

आयकर अपीलिय 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. 85/JPR/2024
निर्धारणवर्ष / Assessment Year : 2015-16

Sh. Vishnu Kumar E221, RIICO Industrial Area, Bharatpur.	बनाम Vs.	ACIT/JCIT/DCIT/Asst.CIT/ITO, National Faceless Assessment Centre, Delhi.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AIAPK7814L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Mukesh Soni, Adv.
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar, (CIT)

सुनवाई की तारीख / Date of Hearing : 05/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 06/09/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER .

Assessee, an individual, is before this Appellate Tribunal, feeling aggrieved by the order dated 08.12.2023 passed, u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as " the Act"), by Learned CIT(A), NFAC, Delhi, whereby his appeal relating to assessment year 2015-16 has been dismissed.

2. The assessee was before Learned CIT(A), having felt dissatisfied with the assessment order dated 29.03.2022 passed by the Assessing

Officer, whereby total income of the assessee was computed at Rs. 4,43,54,460/-, making an addition of Rs. 3,79,16,890/-.

The only addition was made u/s 68 of the Act due to unexplained money.

3. Hence, this appeal against the order of dismissal of the appeal filed by the assessee.

4. Arguments heard. File perused.

Return held to be invalid

5. It has been contended that the Assessing Officer fell in error in holding the income tax return filed in response to notice under section 148 of the Act, to be invalid, on the ground that the same was not filed within stipulated period, the reason being that it was Covid pandemic period and there were directions from CBDT for extension of time line related to compliance by tax payers under the Act.

Learned AR for the assessee-appellant has contended that issuance of notice u/s 148 of the Act to the assessee was bad in law as the assessee had initially furnished income tax return which stood accepted.

It has also been contended that the Assessing Officer was duty bound to provide to the assessee the reasons for reopening the matter, even before furnishing of return in response to notice under section 148 of

the Act. Further, it has been submitted that copy of the approval under section 151 of the Act did not form part of the Reasons supplied to the assessee.

In support of these contentions, learned AR has relied on the following decisions:

- **M/s Shri Krishna Dutta Academy v. ITO**, IV(4) (2013) ITA No. 565/LKW/2011.
- **Gehna v. Union of India**, (2004) 267 ITR 782 (Raj.)
- **Kavee Enterprise (P.) Ltd. v. CIT**, (2008) 170 Taxman 264 (Jharkhand).

6. On the other hand, Id. DR for the Department has referred to the proceedings conducted by the Assessing Officer from the beginning, to point out that the assessee filed return only on 19.11.2021 i.e. after much delay, and that for the reasons recorded by the Assessing Officer, he was justified in holding the ITR filed in response to the notice under section 148 of the Act, to be an invalid return.

As regards the contention raised on behalf of the appellant that the reasons for reopening of the matter were not communicated to the assessee at the earliest, Learned DR has submitted that it was explained to the assessee that only after filing of his return reasons for reopening of the

matter would be communicated to him, and that in this regard there was no illegality or irregularity committed by the Department.

We have gone through the decisions relied on by learned AR for the assessee to appreciate the respective contentions raised before us.

Narration of facts in brief

The assessee is a proprietor of proprietorship concern- M/s Shri Ramesh Industries.

He is also a director in company namely M/s Sunny Real Construction Pvt. Ltd., having 40% share in the said company.

He is also a partner in M/s S.V.M. Oil Industries.

As claimed by the department, the assessee, had provided unsecured loan to the abovesaid company for purchasing of an immovable property of Rs. 3,79,16,890/-.

In regard to the source of amount advanced to M/s Sunny Real Construction Pvt. Ltd. and to examine the creditworthiness of Directors and genuineness of the transactions, assessee replied in response to the notice u/s 133(6) of the Act that the amount advanced was given out of capital withdrawn from his partnership firm. M/s SVM oil industries. Bank statement of M/s SVM oil Industries was filed from which amount of loan

was found to be have been advanced to M/s Sunny Real Construction Pvt. Ltd. All the payments were made through banking channel.

As further claimed by the department, total turnover of the M/s SVM oil Industries was Rs. 96,46,88,637/- and 81,74,25,829/- for FY 2014-15 and 2015-16 respectively. Further, on perusal of Books of M/s SVM Oil Industries, it was found that amount which was paid to M/s Sunny Real Construction was shown as capital withdrawn by Sh. Vishnu Kumar.

But, it was also found form the partner's capital account in the books of M/s SVM oil Industries that sh. Vishnu Kumar had introduced capital of Rs. 3,79,16,890/- during the FY 2014-15 and Rs. 3.53,51,196/- during the FY 2015-16.

There were no respective withdrawal from the proprietorship concern of Sh. Vishnu Kumar.

Thus, capital introduced by Sh. Vishnu Kumar in his partnership concern M/s SVM Oil Industries at the tune of Rs. 3,79,16,890/- during the FY 2014-15 and Rs. 3,53,51,196/- during FY 2015-16 was not collaborative with the income particulars of Sh. Vishnu Kumar.

As further claimed by the department, in the Reasons communicated to the assessee, amount of capital introduced in M/s SVM Oil Industries during AY 2015-16 was found un- explained.

7. Admittedly, for the assessment year 2015-16, the assessee filed his return of income initially on 17.03.2017, u/s 139 of the Act, declaring total income at Rs. 64,37,570/- only.

Notice dated 30.03.2021, issued u/s 148 of the Act was admittedly issued to the assessee requiring him to furnish return within 30 days from the date of service of the said notice.

It is not in dispute that the assessee, in response to the said notice, filed his return on 19.11.2021 declaring the same total income i.e. Rs. 64,37,570/-.

Notice dated 24.06.2021 u/s 142(1) of the Act was issued to the assessee calling for certain details and documents to be furnished on or before 09.07.2021. In this way, notice under section 142(1) came to be issued after issuance of notice under section 148 of the Act, and even before the assessee furnished return in response to the last mentioned notice.

Admittedly, the assessee did not respond the notice under section 142(1), by the given date. It was on 23.07.2021 that the assessee submitted his reply and thereby also requested that he be provided with reasons for reopening.

In response, the Department informed the assessee vide letter dt.16.11.2021 that reasons for reopening shall be provided to him after he furnished his return of income in compliance with the notice u/s 148 of the Act, which stood already issued to him on 30.03.2021.

That is how, the assessee furnished his return on 19.11.2021, as already mentioned above, even without having been provided Reasons for reopening of the matter, and then on 06.12.2021, he informed the department in this regard.

8. No doubt, the assessee exceeded the stipulated time in filing of return in response to the notice under section 148 of the Act. But, for that he had sufficient reasons.

Admittedly, it was Covid-pandemic period. Vide Circular dated 30.04.2021, CBDT extended the time line for furnishing of return in response, to the notice u/s 148 of the Act. Said instructions were issued in view of said severe pandemic, which had cruelly attacked the human beings.

Secondly, the assessee had requested for supply of Reasons for reopening of the matter, but those were not made available to the assessee. He was informed by the department only on 16.11.2021 that Reasons will be provided after he files return of income in response to

notice under section 148 of the Act. Soon thereafter, the assessee came up with the return of income on 19.11.2021. Had the department informed the assessee prior to 16.11.2021 that Reasons would be provided after he files return of income, the assessee might have furnished the return of income even earlier.

As regards non supply of copy of approval under section 151 of the Act, suffice it to state that after the supply of Reasons for reopening, the assessee never lodged any protest with or asked the Assessing Officer for copy of such approval. In *Saraswati Garewal's case*, (2024) 158 taxmann.com 37 (Raipur) cited on behalf of the appellant, the assessee had specifically asked for copy of approval for issuance for notice under section 151 of the Act, but the department provided only copy of reasons, without the copy of approval under section 151. Therefore, said decision subsequently cited on behalf of the assessee is distinguishable, and does not come to the aid of the appellant.

Conclusion

9. Therefore, we are of the view that the return filed by the assessee on 19.11.2021, in response to the said notice u/s 148 of the Act, should not have been held to be an invalid return.

10. Even otherwise, there is no dispute that even an invalid return is considered by the Department as source of information in completion of assessment under the Act.

11. No request to, or protest, with the Assessing Officer from the side of the assessee for supply of copy of approval was made. Therefore its non-supply cannot be said to have adversely affected the case of the assessee, particularly, when it was specifically mentioned in the Reasons supplied that approval had been obtained under section 151 of the Act.

Non issuance of notice under section 143(2) of the Act- its impact on the proceedings

12. One of the contentions raised on behalf of the assessee is that issuance of notice under section 143(2) of the Act is mandatory before framing of assessment, even in case of issuance of notice under section 148 of the Act, but, no such mandatory notice was issued by the Assessing Officer, and as such the Assessing Officer had no jurisdiction to conduct or go ahead with the proceedings.

In support of this contention, learned AR has placed reliance on following decisions:

- **Travancore Diagnostics Pvt. Ltd. ACIT**, Circle/, Kollam (2016) 74 taxmann.com 239 (Kerala).
- **Shri Jain Shiv Shankar Traders Pvt. V. PCIT**, (2015) 64 taxmann.com 220 (Delhi).
- **CIT v. Rajeev Sharma**, (2010) 192 taxman 197 (Allahabad).

13. Learned DR has referred to the findings recorded in para No. 5 of the impugned order by Learned CIT(A), to justify non issuance of any such notice to the assessee, and contended that non issuance of notice under section 143(2) does not adversely affect the case of the department.

Discussion

14. As regards non issuance of notice u/s 143(2) of the Act, Assessing Officer is required to serve on the assessee such notice, calling upon him to produce or cause to be produced before him any evidence on which the assessee is to rely in support of the return already furnished u/s 139 of the Act, where the Assessing Officer considers it necessary or expedient to ensure that the assessee did not understate the income or did not compute excessive loss or did not underpay tax in any manner.

This is a case where return was initially furnished u/s 139 of the Act.

15. Admittedly, notice under section 148 of the Act was issued to the assessee on 30.3.2021. It was followed by notice u/s 142(1) of the Act

issued to the assessee on 24.06.2021. No notice under section 143(2) was issued.

16. Learned CIT(A) held that since no valid return was filed by the assessee in response to the notice under section 148 of the Act, no notice under section 143(2) of the Act was required to be issued. With this finding, Learned CIT(A) upheld the view expressed by the Assessing Officer.

But, as noticed above, we have held that the return filed by the assessee in reply to the notice under section 148 of the Act could not be held to be an invalid return. In view of said finding, the findings recorded by the authorities below, on this point, deserve to be set aside.

Even otherwise, it is settled law that in case of assessment under Chapter XIV of the Act, a notice under section 143(2) of the Act is mandatory where the Assessing Officer proceeds to make an inquiry as provided under section 142.

17. In **Alpine Electronics Asia Pte. Ltd. V. DGIT**, (2012) 341 ITR 247(Delhi), it has been held that section 143(2) is applicable to proceedings under section 147 or 148 of the Act, and service of said notice under section 143(2) is mandatory in respect of returns filed pursuant to such notice. Without compliance with the mandatory requirement, a reassessment order cannot be passed. In other words, requirement of

issuance of such notice is a jurisdictional one. In this regard, reference may be made to decision in **Principal CIT v. Paramount Biotech Industries Ltd.**, (2017) 398 ITR 701 (Delhi).

18. Nothing to the contrary has been cited on behalf of the Revenue.

19. As regards significance of such a notice, it may be mentioned here that section 143(2) incorporates the rule of audi alteram partem i.e., no man should be condemned unheard.

20. Without service of such a notice, right of the assessee would get affected, the reason being that it would prejudice his case if he is not afforded an opportunity to put forward his case in the proceedings. In this regard, reference may be made to decision in **I.J.Rao, Asstt. Collector of Customs v. Bibhuti Bhushan Bagh**, (1989) 3 SCC 202 (SC).

Conclusion

21. In view of the above discussion, we hold that for want of service of notice under section 143(2) of the Act, the Assessing Officer had no jurisdiction to assume jurisdiction under section 143(2) of the Act.

Sufficient time not provided to file objections to the Show Cause Notice & Draft Assessment Order

22. Another contention raised on behalf of the assessee is that after service of show cause notice & draft assessment order, upon the

assessee, he was not provided sufficient time to file objections thereto, and rather, the Assessing Officer hurriedly framed the assessment, and as such the assessment order deserved to be set aside.

23. At this stage, para 13 of the assessment order needs to be reproduced, and is reproduced for ready reference:-

“13. A show cause notice along with Draft Assessment Order was issued to assessee on 27.03.2022. The assessee was requested to furnish his reply in response to the show cause notice. However, he failed to reply to the notice on the specified date. It clearly indicates that assessee has nothing to say in this regard.”

24. Admittedly, show cause notice accompanied by draft assessment order was issued to the assessee on 27.03.2022. Thereby, the assessee was asked to furnish his reply in response thereto, as is available from the last para of the said show cause notice. The assessee was required to submit his objection to the proposed variation by 23:59 on 28.03.2022.

When the show cause notice appears to have been digitally signed at 16:09:39 IST on 27.03.2022, and he was given time upto 23.59 of 28.03.2022 to furnish reply or objections thereto, it can safely be said that sufficient opportunity was not granted by the Assessing Officer to the assessee, to respond to the said show cause notice or file objections thereto.

Conclusion

25. For the reasons given above, there is merit in the contention raised on behalf of the assessee that this is a case of violation of principles of natural justice in not having provided a reasonable opportunity to the assessee to file objections to be proposed variations. This fact adversely affects the case of the department.

Reasons for reopening and reasons for framing of assessment

26. It has been contended on behalf of the assessee that this is not a case where provisions of Section 68 of the Act are attracted. The submission is that the reasons communicated by the Assessing Officer to the assessee in notice under section 148 of the Act, were different from the reasons made basis for framing of the assessment order.

Further, it has been submitted that the assessee had successfully explained the allegations levelled in the notice under section 148 of the Act as regards the source of the investment made by the assessee with M/s Sunny Real Construction Private Limited for purchase of immovable property.

27. In support of his submissions, Id. AR for the assessee-appellant has relied upon the following decisions:-

- **Bhavmeet Singh Bhatia vs. ACIT**, Circle-43(1) (21.09.2022-ITAT Delhi) Manu/ID/1573/2022.
- **Commissioner of Income-tax-5, Mumbai v. Jet Airways (I) Ltd.**, (2010) 195 Taxman 117 (Bombay).
- **Commissioner of Income-tax (exemption) v. Monarch Education Society**, (2017) 79 taxmann.com 43 (Delhi).
- **Ranbaxy Laboratories Ltd. vs. Commissioner of Income-tax**, (2011) 12 taxmann.com 74 (Delhi).
- **Smt. Shanti devi v. Commissioner of Income-tax**, (1998) 37 taxman 104 (Punjab & Haryana).
- **Anand Ram Raitani v. Commissioner of Income-tax**, (1997) 223 ITR 544 (Gauhati).

28. On the other hand, while referring to the addition made as regard unexplained money to the tune of Rs. 3,79,16,890/- by the Assessing Officer, Ld. DR has submitted that the assessee failed to explain to the Assessing Officer the source of investment made by him, during the financial year 2014-15, to the tune of Rs. 3,79,16,890/-, i.e. from his proprietorship concern to the partnership firm M/s S.V.M Oil Industries,

and that is why, the Assessing Officer was justified in making the addition, and Learned CIT(A) was justified in upholding the said addition.

29. Reasons for reopening of the matter for the assessment year 2015-16, as extracted in para-2 of the assessment order, read as under:-

- *"On perusal of High Risk CRU/VRU transaction information, available on the INSIGHT Portal of the department it is noticed that the assessee is a director in company namely M/s Sunny Real Construction Pvt. Ltd. and had provided unsecured loan to the company for purchasing of an immovable property of Rs. 3,79,16,890/- for which source of investment is unexplained.*
- *The assessee Sh. Vishnu Kumar is Prop. M/s Shri Ramesh Industries and having 40% share in M/s Sunny Real Construction Pvt. Ltd. He is also a partner M/s S.V.M. Oil Industries. He has advanced the loan M/s Sunny Real Construction Pvt. Ltd. In regard to the source of amount advanced to M/s Sunny Real Construction Pvt. Ltd. and to examine the creditworthiness of Directors and genuineness of the transactions, assessee replied in response to the notice u/s 133(6) of the Act that the amount advanced was given out of capital withdrawn from his partnership firm M/s SVM oil industries. Bank statement of M/s SVM oil Industries has been filed form which amount of loan advanced to M/s Sunny Real Construction Pvt. Ltd. All the payments were made through banking channel. Total Turnover of the M/s SVM oil Industries was Rs. 96,46,88,637/- and 81,74,25,829/- for FY 2014-15 and 2015-16 respectively.*
- *Further, on perusal of Books of M/s SVM Oil Industries, it was found that amount which was paid to M/s Sunny Real Construction was shown as capital withdrawn by Sh. Vishnu Kumar.*
- *But it was also found form the partner's capital account in the books of M/s SVM oil Industries that sh. Vishnu Kumar has introduced capital of Rs. 3,79,16,890/- during the FY 2014-15 and Rs. 3,53,51,196/- during the FY 2015-16.*

There were no respective withdrawal were appeared from the proprietorship concern of Sh. Vishnu Kumar. Moreover, total income of Sh. Vishnu kumar for AY 2015-16 and 2016-17 was at Rs. 67,37,570/- and 67,86,000/- respectively.

Thus, capital introduced by Sh. Vishnu Kumar in his partnership concern M/s SVM Oil Industries at the tune of Rs. 3,79,16,890/- during the F 2014-15 and Rs. 3,53,51,196/- during FY 2015-16 is not collaborative with the income particulars of Sh Vishnu Kumar.

Further, it was also found that assessment in the case of Sh. Vishnu Kumar for AY 2016-17 was completed u/s 143(3) on 21.08.2019 and income of Sh. Vishnu Kumar was assessed at Rs. 22,40,75,110/-. Addition on account of unexplained cash deposit into bank account amounting to Rs. 14,92,72,000/- addition on account of unsecured loan repaid from undisclosed sourced amounting to Rs. 2,50,000/-, trading addition amounting to Rs. 1,52,08,988/- and addition on account of enhancement in personal liabilities u/s 09 amounting to Rs. 5,25,57,529/- was made to the total income of Sh. Vishnu Kumar. Since the assessment is already completed in case of Sh. Vishnu Kumar, no further action is required for AY 2016-17.

But amount of capital introduced in M/s SVM C Industries during AV 2015-16 is found un- explained.

- *It is evident from this office record that the assessee has filed its ITR for the A.Y. 2015- 16. However, as per the details available with the department, the amount of loans advanced to M/s Sunny Real Construction Pvt. Ltd. for AY 2015-16 is unexplained. As, Source of capital Introduced in M/s SVM Oil Industry by the assessee is not verifiable and not commensurate with income declared in ITR.*
- *Hence, income of Rs. 3,79, 16,890/- has escaped assessment within the meaning of section 147 of the IT Act, 1961.”*

30. At the set out, as per reasons for reopening of the matter, the assessee was informed that as per details available with the Department “the amount of loan advanced to M/s Sunny Real Construction Private Limited for assessment year 2015-16” remained unexplained, “as source of capital introduced in M/s S.V.M Oil Industries by the assessee was not

verifiable and not inserted with income declared in ITR”, and as such, income of Rs. 3,79,16,890/- had escaped assessment within the meaning of Section 147 of the Act.

31. Draft assessment order is dated 27.03.2022, relevant paras 10 to 12 need to be reproduced for ready reference, when reproduced the same read as under:-

“10. During the year under consideration, the assessee has provided unsecured loan to Mis. Sunny Real Construction where he is a Director for purchase of immovable property of Rs.379168890/-, The assessee replied vide his letter dated 16.12.2021 that the firm has introduced capital of Rs.4965000/- and purchased land for establishment of industries in 2011. The assessee did not provide the details of immovable property for the year under consideration. Further vide his letter dated 31.1.2022, the assessee denied that he has not purchased any immovable property during the financial year 2014-15. He stated that the firm has not provided any unsecured loan/advance to any person and firm during the F.Y. 2014- 15. He stated that the firm has purchased land from Rajasthan Industrial Investment Corpn. on Oct. 2011 and the land has been purchased in 2011 not covered this F.Y. 2014-15. The assessee vide letter dated 5.3.2022 accepted that the firm has purchased land from UIT Bharatpur that is State Govt. owned Corpn. of Rs. 39878212/- and transfer of fund were through banking channel and the Bid amount paid and such type of Institution are not prepared any agreement to buyer but the assessee has transferred voucher which is provided by bank. The loan has been provided to company by Directors of the company.

On perusal of the Balance sheet of M/s. Sunny Real Construction where assessee is having 40% share for the FY 2014-15, it is noticed that there is fixed assets and advance paid for land of Rs.39878212/- and Unsecured loan of Rs.39852000/- by assessee of Rs.21252000/- Meera Devi of Rs. 13600000 and Sunny Goyal of Rs.5000000/-.

On perusal of Balance Sheet of M/s. SVM Oil Industries where assessee is a partner, it is noticed that there is capital of Rs.52556986/- and unsecured loan of

Rs.34374974/-. The assessee has purchased immovable property of Rs.37916890/- for the year under consideration which he routed the transactions in his financials from M/s. Sunny Real Construction where he withdrew capital and given unsecured loan to M/s. Sunny Real Construction. The assessee failed to furnish the identity, creditworthiness and genuineness of the unsecured loan transactions.

In view of the above facts and circumstances of the case, it is crystal clear the mensrea of the assessee and deliberately i.e. false intention to route his unexplained source of income from the books of accounts and an after thought action of the assessee being question on specific transaction.

11. Further the contention of the assessee that all the payments have been made for purchase of immovable property through banking channels is not acceptable in view of the following judgement.

Transaction by cheques may not be sacrosanct- Reliance is placed on the decision of Hon'ble Court in the case of Nemi Chand Kothari v. CIT[2003] 264 ITR 254 in which it is held that It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has proved the identity of his creditors the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors vis-à-vis the transaction which he had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself-

*12. Looking to the facts of the case discussed above for the year under consideration, **the investment made by assessee for purchase of immovable property amounting to Rs.37916890/- on account of unsecured loan remained unexplained.***

Hence the unsecured loan given for purchase of immovable property is treated as unexplained cash credit u/s. 68 of the Act and added back to the total income of the assessee. I am satisfied that the assessee has concealed the particulars of income.

Accordingly, penalty u/s. 271(1)(c) of the Act is separately initiated for concealment of income.

For clarity section 68 reads as under :-

X x x x x x x”

32. Significant to note that the draft assessment order was confirmed in the form of final Assessment Order by observing as under:

*“12. Looking to the facts of the case discussed above for the year under consideration, **the investment made by assessee for purchase of immovable property amounting to Rs.37916890/- on account of unsecured loan remained unexplained.***

Hence the unsecured loan given for purchase of immovable property is treated as unexplained cash credit u/s. 68 of the Act and added back to the total income of the assessee. I am satisfied that the assessee has concealed the particulars of income. “

33. As noticed above, the addition u/s 68 of the Act has been made, by way of assessment order, due to the reason that “the investment made by the assessee for purchases of immovable properties, amounting to Rs. 3,79,16,890/- on account of unsecured loan” remained explained.

34. But, as already noticed above, the reasons for reopening of the assessment, as communicated to the assessee were that since the amount of capital introduced by the assessee in M/s S.V.M Oil Industries, during the assessment year 2015-16 was found unexplained, even the investment made by assessee for purchase of immovable property amounting to Rs.37916890/- on account of unsecured loan remained unexplained.

35. Comparison of the reasons mentioned in para 11 “reasons for reopening”, dated 11.03.2022 with the conclusion drawn in the two

assessment orders i.e. the Draft assessment order and the final assessment order, would reveal that same are totally different.

Had the assessment order been in consonance with the reasons given in the show cause notice accompanying the draft assessment order, then the things would have been otherwise.

This goes to show that proper and thorough enquiry was not conducted by the Assessing Officer keeping in view the Reasons recorded for reopening of the matter. It further shows that while drawing conclusion in passing the assessment order, the Assessing Officer did not keep in mind the Reasons which were communicated to the assessee.

36. Even otherwise Learned CIT(A) appears to have not applied mind in confirming the addition u/s 68 of the Act.

In para 8.3 of the impugned order, Learned CIT(A) observed as under:-

“8.3 Findings and decision:

I have carefully considered the facts of the case as well as submissions filed by the appellant. I find no force in the argument taken by the assessee. The Assessing Officer has given detailed reasons for making the addition in para 9, 9.1, 9.2, 10 and 11 of the assessment order. The Assessee has not been able to controvert these. He has only stated that these transactions are through banking channels and that the Assessing Officer was pre-decided to make the addition. The Assessee has furnished no evidence toward's this end. Accordingly, the addition of Rs.3,79,16,890/- made by the AD on account of unexplained cash credit u/s 68 of the Act is hereby confirmed. The ground no.4 is thus dismissed.

CIT(A) is required to discuss each and every ground raised by an appellant. Here, Learned CIT(A) was required to discuss ground No. 4 raised while challenging the addition on account of unexplained cash credit made u/s 68 of the Act. But, as noticed above, in para 8.3 of the impugned order, Learned CIT(A) simply relied on the reasons given by the Assessing Officer in para-9, 9.1,9.2,10 and 11 of the assessment order and rejected the said ground.

37. It may be mentioned here that in para-4 of the impugned order, Learned CIT(A) observed that in response to the notices issued to the assessee for filing of reply on or before 15.11.2022 and 03.11.2023, the assessee furnished written submissions, but never requested a personal hearing by video conferencing.

38. Ld. AR for the assessee-appellant has referred to page 11 to 18 of the second paper book and pointed out that the assessee had requested not only for earlier hearing of the appeal but also an opportunity of personal hearing.

This submission finds support from the said documents available as pages 11 to 18 of the second paper book. Therefore, we find that Learned CIT(A) did not abide by the principles of natural justice, by not providing to the appellant an opportunity of personal hearing.

Result

39. To cap it all, this is a case where the Assessing Officer did not follow the procedure prescribed under the law and the Assessing Officer as well as Learned CIT(A) did not provide reasonable opportunity of being heard to the assessee-appellant in support of his claim, as provided under the law.

40. As a result, this appeal deserves to be allowed. Same is allowed and the impugned assessments passed by Assessing Officer and the impugned order passed by Learned CIT(A) are hereby set aside, only on legal grounds raised before us.

Order pronounced in the open court on 06/09/2024.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 06/09/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Vishnu Kumar, Bharatpur.
2. प्रत्यर्थी / The Respondent- ACIT/JCIT/DCIT/Asst.CIT/ITO, NFAC, Delhi.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 85/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar