

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 03/JPR/2024
निर्धारणवर्ष / Assessment Year : 2017-18

The ITO, Ward-6(4), Jaipur.	बनाम Vs.	Shriniwas Sharma Room No. 320, NCR Building, Statue Circle, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ANUPS1642M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Praveen Saraswat, C.A.
राजस्व की ओरसे / Revenue by: Shri Sanjay Nargas, (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 04/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 04/09/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER .

This is an appeal filed by the Revenue, feeling aggrieved by order dated 13.11.2023 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as " the Act").

The matter pertains to assessment year 2017-18.

The Department is feeling aggrieved because Learned CIT(A), NFAC has partly allowed the appeal filed by the assessee and deleted two additions made by the Assessing Officer.

The assessee was in appeal before Learned CIT(A) against order dated 11.12.2019 passed by the Assessing Officer, u/s 143(3) of the Act.

Framing of Assessment

2. Vide assessment order dated 11.12.2019, the Assessing Officer recomputed the income of the assessee at Rs. 1,48,21,080/- by making following two additions:-

(a) Unexplained cash deposits u/s 69A	Rs. 1,29,21,923/-
(b) Unexplained unsecured loans	Rs. 12,00,000/-

As noticed above, vide impugned order, Learned CIT(A) deleted abovesaid two additions i.e. u/s 69A and the other u/s 68 of the Act.

3. Hence, this appeal by the Revenue.
4. Arguments heard. File perused.

Contentions

5. The only ground put forth by Learned DR for the appellant-revenue is that Learned CIT(A) erred in admitting additional evidence in contravention of Rule 46A of the Income Tax Rules (in short "the Rules") and thereby in allowing relief to the assessee by deleting two additions. The Learned DR explains that CIT(A) should have sought remand reports from the Assessing Officer as regards the additional evidence, particularly when the

additional evidence was not produced by the assessee before the Assessing Officer, despite opportunity granted to him.

6. On the other hand, Ld. AR for the assessee-respondent has submitted that Learned CIT(A),NFAC took into consideration the additional evidence, while admitting the same under Rule 46A of the Rules and came to the conclusion that the explanation about the subject cash deposits furnished by the assessee was consistent with the facts and circumstances of the case.

Accordingly, Ld. AR for the assessee has urged for dismissal of this appeal.

Discussion

7. As is available from the assessment order, the assessee was found to have been deposited, during the year under consideration, cash to the tune of Rs. 25,00,000/-, Rs. 1,28,11,806/- , Rs. 1,29,21,923/- and Rs. 1,05,07,790/- in his bank account maintained with HDFC Bank Ltd. Mansarover, Jaipur, as per details generated from the system.

The assessee was called upon to explain the source of the above said cash deposits by him in the said saving bank account.

He submitted reply to the said notice.

The Assessing Officer was of the view that the assessee failed to explain the source of cash deposit only to the tune of Rs. 1,29,21,923/-, the reason being that the assessee did not submit any documentary evidence for verification, in particular details of the persons from whom the assessee is stated to have been received the said cash amount.

That is how, the Assessing Officer framed assessment and made addition of a sum of Rs. 1,29,21,923/-, which according to him was unexplained cash deposit attracting the permission of Section 69A of the Act.

8. It may be mentioned here that no challenge has been made by the Department to the impugned order by CIT(A) as regards deletion of the other addition.

As regards the first mentioned addition under section 69A of the Act, when we advert to the impugned order passed in appeal, we find that in para 7.5 thereof, Learned CIT(A) specified production of record by the assessee-appellant in appeal i.e. copies of cash book, bank statements, details of sales and explanation regarding nature of his business.

Learned AR for the assessee has placed on record copy of reply dated 16.09.2019 from the assessee to the Assessing Officer in reply to

two notices u/s 142(1) i.e. on 19.09.2019 and 02.09.2019. Copies of the two notices have also been provided to us.

9. As per notice dated 02.09.2019, Assessing Officer had called upon the assessee to explain the source of cash deposited by him in his bank account during the year under consideration as well as demonetization period.

Coming to the above said reply dated 16.09.2019, to the said notice, we find that the assessee annexed thereto copy of cash book for the period from 03.11.2016 to 22.12.2016 and "*Ugai Bahi*" for the same period, to justify the cash receipt, from time to time, from various vendtors/parties to whom the goods are stated to have been supplied.

From the above reply, it becomes clear that the assessee did not produce before the Assessing Officer the cash book for the whole year under consideration, and rather produced there copy of relevant pages from the cash book pertaining to period from 03.11.2016 to 22.12.2016 and also "*Ugai Bahi*", for the same limited period.

10. Record reveals that ultimately in the show cause notice dated 15.11.2019, issued to the assessee, as regards said fouramounts, the Assessing Officer, called upon the assessee to explain something else, i.e. reporting of zero turnover in the return of income, even though during the

year under consideration, he had deposited cash of Rs. 25,00,000/-, Rs. 1,28,11,806/- , Rs. 1,29,21,923/- and Rs. 1,05,07,790/-.

In other words, while issuing show cause notice dated 15.11.2019 from the Assessing Officer skipped the query to seeking justification of zero turnover, from the query initially raised i.e. as to the source of four cash deposit transactions by the assessee.

This shows that while issuing show cause notice, the Assessing officer appears to have felt satisfied as regards the source of cash deposit transactions, with HDFC Bank .Otherwise, the Assessing Officer would have specifically mentioned even in the show cause notice dated 15.11.2019 that the assessee had failed to produce any documentary evidence to explain the source of cash deposit of Rs. 1,29,21,923/-, during the year under consideration.

11. Coming to the proceedings before Learned CIT(A), NFAC, from para 7.5 of the impugned order it transpires that the assessee had produced copies of cash book, bank statements, details of sales and explanation as regards nature of his business.

Learned Counsel for the AR has drawn our attention to the show cause notice issued by the office of the Learned CIT(A) on 25.08.2022 whereby the assessee was requested to furnish copy of ITR and P & L

account, balance sheet computation of income, bank statements of the aforesaid account with HDFC Bank, cash book, ledger, sale book, purchase book, stock register, sale bills, purchase book, bills/vouchers of expenses. Attention has been so drawn to submit that the requisite record was produced by the assessee before CIT(A), NFAC, as desired in the said notice, and only after its perusal the addition was vacated.

No challenge to the direction by CIT(A) to assessee to produce records as per notice

12. It is noteworthy that in the course of arguments, learned DR has not challenged issuance of directions by CIT(A) to produce records as per the abovesaid notice.

13. Rule 46A of the Rules empowers Learned CIT(A) to take on record additional evidence in the manner prescribed therein.

Sub-rule (3) of Rule 46A provides that the Commissioner (Appeals) shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has allowed the reasonable opportunity -

(a) to examine the evidence or document or cross examine, the witness produced by the appellant or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

14. It is true that as per sub-rule (3), Commissioner (Appeals) is required to provide a reasonable opportunity to the Assessing Officer to examine the additional evidence produced by the assessee-appellant. But, sub-rule (4) of Rule 46A of the Rules provides that nothing contained in Rule 46A shall affect to power of the Commissioner (Appeals) to direct production of any document or the examination of any witness, to enable him to dispose of the appeal, or for any substantial cause including enhancement of the assessment or penalty, whether on his own motion or on the request of the Assessing Officer under clause (a) of sub-section (1) of Section 251 or the examination of penalty u/s 271 of the Act.

Here is a case where Learned CIT(A) exercised powers under sub-Rule (4) of Rule 46A of the Rules in directing the assessee to produce the documents, as per directions contained in its notice dated 25.08.2023.

Powers of CIT(A) to make enquiry himself or direct enquiry by Assessing Officer

15. The power for taking into account the additional evidence does not appear to have been exercised under sub-Rule (3).

Section 250 of the Act prescribes procedure to be followed in appeals filed before Joint Commissioner (A) or the Commissioner (A). Sub-section (4) of section 250 provides that the Commissioner (A) may, before

disposing of any appeal, make such further inquiry as he thinks fit, or may, direct the Assessing Officer to make further inquiry and report the result of the same to him.

Difference in sub-rule (3) and sub-rule (4)

16. Significant to note that there is difference in the provision of sub-rule (3) and sub-rule (4)

Sub-rule (1) of Rule 46A of the Rules postulates the circumstances in which the appellant shall be entitled to produce before the Commissioner (A) any oral or documentary evidence which was not produced by the assessee during the course of proceedings before the Assessing Officer.

In other words, the rule provides that the appellant shall not be entitled to produce any oral or documentary evidence, which was not produced before the Assessing Officer, in case any of the circumstances specified therein is not established.

Under sub-rule (3) puts a bar on the Commissioner (A), in taking into account any evidence produced under sub-rule (1) without providing reasonable opportunity to the Assessing Officer as enshrined therein.

It means that opportunity is to be granted to the Assessing Officer to examine the evidence or cross-examine the witness or to produce evidence in rebuttal of the additional evidence, in case the appellant has been permitted by CIT(A) to produce additional evidence under sub-rule (1).

But sub-rule (4) does not put any such bar, as is clear from this non obstante clause, on the Commissioner (A). In simple words, where the Commissioner (A) directs the production of any document to enable him to dispose of the appeal.

On this point, in **CIT vs. Manish Build Well (P) Ltd.**, [2011] 245 CTR 397 (Delhi), Hon'ble High Court of Delhi observed as under:-

“.....A distinction should be recognized and maintained between a case where the assessee invokes r. 46A to adduce additional evidence before the CIT(A) and a case where the CIT(A), without being prompted by the assessee, while dealing with the appeal, considers it fit to cause or make a further enquiry by virtue of the powers vested in him under sub-s. (4) of [s. 250](#). It is only when he exercises his statutory suo motu power under the above sub-section that the requirements of r. 46A need not be followed. On the other hand, whenever the assessee who is in appeal before him invokes r. 46A, it is incumbent upon the CIT(A) to comply with the requirements of the rule strictly.”

Case in hand is not a case where before CIT(A), the additional evidence was sought to be produced by the assessee. Rather, this is a case where CIT(A) himself directed production of additional evidence. Therefore, the bar put on the Commissioner (A) in exercising of powers for

taking into account additional evidence allowed to be produced under sub-rule (1) of Rule 46A does not come in the way of the Commissioner (A) in taking into account such additional evidence, which he himself directed to be produced by the appellant.

It is not case of the appellant-Revenue that the CIT(A) did not judiciously exercise his power under sub-rule (4) of rule 46 of the Rules.

It is also not case of the appellant-Revenue that the CIT(A) did not conduct enquiry before disposing of the appeal. From the steps taken and the procedure followed by CIT(A), for disposal of the appeal, after collecting additional evidence, it is obvious that CIT(A) conducted enquiry and then disposed of the appeal. In the course of arguments, Learned DR has not pointed out even single document to suggest that same needed verification before being taken into account. Learned CIT(A) recorded in the impugned order to have examined the record, including the additional evidence. Accordingly, CIT(A) was not required to provide to the Assessing Officer of being heard, as regards the additional evidence.

17. In the given facts and circumstances, we find that the documents in the form of additional evidence produced before Learned CIT(A), as desired by the said authority, were necessary for dismissal of the appeal on

merits. Revenue has not brought on record any material to suggest that any of the document requisition by Learned CIT(A) for dismissal of the appeal filed by the assessee, has been found to be false or fabricated or forced, so as to mislead CIT(A).

In **ITO, Ward -4(1) v. M/s Raj Maitry & Eskon Developer**, ITA No. 2117/MuM/2023 pertaining to assessment year 2018-19, decided on 29.01.2024, Hon'ble Bench at Mumbai observed that substantive justice was delivered by Learned CIT(A) within the scope of powers given to him by statute and confirmed over the period by the superior Court, and as such no infirmity was found in the order passed by Learned CIT(A).

Conclusion

18. In view of the above discussion, we find that Learned CIT(A), NFAC, felt justified firstly in directing the assessee to produce the additional evidence, as per notice dated 25.08.2013, and then in taking into account the said additional evidence for the purpose of disposal of the appeal. We also find that the impugned order does not suffer from any illegality or irregularity, simply because the Learned CIT(A) did not call for any report from the Assessing Officer for providing to the Assessing Officer any opportunity to examine the said evidence.

Result

19. In view of the above findings, this appeal filed by the Revenue deserves to be dismissed, and, accordingly, the same is hereby dismissed.

Order pronounced in the open court on 04/09/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(नरेन्द्रकुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 04/09/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- ITO, Ward-6(4), Jaipur.
2. प्रत्यर्था / The Respondent- Shrinivas Sharma, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 03/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar