

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

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

आयकर अपील सं./ITA No. 306/JPR/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Rajesh Kumar Jaiswal Ikauna Mohammadpur Raja Shrawasti- 271845, Uttar Pradesh	बनाम Vs.	ITO, Ward-6(4), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AERPJ 4342 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Rajesh Kumar Jaiswal (Self)
राजस्व की ओरसे / Revenue by: Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 02/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 20/06/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 03.06.2022, National Faceless Appeal Centre, Delhi [herein after referred to as "CIT(A)/NFAC"] for the assessment year 2017-18, which in turn arise from the order dated 10.12.2019 passed under section 143(3) of the Income Tax Act,1961 (hereinafter "Act") by the ITO, Ward-6(4), Jaipur.

2. The assessee has raised the following grounds of appeal:-

"1. That the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in ignoring the decisions of Hon'ble Allahabad High Court while confirming the assessment order which was passed by ITO-Ward -6(4), Jaipur, Rajasthan, without having jurisdiction who knew that the appellant was assessable by ITO, Bahraich in Uttar Pradesh and the impugned assessment order is liable to be quashed as illegal.

2. That the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in failing to observe that the A.O. has wrongly invoked section u/s 69 A of the I.T. Act, 1961, on the basis of presumption, surmises and conjectures.

3. Without prejudice to grounds of appeal numbers 1 and 2. it is submitted that the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in failing to consider the requisite documentary evidence furnished by the appellant and arbitrarily confirming the addition of Rs.2,72,65,000/- as unexplained investment u/s 69A of the I.T. Act, 1961, on the basis of presumption, surmises and conjectures.

3. That the appellant craves permission for amending the aforesaid grounds of appeal and/or for raising fresh grounds of appeal."

3. Brief facts of the case are that the assessee e-filed his return of income on 08.11.2017 vide acknowledgement No.298179120081117 declaring total income of Rs.3,05,700/-. The case was selected for limited scrutiny for the assessment year under consideration through CASS on the reason of "Cash Withdrawals" and notices u/s. 143(2) and 142(1) of the I.T. Act, 1961 had been issued by ITO Ward 6(4), Jaipur. In compliance with the notices issued the assessee furnished written submissions online. The Pr.CIT-2, Jaipur issued notice under section 127(2) of the I.T. Act, 1961 on 10.10.2019, proposing to transfer the assessee's case to ITO-Ward-2, Behraich if no objection is filed by the assessee up to 22.10.2019. The

assessee has not filed objection, however, the assessee's case remained within the jurisdiction of the ITO, Ward-6(4), Jaipur. The ITO, Ward-6(4) completed the assessment proceedings and passed impugned assessment order on 10.12.2019. The ITO held that the explanation offered by the assessee in respect of the source of cash deposits, other amount deposits against the cash withdrawals of Rs.2,72,65,000/- was not found satisfactory and acceptable and accordingly, added the amount as unexplained cash under section 69A of the I.T Act, 1961.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“6. Decision of CIT(AU): I have carefully considered the submission of the appellant dated 13.07.2021 and 24.12.2021 with reference to grounds of appeal and facts of the case emanating from the assessment order u/s.143(3) of the IT Act, 1961. My observation and decision ground-wise is as under:

6.1 Ground No.1: In this ground, appellant contended that the Income Tax Officer-6(4) Jaipur has erred in law and on facts in passing the impugned assessment order without having jurisdiction over the case of appellant and the assessment order is illegal as such.

6.1.1 In this regard, it is observed from the acknowledgement and ITR placed at pages 1 to 43 of the Paper Book that for A.Y.2017-18 total income of Rs.3,05,700/-is declared in the Return e-filed vide acknowledgement No.298179120081117 showing PAN: AERPJ4342P, address is given as Rajesh Kumar Jaiswal, Ikauna, Mohammadpur Raja, District- Shrawasti, Pin Code-271845, State-Uttar Pradesh and that in the PAN also the above-mentioned address is stated.

6.1.2 It is the contention of the appellant that notice under section 127(2) of the I.T. Act, 1961 was issued on 10.10.2019 by the Principal Commissioner of Income Tax, proposing to transfer the assessee's case to ITO-Ward-2, Behraich if no objection is filed by the assessee up to 22.10.2019. Although appellant has not file any objection to the proposal to transfer the PAN, the assessee's case remained within the jurisdiction of the ITO, Ward-6(4), Jaipur, and the ITO, Ward-6(4) completed the assessment proceedings and passed impugned assessment order on 10.12.2019, without having jurisdiction over the case of assessee- appellant and therefore assessment order is illegal as such does not hold merit.

6.1.3 As seen from the acknowledgement and ITR placed at pages 1 to 43 of the Paper Book, the address mentioned therein is Rajesh Kumar Jaiswal, Ikauna, Mohammadpur Raja, District-Shrawasti, Pin Code-271845, State-Uttar Pradesh. Further, notice under section 127(2) of the I.T. Act, 1961 was issued by the Principal Commissioner of Income Tax, on 10.10.2019 proposing to transfer the assessee's case to ITO-Ward-2, Behraich if no objection is filed by the assessee up to 22.10.2019. This indicates that the PAN of the appellant was lying in the domain of ITO Ward 6(4), Jaipur. Hence, for all income tax matters, ITO Ward 6(4), Jaipur had the jurisdiction of the appellant. The e-assessment system was introduced in 2016 on a pilot basis in New Delhi and Mumbai. In 2017, it was extended to 102 cities with the objective of reducing the interface between the department and the assesseees.

6.1.4 Thereafter, CBDT issued Notification No.61 of 2019 dated 12.09.2019 to launch the National E-assessment Scheme. The E-Assessment Scheme became effective on 7th October 2019 under the Income Tax Act, 1961 as per which E-assessment Centres were set up. Prior to the above notification, as per existing provisions of Income Tax Act, 1961, jurisdiction over assessee resided with local Income Tax Authority and service of notice can be made through various modes as prescribed. However, this scheme over-ruled such provisions and gained much liberty and power in terms of exercise of jurisdiction and validity of service of notice. The assessment can be done by any officer allocated through System and further, service of notice can be done at various addresses on record. To enable so, Section 143(3B) has been introduced by Finance Act, 2018 and the notification has been brought by Central Government in Sep'19. Considering the above, I find no merit in the contention of the appellant that the assessment order passed u/s.143(3) for A.Y 2017-18 is without jurisdiction. Accordingly, Ground No1. is dismissed.

6.2 Ground No.2: Under this ground of appeal, appellant contended that the learned Income Tax Officer has erred in law and on facts in arbitrarily rejecting the explanation furnished by the appellant that Rs.2,72,65,000/- was related to commission business and

added the sum of Rs.2,72,65,000/- as unexplained under section 69A of the I.T. Act, 1961, on the basis of presumptions, surmises and conjectures.

6.2.1 In the appellate proceedings, appellant submitted that during the year under consideration, appellant has not maintained regular books of account and disclosed net income from paramedical goods business by estimate at Rs.1,32,580/- which has been added to the commission income of Rs. 1,72,747/- verifiable from Form 26AS and by further adding Rs.370/- interest received from I.T. Refund, the total income has been shown at Rs.3,05,329/- plus agricultural income of Rs. 1,45,300/-in the Return filed for A.Y.2017-18. It is explained that the appellant-assessee received commission on money transfer from three companies namely, Muthoot Forex Limited, Vodafone M-Pesa Limited and Wall Street Finance Limited, which amounted to Rs.1.72,747/- and TDS Rs.10.049/- which is reflected in Form 26AS. Appellant uploaded copy of sub-agency and money transfer agreement dated 25.04.2016 entered between Jaiswal Medical Hall, proprietary firm referred to as 'sub-agent and Muthoot Forex Limited referred to as 'agent' and sub representation agreement effective from 1st January, 2018 entered between Jaiswal Medical Hall and Ebix Money Express Pvt.Ltd, a representative of Western Union Financial Services Inc., USA stated to be the company that has taken over M/s. Wall Street Finance Limited. The deposits in the bank accounts are related to money transfer transactions from the afore-mentioned three companies and the Ld. Income Tax officer has wrongly presumed that the assessee has failed to explain the source of cash deposits made by him against the cash withdrawal made by him. Thus section 69A of the I.T. Act, 1961 is not attracted at all.

6.2.2 As per the assessment order, during the course of assessment proceedings for the assessment year under consideration, AO noticed that appellant made withdrawals of cash of Rs.2,72,65,000/- from his bank account No. 50200012279931 maintained with HDFC Bank Ltd., adjacent SBI, Ikauna Bye pass Road, Ikauna Bazar, District-Shrawasti (Uttar Pradesh). The appellant was asked on several instances and finally by way of show cause notice issued on 09.11.2019 and 08.12.2019 to explain the source of cash deposits and other deposits against the cash withdrawals of Rs.2,72,65,000/- made by appellant during the year under consideration. The AO duly perused the written submission filed along with some documents but found them unsatisfactory and unacceptable to explain the source of deposits made in his bank account from which the cash withdrawals were made by him during the year under consideration, Hence, the sum of Rs.2,72,65,000/- is added to the total income returned under section 69A of the Income Tax Act, 1961.

6.2.3 I have closely perused the materials submitted by the appellant with reference to appellant's submission and findings of the AO brought out in the assessment order. Appellant claimed that during the F.Y.16-17 relevant to A.Y.2017-18, appellant derived

income from sale of paramedical goods and had agricultural income disclosed in the Return filed. Besides, appellant has shown commission income and claimed it to have received for rendering money transfer service from three companies namely, Muthoot Forex Limited, Vodafone M- Pesa Ltd. and Wall Street Finance Ltd. In support of the above claim and receipt of income declared in the return filed for A.Y.2017-18, appellant submitted only statements of bank account maintained with HDFC and a single page of account with Allahabad Bank, copy of agreement purported to have executed with M/s. Muthoot Forex Limited and another agreement entered with Ebix Money Express Pvt.Ltd, stated to be the company that has taken over M/s. Wall Street Finance Limited, and Form 26AS. No document in connection with agency commission received from Vodafone M-Pesa Ltd. is submitted citing the reason that the said company has closed its operations in India. These documents reportedly have been furnished to the Assessing Officer during the assessment proceedings. On careful perusal, I find only the term and conditions of money transfer services are laid down in the said documents. However, these documents alone are not adequate to establish the quantum of transactions carried out by the appellant as a sub-agent or sub-representative of the companies. The agreement entered with M/s. Ebix Money Express Pvt. Ltd submitted by the appellant is dated 1st January, 2018 effective for financial year 2017-18 relevant to A.Y.2018-19 only and has nothing to do with the assessment year 2017-18 under consideration. No agency contract executed by the appellant with M/s. Vodafone M-Pesa Limited has been furnished either during the assessment proceedings or in the appellate proceedings. These documents are insufficient to vouch the correctness of the explanation that the withdrawals amounting to Rs.2,72,65,000/- are made for the business of commission agency. In fact, commission receipt itself disclosed by the appellant in the return of income is unverifiable.

6.2.4 It is significant to point out here that appellant in his submission has categorically stated that no books of accounts have been maintained during the financial year 2016-17 relevant to the current assessment year under consideration. In the given facts and circumstances, appellant has not discharged the onus of proving the contention that all the deposits in the bank account and withdrawals of Rs.2,72,65,000/- pertains to the business of commission agency. There is no confirmation of account by the companies regarding the transactions carried out by the appellant as an agent. No details about the volume of money transfer transactions executed by the appellant and details of customers handled by the appellant on commission basis have been brought on record neither, before the Assessing Officer during the assessment proceedings nor before this office in the appellate proceedings. Appellant has not maintained books of accounts for his paramedical business as well during the period relevant to the assessment year under consideration. Hence, income from his business declared in the return of income is not substantiated with documentary evidence.

6.2.5 The Assessing Officer has specifically stated in the table in page 2 of the assessment order the dates on which notice under section 143(2) and 142(1) were issued and served on the appellant as per which on six instances appellant had the opportunity to make his submissions and authenticate deposits in the bank account and explain with relevant documents, the withdrawals which amounted to Rs.2,72,65,000/-. During the appellate proceedings also, on four instances vide notice u/s.250 issued and delivered to the email id given in Form 35, appellant was accorded opportunity to present its case. Hence, this is a case where adequate opportunity was provided to the appellant to substantiate his claim that the withdrawals amounting to Rs.2,72,65,000/- from the bank account is directly linked to agency account and do not belong to the appellant.

6.2.6 The above facts and circumstances vividly show that the deposits and cash withdrawals from the bank account amounting to Rs.2,72,65,000/- has remained unexplained. Taking into consideration the facts and circumstances of the case on hand, I do not find any infirmity in the conclusion drawn by the Assessing Officer in treating the said amount of Rs.2,72,65,000/- as unexplained cash and making addition thereof to total returned income under section 69A of the income tax Act, 1961. Accordingly, the addition made in the assessment order is sustained. Consequently, ground No.2 is dismissed.

6.3 Ground No.3: This ground relates to the plea of the appellant for grant of permission for amending the aforesaid grounds of appeal and or raising fresh grounds of appeal.

6.3.1 The appellant has not added and altered any of the above-mentioned grounds of appeal. Accordingly, such mention by the appellant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly disposed as dismissed.

7. In the result, the appeal of the appellant is dismissed.”

5. As the assessee did not receive any relief from the order of the Id. CIT(A), assessee preferred the present appeal before us. The Id. AR for the assessee has filed a detailed submissions in support of the grounds so raised and is reproduced hereinbelow:-

“The appellant-assessee derives commission income from sub-agency in respect of money transfer and during the F.Y.16-17 (A.Y.2017-18) received commission from three companies namely Muthoot Forex Limited Vodafone M-Pesa Limited and Wall Street Finance Limited. In addition to the aforesaid income, the assessee enjoyed income from sale of paramedical goods as well as agricultural income.

The return disclosing total income of Rs.3,05,700 for A.Y.2017-18 was e-filed by the assessee on 08-11-2017, vide acknowledgement no. 298179120081117.

In the return of income mentioned above the assessee has noted PAN AERPJ4342P, which is related to his address of Shrawasti District in Uttar Pradesh.

The case was selected for limited scrutiny through CASS on reason Cash withdrawals and notices under sections 143(2) and 142(1) of the I.T. Act, 1961 had been issued without jurisdiction by the ITD Ward 6(4), Jaipur. In compliance with the aforesaid notices issued the assessee has furnished written submissions on line.

The Hon'ble Pr.CIT-2, Jaipur has issued notice under section 127(2) of the I.T.Act, 1961 on 10-10-2019, proposing to transfer the assessee's case to ITO- Ward-2, Behraich (Uttar Pradesh) and informed that if no objection is filed by the assessee upto 22-10-2019, it will be presumed that the assessee has no objection and the case would be transferred accordingly.

The assessee has not filed any objection and expected that the ITO-Ward -2, Behraich would have received the case on transfer from Jaipur and would issue fresh notices under section 143(2) and 142(1) of the I.T.Act, 1961.

The ITD Ward-6(4), Jaipur has however, wrongly completed the assessment proceedings and has passed the impugned assessment order on 10-12-2019 for A.Y.2017-18.

The ITD Ward-6(4) Jaipur has arbitrarily held that the explanation offered by the assessee(in respect of the source of cash deposited/other amounts deposited against the cash withdrawals Rs. 2,72,65,000) was not found to be satisfactory/acceptable and arbitrarily added the sum of Rs.2,72,65,000/- as unexplained investment under section 69A of the IT Act, 1961.

The assessment has arbitrarily been made on total income of Rs 2,75,70,700 and the demand of Rs.2,88,58,834 has been created by invoking section 115BBE of the I.T. Act, 1961 (with surcharge 25 percent, Education cess and interest under section 234B and 234 C) and notice under section 271 AAC(1) of the I.T.Act, 1961 has also been issued separately by the Id.A.O..

The appeal of the assessee has been arbitrarily dismissed by Id. CIT (A), NFAC, Delhi vide impugned order u/s 250 of the I.T. Act dated 03-06-2022.

The aggrieved assessee is, therefore, in appeal before your Honour.

PLEADINGS

1. In ground of appeal No. 1, it is submitted that the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in ignoring the decisions of Hon'ble Allahabad High Court while confirming the assessment order which was passed by ITO-Ward-6(4), Jaipur, Rajasthan, without having jurisdiction who knew that the appellant was assessable by ITO, Bahraich in Uttar Pradesh and the impugned assessment order is liable to be quashed as illegal.

1.1 Your Honour, the humble appellant submits as follows:-

i) The assessee has e-filed the return of income for A.Y.2017-18, disclosing vide acknowledgement total no. income of Rs.3,05,700/- 298179120081117 showing PAN: AERPJ4342P and address as under -

Rajesh Kumar Jaiswal

Ikauna, Mohammadpur Raja,

District Shrawasti, Pin Code - 271845

State Uttar Pradesh

The copy of the relevant acknowledgement and ITR are placed on pages 1 to 43 of the Paper Book.

ii) The PAN Card has been received on the above mentioned address, which is visible in the Income Tax Portal itself

iii) The aforesaid address is noted in the notice 143(2) of the I.T. Act, 1961, dated 09-08-2018 which was issued after the case was selected for limited scrutiny (CASS).

A copy of the notice u/s143(2) is placed on pages 44 to 47 of the Paper Book.

iv) The notices issued electronically u/s 142(1) of the I.T. Act, 1961 contain the above mentioned address of the assessee and are available on the I.T. Portal.

v) The ITO, Ward-6(4), Jaipur has erroneously assumed jurisdiction and this fact has been noticed by the Pr.Commissioner of Income Tax -2, Jaipur, who issued show cause notice u/s 127(2) of the I.T. Act, dated 10-10-2019 requesting the assessee "to show

cause as to why your PAN/case should not be transferred to ITO, Ward-2, Behraich, with whom the current jurisdiction lies and informed that if no objection is filed by the assessee up to 22-10-2019, it will be presumed that the assessee has no objection and the case would be transferred accordingly.

The aforesaid notice is available on I.T. Portal and a copy thereof is placed at page 48 of the Paper Book.

1.2 It may very kindly be observed that the Id. ITO, Ward -6(4), Jaipur has knowingly committed the error of assuming jurisdiction and aforementioned facts emphatically prove it.

The notice u/s 127(2) of the I.T. Act, mentioned above clearly speaks that if no objection is filed by the assessee upto 22-10-2019, it will be presumed that the assessee has no objection and the case would be transferred to ITO, Ward-2, Behraich.

The assessee did not file objection and believed that his case was transferred to ITO, Ward-2, Behraich and expected that after 22-10-2019, legal notices would be issued by ITO, Ward-2 Behraich.

The assessee was however surprised to see that the ITO, Ward-6(4), Jaipur has passed the impugned assessment order dated 10-12-2019 i.e. after 49 days of the date of notice u/s 127 (2) of the I.T. Act, referred to above.

1.21 It is most respectfully submitted that the impugned assessment order dated 10-12-2019 for A.Y.2017-18, has been arbitrarily passed u/s 143(3) of the I.T. Act, 1961, by ITO, Ward-6(4), Jaipur, who has no jurisdiction.

1.3 The Id. CIT(A) in Para 6.1.2 & 6.1.3 of the order passed by him, has misinterpreted the Pr.CIT, Jaipur's notice u/s 127(2) of the I.T. Act and wrongly held that since no objection was filed, the assessee's case remained within the jurisdiction of ITO, Ward-6(4), Jaipur whereas as per Pr. CIT's aforesaid letter if no objection was made on behalf of the assessee, the jurisdiction had to be transferred to ITO, Ward-2, Behraich.

1.31 In Para 6.1.4 of the Id. CIT(A)'s order, it has been wrongly held CDBT Notification No.61 of 2019 dated 12-09-2019 in respect of National E-assessment Scheme became effective on 07 October 2019 and assessment can be done by an Officer allocated through System and further service of notice could be done at various addresses on record and section 143(3B) has been introduced by Finance Act, 2018 and the notification has been brought by Central Government in Sep,2019.

The aforesaid observation of the CIT(A) is basically wrong on account of reasons noted hereunder :-

i) The Notification No.61/2019 dated 12th September, 2019 issued by CBDT in respect of CBDT INCOME TAX E-ASSESSMENT SCHEME 2019, states in Para 4 (on page 51 of the Paper Book) that the scheme shall be followed by National E-Assessment Center setup by the Board and ITO Ward-6(4), Jaipur has not been awarded such responsibility by the Board.

Moreover in Para 5 (on page 52 of the Paper Book), the assessment under the Scheme is mandated to begin with service of notice u/s 143(2) by National E-assessment Center.

ii) The Notification No.62/2019 dated 12th September, 2019 issued by CBDT in respect of DIRECTIONS FOR GIVING EFFECT TO NCOME TAX E-ASSESSMENT SCHEME 2019, states in Para 1.A. (on pages 58 to 61 of the Paper Book) that the assessment shall be made by following procedure noted at SI No. (i) to (xxi) therein, has not been followed.

iii) The Notification No. 60/2020 dated 13th August, 2020 issued by CBDT in respect of CBDT PROCEDURE FOR ASSESSMENT UNDER FACELESS ASSESSMENT (on pages 64 to 70 of the Paper Book) came into effect after 13-08-2020 whereas the impugned Assessment Order was passed earlier on 10-12-2019.

1.32 Reliance in this regard is placed the following on decisions:-

i) CITvs. M.I. Builders (P.)Ltd. [2012] 349 ITR 271(All.), wherein the Hon'ble Allahabad High Court has held that 'When jurisdiction over assessee had already been transferred to ACIT, Range-I, Lucknow notice issued under section 148 by ACIT, Range jurisdiction'. IV, Lucknow was without

Copy is placed on pages 71 to 78 of the Paper Book.

ii) Smt. Smriti Kedia Vs. Union of India & Ors. [WP 1984 of 2006] (Calcutta High Court)
Copy is placed on pages 79 to 81 of the Paper Book

1.33 In view of the aforementioned argument and decisions. It is most respectfully submitted that the Id. CIT(A) is not justified in dismissing the appeal and the impugned assessment order may very kindly be quashed.

2. In ground of appeal No. 2, it is submitted that the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in failing to observe that the A.O. has wrongly invoked section u/s 69 A of the I.T. Act, 1961, on the basis of presumption, surmises and conjectures.

2.1. In this context it is most respectfully submitted that the assessee has not maintained regular books of account and disclosed net income from paramedical goods business by

estimate at Rs.1,32,580/- which has been added to the commission income of Rs.1,72,747/- (which is verifiable from Form 26 AS) and by further adding Rs.370/- as interest received from I.T. Refund, the total income has been shown at Rs.3,05,329/- plus agricultural income of Rs. 1,45,300/-.

The copies of Form 26 AS & computation of total Income are placed on pages 82, 83 & 84 of the Paper Book, respectively.

2.11 It is most humbly submitted that during the year under consideration, the appellant-assessee received commission on money transfer from three companies namely Muthoot Forex Limited, Vodafone M-Pesa Limited and Wall Street Finance Limited, which amounted to Rs. 1,72,747/- and TDSRs. 10,049/-.The details as apparent from Form 26 AS are as follows: -

Name of Company	Commissioner (Rs.)	TDS
Muthoot Forex Limited	6,889	345
Vodafone M-Pesa Limited	51,769	2,804
Wall Street Finance Limited	1,14,098	6,900
Total	1,72,747/-	10,049

The aforementioned commission has been paid by the companies in respect of sub-agency related to money transfer by aforementioned three companies which is verifiable from the current bank accounts (HDFC & Allahabad Bank) The copies of the bank accounts are placed on pages 85 to 157 & 158 of the Paper Book, respectively.

2.12 A copy of agreement with Muthoot Forex Ltd. is placed at pages 159 to 171 of the Paper Book as a sample for information.

2.13 Further, It is most humbly submitted that one of the aforementioned companies Vodafone M-Pesa Limited has stopped business in India and the assessee-appellant has not been able to contact the employees thereof and no agreement is readily available with the appellant.

2.14 On the other hand, Wall Street Finance Limited has been taken over by Ebix Money Express Private Limited with effect from 01-01-2018 and copy of the relevant Sub- Representation Agreement is placed at pages 172 to 192 of the Paper Book as a sample for information,

2.2 The aforementioned facts and evidences have been placed before the A.O. and reiterated before Id.CIT(A) and it has been contended that the A.O. has arbitrarily invoked section 69 A of the I.T.ACT, 1961

For ready reference section 69 A is quoted hereunder :-

Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

It is most humbly submitted that section 69 A is applicable in case of unexplained ownership of any money etc.. Whereas in case of the assessee-appellant the deposits in the bank accounts are duly proved as related to money transfer from three companies noted above and the A.O. has wrongly presumed that the assessee has failed to explain the source of credits in his bank accounts and the consequent withdrawals for payment in cash to the persons entitled for payments as per list communicated by the aforesaid companies.

The assessee-appellant has acted as commission agent responsible for making cash payments to genuine persons. The aforesaid companies have paid commission and deducted TDS which is verifiable from 26AS.

2.21 Reliance in this regard is placed decision of Harsh Washesh Chhadha vs. ACIT Circle (International Taxation) [ITA No. 123/Del/2021] (ITAT, Delhi) Copy is placed on pages 193 to 198 of the Paper Book.

2.3 In view of the aforementioned arguments, it is most respectfully submitted that the section 69 A of the I.T. Act, 1961 is not attracted at all and the Id.CIT(A) is not justified in upholding the illegal finding of the A.O. and the impugned assessment order may very kindly be cancelled.

3. In ground of appeal No. 3, without prejudice to grounds of appeal numbers 1 and 2, it is submitted that the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in failing to consider the requisite documentary evidence furnished by the appellant and arbitrarily confirming the addition of Rs.2,72,65,000 as unexplained investment u/s 69A of the I.T. Act, 1961, on the basis of presumption, surmises and conjectures.

3.1 In this context, it is most humbly reiterated that in view of the submission made in aforementioned Para 2, the Id.CIT(A) is not justified in failing to consider the requisite

documentary evidence furnished by the appellant and the addition of Rs.2,72,65,000/- may kindly be deleted.

4. It is most respectfully submitted that your honour would be pleased to allow the appeal but the appellant is ready to furnish reply to clear the doubt if any.'

In view of the facts mentioned above, it is most humbly urged that the appeal may very kindly be allowed.

For such an act of judicial kindness the appellant shall ever remain grateful."

6. Per contra, ld. DR supported the reasoned order of ld. CIT(A) but at the same time not objected to the specific contention of the ld. AR of the assessee to remand back the case to the file of the ld. AO.

7. We have heard both the parties and perused the materials available on record. The bench noted from the orders of the lower authorities and submissions made by the ld. AR for the assessee, that the assessee failed to explain the source of cash deposits made by him against the cash withdrawals made during the year under consideration. The ld. AO granted six chances to make the submissions before the ld. AO to justify the source of deposit in the bank account and to explain with relevant documents, withdrawals which amounted to Rs.2,72,65,000/-. Before the ld. CIT(A), the assessee was given four chances to present his case. The assessee did not file any evidence to support his claim where the ld. CIT(A) observe that he did not find any infirmity in the conclusion drawn by the ld. AO

treating the said amount to Rs. Rs. 2,72,65,000/-and unexplained cash u/s 69A of the Act, 1961 was confirmed.

7.1 Before us, the ld. AR for the assessee prayed to remand back to the issue to the file of the ld. AO to consider the documentary evidence placed before the ld. CIT(A), in the interest of justice. Looking to these aspect of the matter the Bench feels that the assessee could not advance their arguments / submissions to contest the case before the ld. CIT(A) and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing. Considering that aspect of the matter we hold to remand back the matter to the file of the ld. AO as the order of assessment is ex-parte and before ld. CIT(A), the assessee remained non compliant. But while doing so we note that there was confusion in the assuming the jurisdiction of the ld. AO. Even the Pr.CIT has issued notice u/s 127(2) of the Act for transfer of jurisdiction in the case of the assessee. The bench also noted that the notice u/s 127(2) of the Act was issued on 10.10.2019 for which compliance was fixed on 20.10.2019 after that compliance these 49 days, the assessment order was passed on 10.12.2019 and therefore, the assessee was in dilemma where to comply the notice so issued. The assessee remained non-compliance before ld. Assessing Officer based on that

aspect of the matter. Before the Id. CIT(A), the appeal of the assessee was dismissed on account of fact the assessee he has merely submitted bank statement and has not submitted any books of accounts or any documents to justify the deposit in cash and the related commission received from the agency. The Id. CIT(A) also noted that the terms and conditions of money transfer services laid down in the documents submitted by the assessee are alone not adequate to establish the quantum of transaction carried out by the assessee with Ebix Money Express Private Ltd. submitted by the assessee. Since, the Id. AR of the assessee with this demonstrated that the assessee requires one more chance to justify his claim before the Id. AO. Considering these overall facts and circumstances argued before us, we deem it fit in the interest of justice to set aside this matter before the Id. Assessing Officer who will after hearing the assessee by providing reasonable opportunity being heard, assessee the income of the assessee after obtaining the necessary evidence in accordance with law.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. AO independently in accordance with law.

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

Order pronounced in the open court on 20/06/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 20/06/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Rajesh Kumar Jaiswal, Shrawasti
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(4), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 306/JPR/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar