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. 265/JP/2024
निर्धारण वर्ष/Assessment Year : 2011-12

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| Shri Ram Lal<br>Jawanpura, Viratnagar<br>Jaipur | बनाम<br>Vs. | The ITO<br>Ward 1 (3)<br>Alwar |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AERPL 4009 F | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : Shri Vinod Kumar Gupta, CA
Shri Deepak Sharma, Adv
राजस्व की ओर से/Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख/Date of Hearing : 21/05/2024
उदघोषणा की तारीख/Date of Pronouncement: 08/08/2024

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. Addl. CIT(A)-7, Kolkata dated 05-01-2024 for the assessment year 2011-12 raising therein following grounds of appeal.

1. Ld. CIT(A) has erred in law as well as on the facts of the case, in passing the impugned order dated 05.01.2024. The order has been passed against the principle of natural justice and without affording an opportunity of being heard.

2. Ld. CIT(A) has erred in law as well as on the facts in not adjudicating the grounds of appeals on merits. The impugned order has been passed without considering the submissions made by the assessee.

Ld. CIT(A) has erred in dismissing the appeal on the sole grounds of categorizing the income as non-agricultural income. Additionally, there is a failure to acknowledge the fact that the assessee generates income from business activities and has chosen the presumptive taxation method under section 44AD. The declared profit for taxation is based on the gross turnover/receipts from the trading activity of agriculture products, and the assessee has not claimed the income as exempt agricultural income.

3. Ld. CIT(A) has erred in dismissing the appeal without considering the detailed submissions by the assessee to explain the sources of the funds deposited in his account.

4. The said dismissal is unlawful, illegal, arbitrary, and bad in law and deserves to be quashed.

5. Ld. CIT(A) has erred in confirming the action of the AO in making addition u/s 68 of the act. The addition so made is contrary to the law as well as facts and deserves to be deleted in full.

2.1 The brief facts of the case are that the AO made addition in the hands of the assessee amounting to Rs,4,01,007/- by observing as under:-

> ‘’On perusing of bank statement, it is seen that there are frequent deposits and withdrawals of cash. Therefore, in this case since the assessee has not filed any source or purpose of frequent deposits and withdrawal, therefore, in this case peak theory is applied. The peak theory is usually applied in cases when the unexplained credit and debit entries are standing in the same account of a person. It is seen that on dated 17-01-2021 maximum credit balance in his bank account is of Rs.4,01,007/- which is peak credit, therefore, the same is added in the total income of the assessee as unexplained cash deposit in his bank account.’’

2.2 In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee by observing as under:-

‘’I have gone through assessment order passed by assessing officer (AO) and detail submission made by appellant.

The fact of the case is appellant had not filing his return of income for relevant assessment year. Based on information on cash deposit and receipts in 26AS, AO had reopened the case and issued the notice to appellant u/s 148. Appellant had filed the return in response to 148 notice. Appellant invoked the section 44AD in his return. There was no history of appellant filing return U/s 44AD. Further, appellant argues that cash deposits were from sale of agricultural produce but adduced no evidence. AO instead of treating entire cash deposit as unexplained, he had taken peak credit of appellant's bank account and added Rs. 4,01,007/-

The main issue is whether appellant was able to explain the source of cash deposit from agricultural source with all required evidence.

It is seen that both at the time of assessment and during appeal proceedings appellant had adduced no evidence regarding cash deposits were from agricultural sources.

Further appellant had submitted that the AO had not accepted the claim of agricultural income as the assessee did not file evidence in support of sale of agricultural produce and expenditure incurred for the agricultural activity. Appellant argued, contention of the AO is not justified particularly in view of the fact that agricultural sector in India is unorganized sector and the farmers do not maintain evidence in support of sale proceeds of agricultural produce and expenditure incurred for agricultural activity.

This argument put forth by appellant is not correct. As agricultural income is exempt under the provisions of the Income Tax Act, giving credit to agricultural income for income tax purposes without adequate verification of claim may involve risk of allowance of exemption on ineligible incomes resulting in loss of revenue to the Government.

The third Tax Administration Reform Commission Report (2014) noted that agricultural income of non-agriculturists is being increasingly used as a conduit to avoid tax and for laundering funds, resulting in leakage to the tune of crore in revenue annually. Report on white paper on black money (2012) issued by Ministry of Finance cited that Agriculture contributes around 14 per cent of the country's GDP.

Section 143(3) of the Act dealing with detailed scrutiny envisages that after hearing the evidence produced by the assessee and such other evidences as the AD may require and after taking into account all relevant materials, the AO shall make an assessment of the total income of the assessee. This AO is mandated by law to see evidences before arriving at conclusion. No where in Income Tax Act, 1961 says that for agricultural income, AO needs no evidence.

It has been held by the Apex Court in CIT v. R. Venkataswamy Naidu (1956) 29 ITR 529 (SC) that the onus lies on the assessee who claims exemption to establish it

Therefore, as appellant had failed to submit evidence in support of sale of agricultural produce and expenditure incurred for the agricultural activity, cash deposited are from agricultural source is rejected.

In the result, appeal filed by appellant is dismissed.''

2.3 During the course of hearing, the ld. AR of the assessee filed a written submission in detail and submitted that the action of the AO is excessive and the assessment made u/s 148 should be quashed.

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

2.5 The Bench heard both the parties and perused the orders of the lower authorities and also taken into consideration the written submission filed by the assessee. It is noticed form the records that the assessee is an individual and engaged in selling of vegetables. While passing the impugned order of assessment, the total turnover of the assessee was in the limit of Section 44AD of the Act and after applying net profit rate of 8%, the total income of the assessee was below the limit of maximum amount not chargeable to tax. Therefore, as per the assessee, no return of income was filed. However, the AO got information that the assessee had deposited cash of Rs.6.00 lacs during the year under consideration. Hence, considering the said information as reason to believe that income of the assessee has escaped assessment. Thus the AO initiated proceedings for reopening of assessment and ultimately made addition on account of unexplained cash deposits in the bank by taking maximum credit in bank amounting to Rs.4,01,007/-. However, the ld. AR of the assessee submitted before the Bench that the order of assessment as well as order of the ld. CIT(A) lacks clear reference to the specific sections under which the addition is made. After perusal of the record, the Bench also found that no specific section has anywhere been mentioned by the Revenue Authorities for making addition. The Bench rely upon the following case laws.

1. Smt. Sudha Loyalka Vs ΓIO (2018) 7 TMI (2018) (Delhi Tribunal) wherein it has been held:-

"In our considered opinion, the sustaining of impugned addition is not justified due to the following reasons:-(Case Law #1)

(i) It has not been mentioned either by A.O or by ld. CIT(A) as to under which section of the Income Tax Act, these closing credit balances appearing as on 31.03.2012 could be added. Therefore, non-mentioning the precise provision of law makes the impugned addition bad in law"

2. By placing its reliance on the decision of Smt. Sudha Loyalka (supra) Hon'ble Tribunal in the case of Neeraj Paliwal Vs ITO (2021) 12 TMI 584 held as under:

"From perusal of the record, we observed that the order of the AO as teell as that of the CIT(A) that they have not specifically mentioned as to under which section of the Act the additions have been made. In this regard, we draw strength from the decision of the Coordinate Bench of the Dellu ITAT in the case of Smt. Sudha Loyalka vs ITO, ITA No. 399/De1/2017 wherein the Coordinate Bench has held as under:

"In our considered opinion, the sustaining of impugned addition is not justified due to the following reasons:

i). It has not been mentioned either by A.O. or by Ld. CIT(A) as to under which section of the Income Tax Act, these closing credit balances appearing as on 31.03.2012 could be added. Therefore, non-mentioning the precise provision of law makes the impugned addition bad in law."

3. Hon'ble Banglore Bench of ITAT in the case of Ramreddy Ramesh Vs ITO in ITA No.2027/Bang/2016 held as under: (Case Law#2)

"About the third amount of Rs. 30,21,961/-, we find that this is a fact that no section is mentioned by the AO or CIT (A) for making

this addition and for this reason alone, the addition is bad in law as per the tribunal order cited by the learned AR of the assessee having been rendered in the case of Smt. Sudha Loyalka vs. ITO (Supra) wherein it was held that non mentioning the precise section makes the addition bad in law.

Therefore considering the above judgements and also considering the fact that no specific section has any where been mentioned for making impugned addition, the Bench is of the view that non-mentioning the precise provision of law makes the entire impugned addition bad in law. In this view of the matter, the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed with no order as to costs.

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

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

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

*Mishra
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:
1. The Appellant- Shri Ram Lal, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(3), Alwar
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 372/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar