volumes against the assessee.

10. Learned AR for the assessee has drawn our attention to the impugned orders, where it stands recorded that Learned CIT(A) had called for remand report(s) from Learned Assessing Officer as regards the above said version that he had neither opened with ING Vysya Bank Ltd. nor used any such bank account.

11. Having gone through the remand report, we find that on his appearance before the Learned Assessing officer, in the proceedings pertaining to remand report, the concerned Learned Assessing Officer based his remand report on the following observations: -

*“9. From above factual position it is seen that assessee has been claiming that the said bank account does not belong to him and was operated / controlled by friend of Shri Yash Jain, the person i.e. friend of Yash Jain who also controlled bank account of his friend Rajesh. However, neither the assessee has disclosed the name of the person who operated/ controlled his bank account nor furnished any documentary evidence in support of his submission. Further, no evidence of filing of complaint, if any regarding misuse of his credentials for opening of bank account has been filed by the assessee. Therefore, it is not acceptable that the bank account does*

*not belong to him. Since, explanation in respect of transactions reflected in bank account were not filed during assessment proceedings as well as during appellate proceedings, hence the same remained unexplained. It is, therefore, requested that no relief may be granted to the assessee and the addition made by the Assessing Officer may kindly be upheld in this case.*

*10. It is pertinent to mention here that in the statements recorded u/s 131 in the case of Shri Rajesh the assessee did not stated anything about any bank account in his name. He only stated about bank account opened in the name of his friend Shri Rajesh.”*

12. It is significant to note that while conducting proceedings in connection with remand report and before submitting said report, the statement of account and other documents were available with the Learned Assessing Officer.

Said Statement of Account reveals several money transactions, names of several persons -debtors and creditors and names of different accounts having relation to the transactions.

In the given circumstances, it was for the Learned Assessing Officer to join in the enquiry said persons or their representatives or officers of the concerned banks for a thorough inquiry to find out as to who had deposited

the particulars sums shown therein and as to whose accounts the particulars sums were transferred, from time to time. But, the Learned Assessing Officer appears to have not taken any such step for the purpose of conducting detailed or thorough enquiry, to extract true facts and unearth any other person involved in the transactions.

13. In the course of arguments, Learned DR for the department did not dispute that that the Assessing Officer took no steps to join the concerned persons or their representatives, to whom the various entries/transactions as reflected in the Statement of accounts, pertained.

14. In the peculiar facts and circumstances, learned Assessing Officer could also report the matter to the police or any other Investigating Agency, so that with their assistance remand report, complete in all respects, could be submitted to Learned CIT(A) in respect of each matter. But, no such step appears to have been taken.

15. Simply because the assessee did not report the matter to the police or file any complaint before the Magistrate, or merely having regard to the conduct of the assessee, the Assessing Officer could not brush aside the version of the assessee put forth in the remand proceedings, or the version put forth during assessment proceedings pertaining to the Assessment year 2011-12 or because of the failure of the assessee to produce Shri

Yash Jain and other persons, who are stated to have opened the bank account and the firm, in his name and then transacted on different dates. Learned Assessing Officer could himself take steps to summon said persons during assessment proceedings pertaining to the year 2011-12.

16. In the given facts and circumstances, we are of the considered opinion that the matter needs to be restored to the Learned Assessing Officer for through inquiry in the matter by joining or summoning or calling all the concerned persons or even by reporting the matter to police or any other investigating agency for lawful assistance, before recording findings, and before framing of assessments.

### **Result**

17. As a result, both these appeal are disposed off for statistical purposes and each matter is restored to the files of Learned Assessing officer for decision afresh after joining, summoning or calling all the concerned parties or persons or having assistance of investigating agency as provided under the law, to arrive at the truth, before framing of any assessment, pertaining to each assessment year i.e. 2011-12 & 2012-13.

Learned AR for the assessee has assured that the assessee shall render complete assistance in the assessment proceedings.

Of course, Learned Assessing Officer shall afford to the assessee reasonable opportunity of being heard in the said process of framing of assessment.

Order pronounced in the open court on 31/05/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 31/05/2024  
\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Pushpendra Kumar Jain, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Ajmer.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 429 & 430/JPR/2023)

आदेशानुसार / By order,

Sd/-

(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

सहायक पंजीकार / Asstt. Registrar