

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. 564/JP/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Indra Kumar Narwani 224, Govind Nagar, East Brahmpuri Jaipur	बनाम Vs.	The ITO Ward 5 (3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEJPN 3256 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Deepak Sharma, Advocate  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 16/07/2024  
उदघोषणा की तारीख / Date of Pronouncement: 20/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A)-4 Jaipur dated 28-02-2024 for the assessment year 2017-18 raising therein following grounds of appeal.

1. The impugned assessment order dated 11-12-2019 passed u/s 143(3) is bad in law and facts of the case, for want of jurisdiction and various other reasons and hence the deserves to be fully quashed.
2. Rs.15,63,000: The Id. CIT(A) committed legal and factual errors in upholding the addition of Rs.15,63,000/- u/s 69A made by the AO, attributed to unexplained some allegedly voluntarily disclosed by the

assessee during a survey conducted under PMGKY provisions in section 133A. The addition so made and confirmed being contrary to the provisions of law and facts, kindly be deleted in full

3. Rs.4,37,289/ The Id. CTT(A) erred in law as well as on the facts of the case in confirming the addition of Rs 4,37,289 made by the AO, based solely on a Net Profit Rate of 15% derived from a diary discovered and scored during a survey, estimating the turn over at Rs.44,21,445 on the bases of credit entries in his bank statement for year. The addition so made and confirmed being contrary to the provisions of law and facts, kindly be deleted in full.

2.1 Brief facts of the case is that the assessee is individual. In this case, the assessee filed return of income on 4-09-2017 declaring an income of Rs.4,97,600/- for the year under consideration. However, the assessment was completed at Rs.24,97,890/-by making addition of Rs.15,63,000/- u/s 69 and trading addition of Rs.4,37,289/- vide order dated 11-12-2019. This addition was made solely on the ground that the assessee had made admission during the course of survey by making a statement that he will deposit the amount of Rs.15,63,000/- under Pradhan Mantri Garib Kalyan Yojna for taxation. Therefore, the addition was made. In this case the Bench noted that on the contrary, in order to counter the said basis for making addition, the assessee submitted from day one i.e. during the survey u/s 133 of the Act, the assessee had disclosed the amount of cash deposited in the bank account amounting to Rs.15.63 lacs was lying with the assessee as the

assessee has withdrawn a sum of Rs.48.00 lacs from his bank account and this amount was part and parcel of the said amount of Rs.48.00 lacs and thus the source of this amount deposited in the bank account was fully explained. Apart from this, the assessee has further submitted admission was made under duress just to buy peace of mind but the said admission was immediate retracted by the assessee. During the course of hearing, the ld. AR of the assessee filed an written submitted that the ld. CIT(A) is not justified in confirming the addition. However, the ld. DR supported the order of the ld.CIT(A). After hearing both the parties and evaluating the facts of the present case and legal proposition put forth before me, I am of the view that it is an admitted fact that survey had taken placed in the case of the assessee u/s 133A of the Act and further proceedings were different from that of the survey proceedings. However, during the course of survey, the Officer of the survey party had recorded statement of the assessee u/s 132(4) of the Act read with Section 131 of the Act and the statement was recorded on oath as is evident from page 1 of the statement wherein the signature of the assessee was obtained under oath. However, the legal proposition as laid down in the case of Satish Chandar Agarwal vs ITO in ITA No. 311/JP/2015 vide order 12-04-2018 wherein it has been categorically held that in the case of survey, the concerned officers did not have any power to record the statement on oath and, therefore, no addition can be

made only on the basis of the statement recorded during course of survey. In this regard, we also found support from the decision of Hon'ble Delhi High Court in the case of PCIT, Central;-3 vs ARN Infrastructure Ltd. (ITA No. 37/JP/2019 dated 27-07-2023 wherein it was held as under:-

"18. We have heard learned counsel for the parties and perused the record.

19. According to us, what clearly emerges from the record is that the addition of Rs.10 crores to the taxable income of the respondent/assessee was made purely on the basis of the statement made by its directors.

20. Although the statements appear to have been categorized as voluntary, what emerges is that these statements were made to "buy peace of mind". Thus, Rs. 10 crores was surrendered by the directors during survey, which was added to the taxable income of the respondent/assessee.

21. Furthermore, concededly, while filing its return, the respondent/assessee did not include the amount in issue, Le, Rs. 10 crores which, according to the AO, had remained unexplained.

22. It is also not in dispute that the respondent/assessee was not furnished with a copy of the survey report. This is an aspect which the Tribunal has noted in the impugned order.

23. Concededly, the directors were not confronted with the contents of the survey report.

24. Given this position, the Tribunal, in our view, quite correctly has concluded that since there was no corroborative material available for making addition, the assessment order, qua this aspect, could not be sustained.

25. As observed by the Madras High Court in S. Khader Khan Son's case, there is a qualitative difference between the statement recorded under Section 133A and Section 132(4) of the Act.

26. The statement recorded under Section 133A of the Act has no evidentiary value, since the officer concerned is not authorized to administer oath and record a sworn statement. This is in contradiction with the statement recorded under Section 132(4) of the Act, which is recorded on oath by an officer who is vested with necessary powers.

27. Given this position and the fact that no corroborative evidence was found to support the addition, we are not inclined to interfere with the impugned order passed by the Tribunal.

28. According to us, no substantial question of law arises for our consideration.

29. The appeal is, accordingly, closed."

(e) In this regards we place our reliance on the decision of Hon'ble CIT vs. S. Khader Khan Son (2008) 300 ITR 157 (Mad) affirmed by the SC and Paul Mathews & Sons vs. CIT (2003) 263 JTR 101 (Ker)''

Therefore, even otherwise, no addition in the present case could have been made on the basis of admission made by the assessee during the course of survey as from the day one i.e. during the course of survey, the assessee has made it clear that the amount deposited in the bank was out of Rs.48.00 lacs withdrawn from the bank by encashing FDR and in this regard the Bench has evaluated the statement recorded of the assessee wherein in reply to Question No. 8 which is at PB 19 the assessee had clearly mentioned that the amount deposited by him is out of the

amount withdrawn from the bank. Therefore, in these circumstances, when the source of cash has been clearly established by the assessee then in that eventuality no addition can be made. Thus Ground No. 2 of the assessee is allowed.

3.1 The Ground No. 3 of the assessee is relating to trading addition of Rs.4,37,289/- made by the AO and sustained by the Id.CIT(A). Brief facts of the case are that during the course of survey, a diary was found containing the sale starting from 10.01.2017. In the said diary, total sale of Rs.6,83,870/- was appearing. While filing the return of income the assessee declared total sale of Rs.15,06,180/-. During the assessment proceedings, a show cause notice dated 27.11.2019 (PBP 34- 40) was issued proposing to estimate the turnover at 45,38,410/- i.e. turnover for 365 days based on 55 days turnover noted in the impounded diary. In reply of the same, the assessee submitted that the business of the assessee could not run due to shifting of shop. The assessee started business around three-four months back only and hence the estimation of income for full year based on diary is not justified. The reply of the assessee was considered but in the assessment order, total credits of Rs. 44,21,445/- as appearing in bank account of assessee were termed as turnover and by applying NP Rate of 15% on the same business profits were estimated at Rs.6,63,217/- as against Rs.2,25,927/-

shown by the assessee thus resulting into trading addition of Rs.4,37,289/-. In the first appeal, the addition so made was sustained by Ld.CIT(A).

3.2 During the course of hearing the ld. AR of the assessee filed the written submission and prayed therein that lower authorities have erred in confirming the addition of Rs.4,37,289/- which should be deleted.

3.3 On the other hand, the ld.DR supported the order of the ld.CIT(A)

3.4 After hearing both the parties and perusing the materials available on record, it is noted that the AO made an addition of Rs.4,37,289/- and the same is sustained by the ld. CIT(A). In this case, it is noted that AO did not consider the matter judiciously in as much as he estimated the sales at Rs.45,38,400/-based on sale book started from 10.01.2017 stating that the assessee could not produce the sale book / register prior to said period. The AO though relying upon the statement recorded admittedly available on record but only in part. When he has admitted the evidence without disputing the correctness/bonafide of the same, he was bound to read entire evidence as a whole and could not have read and adopted a part suited him best and to ignore the other which did not. In the statement itself, the assessee in reply to Q-11 stated on oath as under: (PBP-22)

"महोदय यह दुकान हमने करीबन 3 महीने पहले ही खोली है।

The same fact was stated much before the question concerning the sale diary was asked. In response to Question No.4, assessee clearly stated the same fact. Hence, from the records available before the Bench, it is observed that AO is not entitled to make any guesswork and he has to make the assessment w.r.t. evidence and material brought on record. There must be something more than suspicion to support the assessment. In the absence of any evidence suggesting that assessee is making any out of books sale, estimation of turnover on the basis of turnover declared in the preceding year or on the basis of credit entries appearing in the bank account of the assessee is nothing more than a suspicion. In this regards the Bench place reliance on the decision of Hon'ble Chennai Bench of Tribunal in the case of Array Land Developers Vs DCIT in ITA No.379/Chny/2022 vide order dated 09-06-2023 wherein it was held as under:

"9. Proceeding further, it is trite law that in case of search proceedings, the additions are to be based solely on the basis of incriminating material found during the course of search operations. Guess work or estimation or extrapolation of income is not permissible unless there are strong evidences to suggest otherwise. The additions are to be based solely on tangible material and not on the basis of estimations or extrapolation theory. This principle supports the case of the assessee."

Hence, in view of the entirety of the facts and circumstances and the case law (supra), the Bench does not concur with the findings of the ld CIT(A). Thus Ground No.3 of the assessee is allowed.

4.1 The Ground No. 1 of the assessee is general in nature which does not require any adjudication.

5.0 In the result, the appeal of the assessee is allowed with no orders as to costs.

Order pronounced in the open court on 20/08/2024.

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

जयपुर / Jaipur  
दिनांक / Dated:- 20 /08/2024

**\*Mishra**

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

1. The Appellant- Shri Indra Kumar Narwani, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 5(3), Alwar
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.564/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar