

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA Nos. 346 & 347/JP/2024  
निर्धारण वर्ष/Assessment Years : 2017-18 & 2018-19

Sh. Onkar Syal S/o Rajendra Prasad Syal, Near Radha Krishan Mandir Top Mohalla, Bharatpur, Rajasthan	बनाम Vs.	ITO, Ward-2, Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BFZPS 9883 L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Parwal (CA)  
राजस्व की ओर से/ Revenue by : Sh. Anup Singh (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 12/06/2024  
उदघोषणा की तारीख/Date of Pronouncement: 18/06/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals filed by assessee are arising out of the order of the National Faceless Appeal Centre, Delhi dated 08/02/2024 [here in after 'NFAC'] ] for assessment years 2017-18 & 2018-19 which in turn arise from the order dated 21.10.2019 & 15.03.2023 passed under section 144 & 147 r.w.s 144 of the Income Tax Act, by Assessing Officer.

2. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure disputed in each year, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA No. 346/JPR/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in disputed. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 346/JP/2024 is taken as a lead case.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 346/JP/2024 on the following grounds;

*“1. The Ld. CIT(A), NFAC has erred on facts and in law in deciding the appeal ex-parte without providing adequate opportunity of hearing.*

*2. The Id. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs. 1,02,38,438/- u/s 69A of the IT Act, 1961 by treating the cash and other credit deposit entries in the bank account as unexplained.*

3. *The appellant craves to alter, amend and modify any ground of appeal.*

4. *Necessary cost be awarded to the assessee.”*

5. Succinctly, the fact as culled out from the records is that as per the information available with the department, the assessee deposited cash amounting to Rs. 15,84,460/- during the demonetization period (09.11.2016 to 30.12.2016) in his bank account maintained with Baroda Rajasthan Kshetriya Gramin Bank, Rajendra Nagar, Bharatpur. As per the provisions of section 139(1) of the Income Tax Act, 1961, the assessee was required to file the income tax return for the assessment year 2017-18 (F.Y. 2016-17) but he failed to do so. Therefore, a notice u/s 142(1) was issued to the assessee on 05/02/2018 requiring the assessee to prepare a true and correct return of his income in respect of which he is assessable under the Income-tax Act, 1961 for the A.Y. 2017-18. The said return of income was required to be furnished by the assessee as per the conditions and manner prescribed in Rule 12 of Income-tax Rules, 1962 on or before 07/03/2018. In response to the notice, neither any return of income was filed nor any reply furnished by the assessee through electronic medium. Thereafter, notice u/s 142(1) of the I.T. Act, 1961 was issued on 29.05.2019, but this notice was also remained un-complied with.

5.1 Keeping in view of natural justice, a show cause notice u/s 144 of the I.T. Act, 1961 was issued to the assessee on 11.09.2019 providing last opportunity to submit the details/information on 16.09.2019 failing which, the Id. AO mentioned that he has no option but to complete the assessment ex-parte u/s 144 of the I.T. Act, 1961 on the basis of information available on the record of the relevant assessment year.

5.2 As the assessee remained non-compliant from the material available on record the Id. AO observed that during the year under consideration, the assessee made cash deposit amounting to Rs. 99,07,500/- and other credit in the bank account of Rs. 3,30,398/- which remained unexplained. Therefore, total income was determined at Rs. 1,02,38,438/- in the case of the assessee and the addition was made as per provision of section 69A of the Act.

6. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“Decision: I have carefully considered the facts of the case as well as gone through the observation and findings of the AO’s assessment order. Since no written submission against the grounds, as enumerated in grounds of appeal, is filed by the appellant despite availing multiple opportunity of hearing dated 23-11-2023, 06-12-2023, the appeal relating to the grounds is disposed on merit i.e. based on materials available on records.

I find from the grounds of appeal vis-à-vis statement of facts that the appellant claimed the AO has made erroneous addition based on erroneous information and the same proceedings being bad in law. But the appellant is unable to submit any written documents in support of its claim and in course of appeal proceeding the attitude of non compliance on the part of the appellant reveal the said claim of appellant being unacceptable. It is observed from the assessment orders that despite availing ample opportunity in assessment stage neither the appellant nor its authorized representative could have provided any acceptable satisfactory evidence against the show cause notice issued for the proposed addition made in the year under consideration. In view of that considering the entire conspectus of the case I am of opinion that despite availing adequate opportunity the appellant is unable to give either satisfactory explanation with corroborating evidence regarding unexplained money receipt details. Accordingly I do not find any infirmity in the order of the AO and find the same was justified in as much as the addition being made in accordance with law. Considering the entire conspectus of the case I hold that the appellant has no proper explanation regarding unexplained money/cash deposits. Accordingly addition of Rs. 1,02,38,438/- invoking provision of section 69A of the I.T Act stand confirmed and the grounds relating to these issues are dismissed.”

7. Feeling dissatisfied with the order of the Id. CIT(A)/NFAC, the assessee has preferred the present appeal on the grounds as raised by the assessee as reiterated here in above. To support the various grounds so raised by the assessee, the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is reiterated here in below;

1. The assessee is a distributor of Danik Bhaskar newspaper of M/s DB Corp Ltd. M/s DB Corp Ltd. supplies newspaper to the assessee who in turn distributes it to various hawkers. These hawkers supply the newspapers to various households. These hawkers collect cash from the households and the same is given to the assessee. The assessee deposits such cash in the bank account maintained with Baroda Rajasthan Kshetrya Grahmin Bank from which he makes payment to DB Corp Ltd. against the newspaper supplied to him.

2. The assessee filed the income tax return upto AY 2012-13. Thereafter the return was filed from AY 2019-20 onwards. In the e-filing portal the communication address of CA Rakesh Mitthu i.e. [rakeshmitthuca@yahoo.com](mailto:rakeshmitthuca@yahoo.com) was provided.

3. The AO issued notice u/s 142(1)/ show cause notice for AY 2017-18 on 29.05.2019, 03.09.2019, 11.09.2019 & 17.09.2019 at email address [rakeshmitthuca@yahoo.com](mailto:rakeshmitthuca@yahoo.com). However, since these notices were never communicated by CA Rakesh Mitthu to the assessee, AO passed the order u/s 144 dt. 21.10.2019 by treating the cash & other deposits of Rs.1,02,38,438/- in the bank account as unexplained. This order came to the notice of the assessee on 31.01.2020. The assessee thereafter changed his counsel and in the e-filing portal his e-mail address [rajeshmanak13@hotmail.com](mailto:rajeshmanak13@hotmail.com) was also provided. In Form No.35 filed on 18.02.2020 the communication address for issue of notice was also given of CA Rajesh Gupta and in S. No.11 relied upon the books of accounts, bills, bank statement and other documents.

4. For AY 2018-19, A.O. issued notice u/s 142(1)/ show cause notice on 03.11.2022, 05.01.2023, 17.01.2023, 23.01.2023, 03.02.2023 & 16.02.2023 but except for notice dt. 03.11.2022 all the notices were issued only on the e-mail of [rakeshmitthuca@yahoo.com](mailto:rakeshmitthuca@yahoo.com). These notices never came to the knowledge of the assessee and therefore AO passed the assessment order u/s 144 dt. 15.03.2023 by treating the cash deposit of Rs.1,14,21,120/- as unexplained. This order came to the notice of the assessee on 26.06.2023 and accordingly appeal was filed on 23.07.2023 where the address to which notice is to be sent was mentioned as "Near Radha Krishna Mandir, Top Mohalla, Ramnagar, Barso B.O., Bharatpur". Along with the appeal papers assessee in S. No.11 & 12 relied upon the Profit & Loss a/c, Balance Sheet and the bank statement.

5. The Ld. NFAC in AY 2017-18 observed that assessee failed to comply with notices dt.23.11.2023 & 06.12.2023 and therefore in the absence of any written document he dismissed the appeal filed by the assessee. Similarly for AY 2018-19 the Ld. NFAC observed that assessee failed to comply with notice dt. 14.12.2023 & 11.01.2023 and thus dismissed the appeal filed by the assessee.

*Submission:-*

1. At the outset it is submitted that during the course of assessment proceedings for both the assessment years, notices were issued by the AO on email address of earlier CA Rakesh Mitthu but he never communicated these notices to the assessee and therefore no representation could be made during the course of assessment proceedings. However from the bank statement available before the AO (PB 3-12) it is evident that cash is deposited each month and against the same payment is made by RTGS/ NEFT. Therefore even in the

best judgement assessment considering the entire credit in the bank account as unexplained without considering the debit transaction is unjustified. In fact the debit transaction in the bank account represents the payment made to DB Corp Ltd. against the newspaper supplied by them to the assessee. Copy of the account of assessee in the books of DB Corp Ltd. is at PB 13-17 from which it is verifiable. In fact the assessee earned net profit of Rs.2,32,958/- in AY 2017-18 (PB 19) and net profit of Rs.2,47,935/- in AY 2018-19 (PB 22) as is evident from the Profit & Loss a/c and Balance Sheet.

2. The Ld. NFAC issued two notices for each assessment year. These notices were issued at the e-mail address [rakeshmitthuca@yahoo.com](mailto:rakeshmitthuca@yahoo.com) & [rajeshmanak13@gmail.com](mailto:rajeshmanak13@gmail.com). The notice issued at email address of Rakesh Mitthu never came to the notice of the assessee and the notices were issued at the e-mail of [rajeshmanak13@gmail.com](mailto:rajeshmanak13@gmail.com) instead of [rajeshmanak13@hotmail.com](mailto:rajeshmanak13@hotmail.com) and thus these notices also didn't come to the knowledge of the changed CA of the assessee. Therefore the assessee could not comply with the notices issued by the NFAC.

In view of above, it is prayed that the matter be send back to the AO to impart substantial justice to the assessee.”

8. The Id. AR of the assessee as regards to the contention that the assessee remained non-compliant before the lower authorities for which he has filed an affidavit of himself and his Authorized representative explaining the reasons as to why they remained non-compliant before the lower authorities. The Id. AR of the assessee further vehemently argued that the assessee is deprived up on the justice and based on the record filed. He prayed that though the assessee did not explain the credit before the lower authorities, assessing the income of the assessee at whole of the credit as income is also not correct. Drawing our attention to that statement he

submitted that the money so credited is not income as the same is also debited and transmitted to the party for which he is working. The Id. AR of the assessee demonstrated that if the assessee based on the affidavit filed, if given an opportunity to represent his case on merit there has been substantial relief to the assessee and principle of natural justice also demand so.

9. On the other hand, Id. DR based on the affidavit submitted by the Id. AR of the assessee relying on the contentions of the affidavit that in one case e-mail id was not regularly checked but in the other case, there is no dispute about the service of notice. The Id. AR of the assessee choose to remain silent on that aspect of the matter. The Id. DR also submitted that since the Id. AR of the assessee for the first time raised the contention that credit is on account of payment made to news paper agency for which the assessee works. Considering that aspect of the matter he submitted that the aspect which is placed before the bench for the first time needs to be verified.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that the notices were issued on email address of earlier CA Rakesh Mitthu but he never communicated these notices to

the assessee and therefore no representation could be made during the course of appellant proceedings. However, from the bank statement available before the Id. AO it is evident that cash is deposited each month and against the same payment is made by RTGS/ NEFT. Therefore even in the best judgement assessment considering the entire credit in the bank account as unexplained without considering the debit transaction is unjustified. In fact the debit transaction in the bank account represents the payment made to DB Corp Ltd. Copy of the account of assessee in the books of DB Corp Ltd. Place on record at PB 13-17 from which it is verifiable the debit side of the bank statement. In fact, the assessee earned net profit of Rs.2,32,958/- in AY 2017-18 and net profit of Rs.2,47,935/- in AY 2018-19 as is evident from the Profit & Loss a/c and Balance Sheet. Therefore, considering that contentions and ongoing through the orders of the lower authorities we find force in the arguments advanced by the Id. AR of the assessee. Thus, we are of the considered view that the assessing officer should hear the assessee's submission on merits. But at the same time assessee be given reasonable opportunity of being heard and the Id. CIT(A) should have passed the speaking order. Since, the lower authority has not considered the plea of the assessee as regard to the fact that what is the income of the assessee. Considering the facts and circumstances so

available on record, we considered it fit to remand back the matter to the file of the Id. Assessing Officer with a direction to hear the merits of the case after affording a reasonable opportunity of being heard to the assessee and after that to pass an appropriate order in accordance with the law. At the same time the assessee is directed to represent the facts of the case and remain co-operative before the assessing officer. At this stage we remand back the issues raised without commenting upon the merits of the case.

In terms of these observations, the appeal of the assessee in ITA no. 346/JP/2024 is allowed for statistical purposes.

11. The facts of the case in ITA No. 347-JP-2024 are similar to the case in ITA No. 346-JP-2024 and we have heard both the parties and perused the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 347/JP/2024 are equally similar on set of facts and grounds with that of ITA no. 346/JP/2024. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 346/JP/2024 for the Assessment Year 2017-18 shall apply mutatis

mutandis in the case of Shri Onkar Syal in ITA No. 347/JP/2024 for the Assessment Year 2018-19.

In the result, both the appeal of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 18/06/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/06/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Sh. Onkar Syal, Bharatpur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward-02, Bharatpur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 346 & 347/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar