

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 363/JP/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Shiv Bhagwan Agarwal Krishi Upaj Mandi Samiti Yard Ramganjmandi, Kota- 326 519	बनाम Vs.	The ITO Ward- 1(3) Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABHPA 4563 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Rajendra Sisodia, CA
राजस्व की ओर से / Revenue by: Shri Rajesh Kumar Meena, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 30/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 12 /06/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 29-01-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2013-14 raising therein following grounds.

"1. For that the ld CIT(A) erred in upholding addition of Rs.3,29,923/- made by the AO to the total income of the assessee on account of commission income.

2. For that the ld.CIT(A) erred in upholding addition of Rs.22,413/- to the total income of the assessee on account of interest income.’

2.1 Apropos Ground No. 1 & 2, the ld. CIT(A) has dismissed both the grounds by observing as under:-

“7.4 Further, even during the course of present appellate proceedings, the assessee has failed to rebut the findings of the AO. The assessee furnished the same reply during the appellate proceedings which was already considered and rejected by the AO after pointing out the discrepancies. Under the circumstances, in the absence of any details or documentary evidence forthcoming from the assessee, I am of the considered opinion that the AO rightly made the impugned addition of Rs.3,29,923/- warranting no interference of the appellate authority. Thus, the Ground No. 1 raised by the assessee on this issue is dismissed.

7.5 Ground No. 2 is raised against the AO’s action in making addition of Rs.22,413/- on account of interest received.

The assessee received interest income of Rs.1,56,406/- as per 26AS but in books of accounts assessee had shown interest income of Rs.1,33,993/- only. As per the 26AS, the assessee received interest of Rs.22,413/- u/s 194A from Shri Anand Swaroop Agarwal, which is not shown by the assessee in his books of accounts and therefore, the same has been added by the AO. The assessee contended that he did not receive any interest from Shri Anand Swaroop Agarwal. However, he did not file any documentary evidence in support of his claim. In view of the above, I am of the considered opinion that the AO rightly made the impugned addition of Rs.3,29,923/- warranting no interference of the appellate

authority. Thus the Ground No. 2 raised by the assessee on this issue is dismissed.

2.2 After hearing both the parties and perusing the materials available on record, the Bench noted that the books of the assessee are duly audited by a Chartered Accountant and the audit report has been filed on the income tax portal. It is noted that the audited final accounts were produced before the AO. The ledger account of Aadat is an integral part of the final accounts of the assessee. The assessee had filed his ITR on the basis of these audited final accounts, which was accepted by the AO. The Bench noted that the AO doubted the correctness and genuineness of Aadat account. As for the details of receipts in Aadat account, all receipts are matching with the receipts reflecting in Form-26AS. As a matter of fact, the Aadat account contains even those entries which are not appearing in Form-26AS. He has further stated that the debit entries are not verifiable. What further verification is required when all party ledger accounts were made available to the AO? From the party ledgers, the debits made in the Aadat account could have been easily verified. However, the AO did not feel to accept the fact that the net Aadat has been carried to P&L account and Commission from all the parties as per Form-26AS stands duly included in the ledger account of Aadat. He simply added the difference pointed out by the audit, for which he had reopened the assessment and

based the addition solely on the basis of mismatch between Aadat receipts in P&L account and Form-26AS, without appreciating the reason for the same. The Id. CIT(A) confirmed the action of the AO. He held the information in respect of TDS amount shown in Form 26AS from the TDS deductor as conclusive against the assessee. It is noted that various judicial forums have held time and again that addition solely based on mismatch between receipts in P&L and in 26AS is unsustainable. The Hon'ble ITAT 'A' Bench, Delhi in the case of **Ace Build Tech vs. ACIT** in ITA No.9322/Del/2019 decided on 07/07/2023 held –

23. In view of foregoing discussion, we reach to a fortified conclusion that only because there was mismatch between TDS certificate/26AS and the turnover/receipts shown by the assessee in its P&L account cannot be a sole basis for making addition in hands of assessee to bring the difference to tax.

The Bench further noted that ITAT 'A' Bench, Kolkata in the case of **ITO vs. Star Consortium** in ITA No.04/Kol/2020 decided on 07/04/2021 held as under:- –

6. We note that only because there is a mismatch between TDS certificate (26AS) and turnover shown by the assessee in its P & L account cannot be the sole basis on which the entire addition of the difference could have been brought to tax. Therefore, on the facts and circumstances discussed above we find the view of the Ld. CIT(A) to be a plausible view and accordingly his action of deleting Rs. 2,14,35,593/- is confirmed and therefore, the appeal of the revenue stands dismissed.

Hence, in this view of the matter, the Ground No. 1 of the assessee is allowed.

2.3 As regards the Ground No. 2 of the assessee, it is noted that during the relevant year, the assessee had incurred financial expenses of Rs.9,14,111/- which

stood debited to his P&L account. This amount comprised of interest payment to banks (Rs.1,50,370/-) and various parties (Rs.7,63,741/-). In this case, the assessee had paid interest of Rs.8,97,734/- to various parties and received interest of Rs.1,33,993/- from M/s Om Sai Collateral Management Pvt. Ltd. The net interest payment of Rs.7,63,741/- formed part of financial expenses debited to P&L account. In this ground of appeal, it is seen that the AO noticed from Form 26AS that interest of Rs.22,413/- is not included in the interest receipts by the assessee. It was stated before the AO as well as the before Ld.CIT(A) that the above amount of Rs.22,413/- was neither received by the assessee nor credited into the bank account or books of the assessee. It was also stated that the assessee has not done any transaction with Anand Swaroop Agarwal, from whom the above interest was claimed to be received by the assessee. It was also submitted before the lower authorities that there might be some typographical error in filling the PAN at the time of filing TDS return by the so called Anand Swaroop Agarwal and anything could not be added to the total income of the assessee on the basis of mistake of others. In such an eventuality, the AO/ ld. CIT(A) were duty bound to conduct further inquiries before making the impugned addition but they cast the onus on the assessee to prove the negative. The burden is on the AO to prove the alleged fact. On the contrary in the assessment proceedings, the AO demanded the assessee

to prove that the amount appearing in Form 26AS did not belong to the assessee. In any case, it is difficult to prove the negative for the assessee, who seems to have submitted good amount of papers to the AO to support his case on the issue concerned. The AO has proceeded without any material to hold that the assessee had earned interest of Rs. 22,413/-, which he has failed to report. It is submitted that Form 26AS alone cannot lead to addition of income if claims are made of wrong data entry/information and lack of corresponding services by the deductee to the deductor. The AO/learned CIT(A) had sufficient time to conduct necessary enquiries to rebut the version of the assessee that his interest income stood duly disclosed in return of income filed with Revenue and no additions are warranted for this TDS mismatch. The powers of learned CIT(A) are co-terminus with the powers of the AO. Neither AO nor learned CIT(A) had considered it appropriate to conduct enquiries with the party who had deducted TDS on behalf of the assessee wherein there is difference between information as per Form No. 26AS per income-tax data base and TDS as per books of accounts of the assessee, despite having all information in their possession which was submitted by assessee. No notice u/s 133(6) or summons u/s 131 of the 1961 Act were issued by any of these authorities to Shri Anand Swaroop Agarwal whom TDS credit is reflected in 26AS, while assessee is denying to have dealt with this person. The assessee has

discharged its onus which lay under provisions of the Act by submitting ledger account of Interest as well explaining the reasons for difference between income as is reported in Form No. 26AS information per data base maintained by income tax department and income as is reflected in its books of accounts. The assessee has no control over the data base of the Income-tax department as is reflected in Form No. 26AS and at best the assessee could do is to offer bonafide explanations for these differential which assessee did in this case during appellate/assessment proceedings. On the other hand, the Income-tax department has all the information and data base in its possession and control. The learned CIT(A)/AO ought to have conducted necessary enquiries to unravel the truth but asking assessee to do impossible is not warranted. No defect in the books of accounts is pointed out by the authorities below nor were books of accounts rejected by the authorities below. No cogent incriminating material was brought on record by the authorities below to evidence/prove that the assessee has received/earned any income outside its books of accounts. The authorities below also did not rebut the contentions of the assessee. The assessee's case was also scrutinized under the provisions of Section 143(3) of the 1961 Act for the same assessment year but no such additions were made on account of mismatch of income vide TDS as is reflected in Form No. 26AS information per income-tax data base maintained by department and the

income as is reflected in assessee's books of accounts. It is noted that ITAT 'E' Bench, Mumbai in the case of **TUV India Pvt Ltd. vs. DCIT** in ITA No.6628/Mum/2017 decided on 20.08.2019 has allowed the appeal of the assessee on identical circumstances. Hence, in view of the above deliberation and facts and circumstances of the case, the Bench does not concur with the findings of the ld. CIT(A) and thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 12/06/2024.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/06/2024

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Shiv Bhagwan Agarwal, Ramganj Mandi, Kota
2. प्रत्यर्थी / The Respondent- The ITO, Ward -1(3) Kota
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 363/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar