

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.673/JP/2024  
निर्धारण वर्ष / Assessment Year : 2010-11

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| The ITO<br>Ward 6(3)<br>Jaipur                       | बनाम<br>Vs. | Smt. Abhilasha Jain<br>SB-107C, Sethi House<br>Lal Kothi, Tonk Road, Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIRPG 2820 P |             |   |
| अपीलार्थी / Appellant                                |             | प्रत्यर्थी / Respondent   |

राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR  
निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA

सुनवाई की तारीख / Date of Hearing : 11/07/2024  
उदघोषणा की तारीख / Date of Pronouncement: 22/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the Revenue is directed against order of the CIT(A)-4, Jaipur dated 07-02-2024 for the assessment year 2010-11 raising therein following grounds of appeal.

“(i) "On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition without appreciating the facts that the reasons were recorded for taking bogus accommodation entry by misused of NMCE platform and addition was also made on transaction done on NMCE platform which was misused for booking bogus loss/profit."

2 "On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.23,40,518/- made on account of commodity profit without considering the fact that the profit of Rs.23,40,518/- in commodity transaction is factitious in nature".

3 "On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.46,810/- made on account of commission paid without considering the fact that the assessee had paid the commission on the alleged accommodation profits."

2.1 Brief facts of the case are the assessee had filed her return of income on 13-10-2010 at Rs.13,35,170/-. The case was reopened by invoking the provisions of Section 147 of the Act after recording the reasons and proceedings u/s 147 of the Act was initiated in this case after getting approval of the competent authority. Notice u/s 148 of the Act was issued on 28-03-2017. In response to notice u/s 148 of the Act, the ld. AR of the assessee submitted copy of ITR filed on 17-04-2017. Further the AO had issued notice u/s 143(2) on 22-06-2017. Finally the AO completed the assessment vide order dated 20-12-2017 at a total income of Rs.30,82,510/- by making an addition of Rs.23,40,518/- on account of commodity profit and addition of Rs.46,810/- on account of commission paid.

2.2 Aggrieved by the order of the order of the AO, the assessee carried the matter before the ld. CIT(A) who allowed the appeal of the assessee with the observations at para 4.2 and 5.2 of his order that the addition made in the

assessment order is without jurisdiction. The relevant observations of the ld.

CIT(A) are mentioned as under:-

“4.2.....In the assessment order the addition has not been done on the basis of formation of believe for the reasons of reopening. The addition has been done with respect to other transactions. Respectfully following the judgement of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd vs CIT [2011] 12 taxmann.com 74 (Delhi)/2011 200 Taxman 242 (Delhi)/[2022] 336 ITR 136 (Delhi)/[2011] 242 CTR 117 (Delhi) [03-06-2011], Hon'ble Bomaby High Court in the case of Commissioner of Income- tax-5, Mumbai v. Jet Airways (I) Ltd. [2010] 195 Taxman 117 (Bombay)/[2011] 331 ITR 236 (Bombay)/[2011] 239 CTR 183 (Bombay)[12-04- 2010] and Hon'ble ITAT, Jaipur Bench in the case of Assistant Commissioner of Income-tax, Circle-7, Jaipur v. M.K. Exim (India) Ltd., it is hereby held that the addition made in the assessment order is without jurisdiction as other additions can be made in the reassessment proceedings only when the addition has been made on basis of formation of believe on which the case of the taxpayer is reopened.

Accordingly, this ground of appeal is hereby allowed.”

5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In this order the addition made in the assessment order has been held to be without jurisdiction following the judgments of Hon'ble High Courts and Hon'ble Tribunal. Once the additions stand deleted on technical ground, the adjudication of the same on the merits is rendered merely academic and does not require detailed adjudication. In view of this discussion this ground of Appeal of the appellant is treated as disposed off.”

2.3 During the course of hearing, the ld. DR supported the order of the AO.

2.4 On the other hand, the ld. AR of the assessee supported the order of the ld  
CIT(A)

2.5 The Bench has heard both the parties and perused the materials available on record. It is not imperative to repeat the facts of the case as the ld. CIT(A) has

explicitly dealt with the above issues. It is also noticed that the ld. DR has not filed any contrary documents relating to the issue as mentioned hereinabove except relying upon the order of the AO. In this situation, the Bench taking into consideration the facts and circumstances of the case feels that it does not find any infirmity in order of the ld. CIT(A) and the same is sustained. Thus the appeal of the Department is dismissed.

3.0 In the result, the appeal of the Department is dismissed with no order as to costs.

Order pronounced in the open court on 22 /08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22/08/2024

\*Mishra

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

1. The Appellant- The ITO, Ward 6(3), Jaipur
2. प्रत्यर्था / The Respondent- Smt. Abhilasha Jain, Jaipur
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 673/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar