

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 340/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18

Shri Mahesh Kumar Ladiwala B-24, New Light Colony Tonk Road, Jaipur	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAIPL 9733 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vinod Kumar Gupta, CA
राजस्व की ओर से / Revenue by : MS. Alka Gautam, CIT (V.H)

सुनवाई की तारीख / Date of Hearing : 03/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 10/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the captioned assessee was dissatisfied with the order of the Commissioner of Income Tax (Appeals)-4, Jaipur [for short CIT(A)] passed on 30/01/2024 the present appeal is filed. The dispute relates to assessment year 2017-18. The order of the Id. CIT(A) is passed because the assessee preferred an appeal before him against the order dated 31.12.2019 passed under section 153A r.w.s. 143(3) of the Income Tax Act, [for short Act] by DCIT, Central Circle-01, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

"1. The Ld.AO erred in law as well as on the facts of the case by passing order u/s 143(3)/153A dated 31.12.2019 for want of jurisdiction and various other statutory reasons.

2. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.

3. Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in making addition of Rs.82,37,000/- u/s 69 in the hands of the assessee on protective basis. The entries were pertaining to firm and already accepted by M/s Ramesh Mahesh & Co. before ITSC as well as by the department in report u/s 245D(3). The addition in the hands of the assessee is unjustified, unreasonable and excessive and kindly be deleted in full.

4. Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in making addition of Rs.41,100/- u/s 68 in the hands of the assessee on protective basis. The entries were pertaining to firm and already accepted by M/s Ramesh Mahesh & Co. before ITSC as well as by the department in report u/s 245D(3). The addition in the hands of the assessee is unjustified, unreasonable and excessive and kindly be deleted in full.

5. Ld.CIT (A) erred in law as well as on the facts of the case in confirming the action of AO in making addition of Rs.50,000/- u/s 69C in the hands of the assessee on protective basis. The entries were pertaining to firm and already accepted by M/s Ramesh Mahesh and Co. before ITSC as well as by the department in report u/s 245D(3). The addition in the hands of the assessee is unjustified, unreasonable and excessive and kindly be deleted in full.

6. The Ld.AO erred in law as well as on the facts of the case in invoking Sec 115BBE, which is contrary to provisions of law as well as facts of the case.

7. The appellant prays your honour indulgence to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

3. Succinctly, the fact as culled out from the records is that search & seizure operation under section 132(1) of the Act was carried out on 30.10.2017 at the various premises of Ladiwala and Kanoongo Group,

Jaipur. Residential premises of the assessee at B-24, New Light Colony, Tonk Road, Jaipur was also covered. Consequent to search action the case of the assessee was centralized to DCIT, Central Circle-1, Jaipur. Consequent to the search notice u/s 153A of the Act was issued to the assessee on 09-10-2018 which was duly served. In response to notice issued u/s 153A, the assessee furnished his return of income on 20-10-2018 declaring total income of Rs. 46,70,770/-. Assessee had not filed his regular return u/s 139 of the Act. Notices u/s. 143(2) & 142(1) were issued from time to time and same were complied by the assessee.

3.1 Assessee has declared Remuneration income from Firm Ramesh Mahesh & Co., income from business u/s 44AD, Income from STCG on shares sold, income from commission, income from LIC Matured, interest income from saving bank a/c and interest from other sources.

3.2 During the course of search and seizure action at the residential and business premises of the assessee various incriminating documents has been found and seized on analysis of seized documents at Page No. 1 to 11 of Exhibit-28 of Annexure-AS (found and seized from the residence of Shri Mahesh Kumar Ladiwala at B-24, New Light Colony, Tonk Road,

Jaipur) and these were the pages of a diary which contains the details of cash loans which have been lended. The amount of cash loan from the above working comes at Rs. 82,37,000/- which was the unexplained investment of the assessee in form of cash loans. Further, assessee had paid Rs. 50,000/- to a travel agent and working unaccounted interest receipts of Rs. 41,100/- was noticed. The assessee has not disclosed these transactions in his books of accounts. AO called for the explanation of the assessee of these transactions. Assessee submitted the written reply contending that the papers were kept only for the purpose of memory and to show other partners, as and when required. The entries now have been already accepted by M/s Ramesh Mahes & Co. in the application before ITSC. This reply of the assessee was verified by the AO but not accepted and to protect the interest of revenue these transactions were added to the total income of the assessee on protective basis.

4. Aggrieved from the above order making the protective addition by the assessing officer, assessee challenged the finding of Id. Assessing Officer before Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee and confirmed the view of Id. Assessing Officer stating that during the appellate proceedings, the assessee has not furnished any information /

evidence to rebut the finding of Id. Assessing Officer. The Id. CIT(A) has also observed that the assessee has even though various opportunities were given not furnished any information and therefore, on these contentions the addition so made on protective basis were confirmed and the appeal was accordingly dismissed by the Id. CIT(A).

5. Before us, in the present case the Id. AR of the assessee filed an affidavit stating as to why the assessee was not represented before the Id. CIT(A). The contention of the Id. AR of the assessee that during these periods he was advised bed rest for the two notices issued in January 2024. The other notices were issued during covid-19 period. Based on these explanation Id. AR in support of the grounds of appeal filed by the assessee, filed a detailed submission which reads as follows ;

1. Appellant is an individual and partner in M/s Ramesh Mahesh and Co. A search and seizure operation u/s 132(1) was carried out on 30.10.2017 at Ladiwala and Kanoongo Group, Jaipur. Assessee being the partner of M/s Ramesh Mahesh and Co, his residential premise was also covered in the search action.
2. Notice u/s 153A was issued on 20.10.2018 declaring total income of Rs.46,70,770/-.
3. During the course of search, from the residential premises of assessee certain documents were found and seized as Page-1 to 11 of Exhibit-28 of Annexure AS.
4. During the course of assessment, when the assessee was asked to explain the transactions noted on the seized documents found at the residential premises of the assessee, it was submitted that assessee is not engaged in any cash loan business in his individual capacity and the transaction noted on the

seized paper were carried out by him on behalf of firm only and the entries noted on the seized papers have been already accepted by M/s Ramesh Mahesh & Co. in the application before Income Tax Settlement Commission. (ITSC).

5. Ld.AO made the verification of said contention from the settlement report u/s 245D(3), however, the addition of Rs.83,28,100/- was made on protective basis by holding as under:

“The reply of the assessee has been considered and verified from the settlement report u/s 245D(3). However, in order to protect the interest of revenue the above transactions are being added to the total income of the assessee on protective basis”

6. In the first appeal, Ld.CIT(A) confirmed the said protective addition on the ground that *“appellant has not filed a copy of the order of honorable Settlement Commission and the report of the department referred by him, to examine the claim of the appellant and the final fate of the same for perusal.”*

Grounds of Appeal No. 1

The Ld. AO erred in law as well as on the facts of the case by passing order u/s 143(3)/153A dated 31.12.2019 for want of jurisdiction and various other statutory reasons.

Submission:

General in nature, hence not pressed.

Grounds of Appeal No. 2

The Id.AO erred in law as well as on the facts of the case in making addition of Rs.82,37,000/- u/s 69 in the hands of the assessee on protective basis. The entries were pertaining to firm and already accepted by M/s Ramesh Mahesh & Co. before ITSC as well as by the department in report u/s 245D(3). The addition in the hands of the assessee is unjustified, unreasonable and excessive and kindly be deleted in full.

Grounds of Appeal No. 3

The Id.AO erred in law as well as on the facts of the case in making addition of Rs.41,100/- u/s 68 in the hands of the assessee on protective basis. The entries were pertaining to firm and already accepted by M/s Ramesh Mahesh & Co. before ITSC as well as by the department in report u/s 245D(3). The addition in the hands of the assessee is unjustified, unreasonable and excessive and kindly be deleted in full.

Grounds of Appeal No. 4

The Id.AO erred in law as well as on the facts of the case in making addition of Rs.50,000/- u/s 69C in the hands of the assessee on protective basis. The entries were pertaining to firm and already accepted by M/s Ramesh Mahesh

and Co. before ITSC as well as by the department in report u/s 245D(3). The addition in the hands of the assessee is unjustified, unreasonable and excessive and kindly be deleted in full.

Grounds of Appeal No. 5

The Ld.AO erred in law as well as on the facts of the case in invoking Sec 115BBE, which is contrary to provisions of law as well as facts of the case.

Facts: As narrated above

Submissions:

1. The grounds are interconnect; therefore, a common submission is being filed.

2. During the course of proceedings before Hon'ble ITSC, Ld. PCIT furnished a working of peak as Annexure-C of report u/s 245D(3) of the Act. A perusal of the finding of Ld.AO at Page-4 of assessment order clearly shows that the fact had been verified from the said report that entries/transactions noted on the paper seized on the basis of which impugned additions have been made are already covered in the said peak working.

3. Thus, Ld.AO has given a categorical finding of the fact that the said entries/transactions are covered in the peak working enclosed with report u/s 245D(3), however, the protective addition was made by Ld.AO just to protect the interest of revenue because at the time of assessment, proceedings were pending before ITSC and final order was awaited.

4. Afterwards, ITSC passed a final order dated 03.12.2020 u/s 245D(4) of the act. Now the moot question remained for adjudication is whether the final order of ITSC covers the working of peak as submitted by Ld.PCIT in report u/s 245D(3) so as to give the inclusion of the impugned entries/transactions in the final order of ITSC, which were verified by Ld.AO with the report of PCIT u/s 245D(3). In the light of this we submit as under:

4.1 The peak working determined by ITSC is enclosed to the order as Annexure-1. A perusal of the same shows that said working is also containing 2402 line items.

4.2 A perusal of the working of peak determined by Ld.PCIT and annexed to report u/s 245D(3) shows that the peak working is containing 2402 Line items.

4.3 Further, the said working is exactly the same as submitted by Ld. PCIT in the report u/s 245D(3), from which the verification has been made by Ld.AO. For an instance peak balance at Serial No.37 as on 18-09-2013 is 44905.20 and the same is reiterated in the final order of ITSC. In the similar manner, each and every line item is 100% matching except for entry no. 82 of Rs. 40,500/- which was skipped in the report u/s 245D(3) (PBP: 240) but considered in the order of

the Hon'ble ITSC (PBP: 42) resulting into difference of Rs. 40,500/-. However, after taking the effect of the same in the report u/s 245D(3), the resultant balance of report u/s 245D(3) (PBP: 273) will 100% match with the balance of the order of the Hon'ble ITSC (PBP: 152). In this reference, we are producing a reconciliation of the balance appearing in report u/s 245D(3) with the balance of order of the Hon'ble ITSC as follows:

Particulars	Amount
Balance as per Report u/s 245D(3) (PBP: 273)	(5,00,912.85)
Add.: Entry No. 82	40,500.00
Balance as per Order of Hon'ble ITSC (PBP: 152)	(4,60,412.85)

Without prejudice to anything stated above and without any admission, even otherwise also, the entry no. 82 neither pertain to the current period nor to the Exhibit-28.

4.4 Thus it is evidently clear that final order of ITSC has reiterated the peak working submitted by Ld.PCIT in the report u/s 245D(3), from which Ld.AO has verified the fact that said working is covering the transactions/entries of documents found at the residential premises of the assessee on the basis of which protective addition has been made in his hands. Thus effectively, the said entries have already been covered in the income offered before ITSC and due taxes have been paid thereon. Therefore, at this state, protection of interest of revenue shall stand vacated and resultantly the protective addition so made kindly be deleted in full.

5. Rebuttal of findings of Ld.CIT(A):

5.1 Ld.CIT(A) dismissed the appeal of the assessee on the ground that appellant has not filed the copy of order of ITSC and report of department.

5.2 In this regards it is submitted that the same could not be filed as the period in which date of hearing was fixed, assessee was suffering from a medical condition slip disc and he was instructed a complete bed rest and during that period only an ex-parte order was passed by Ld.CIT(A)-4, Jaipur.

5.3 Now coming to the contention of the Ld. CIT(A) that the appellant has not filed copy of the order of the Hon'ble ITSC and the report of the PCIT-Central, Jaipur u/s 245D(3) of the Act to examine the claim of the appellant. In this regard, your honors would appreciate the fact that it is the finding of the Ld. AO himself that the claim of the appellant has been verified from the report u/s 245D(3) which is evident from the assessment order. Further, such report and order were very well under the access of the department, therefore even if the appellant could not submit the same, the Ld. CIT(A) could have easily obtained the same and verify it under the given circumstances. Furthermore, without prejudice to above, it is submitted that the law of fairness and propriety also warranted that the Ld. CIT(A) should have obtained the order to verify the claim since no

prejudice would have resulted to the revenue by considering the order and the said action could have assisted in delivering judgement as per Income tax law which mandates fair proceedings and to tax real income and avoid double taxation.

5.4 Further, Ld. CIT(A) has further observed that the appellant has not furnished any information/evidence to rebut the finding of Ld.AO. In this regards it is important to note that appellant is not rebutting the finding of the Ld.AO, rather we are conceding the fact finding given by Ld.AO. The only development taken post the completion of assessment is the order of Hon'ble ITSC, which has confirmed the working of peak submitted by Ld. PCIT(Central), Jaipur and resultantly the protective addition so made may kindly be deleted in full.

Appellant Prays for Justice.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S.No.	Particulars	Page No.
1.	Copy of order of Hon'ble Settlement Commission dated 03-12-2020 in the case of M/s Ramesh Mahesh and Co.	1-152
2.	Copy of report of PCIT, (Central) Jaipur u/s 245D(3) dated 09.12.2019	153-272
3.	Copy of Medical Prescription for Shri Vinod Kumar Gupta (CA/AR)	273-273
4.	Duly Notarized affidavit of Shri Vinod Kumar Gupta (CA/AR)	274-276

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee in the assessment proceedings has categorically submitted that the transactions reflected in those loose papers were already considered in the settlement petition filed by Ramesh Mahesh & Co. That petition being accepted the double addition of the same income cannot be made and considering that

undisputed factual aspect of the matter the protective additions made in the case of the assessee is required to be deleted.

8. Per contra, the Id. DR relied on the order of lower authorities. On being asked about the contentions of the assessee that the revenue has accepted those transactions in the case of Ramesh Mahesh & Co., Id. DR did not controvert this factual aspect as argued by Id. AR of the assessee. Even Id. AO did not controvert this basic aspect of the matter at the time of hearing of the appeal through Id. DR.

9. We have heard the rival contentions and perused the material placed on record. Vide ground no. 3, 4 & 5 the assessee has challenged the protective addition made by the Id. AO and confirmed by the Id. CIT(A) for an amount of Rs. 82,37,000/-, 41,100/-, & 50,000/- u/s. 69, 68 & 69C respectively. Since these grounds relates to the protective addition of the amount which has already been considered by the firm where the assessee is partner, we considered the same for deciding all these three grounds together. Brief facts related to the dispute is that there was search & seizure operation under section 132(1) of the Act on 30.10.2017 at the various premises of Ladiwala and Kanoongo Group, Jaipur. Residential premises of

the assessee was also covered. Consequent to search action notice u/s 153A of the Act was issued to the assessee on 09-10-2018 which was duly served. In response to notice issued u/s 153A, the assessee furnished his return of income on 20-10-2018 declaring total income of Rs. 46,70,770/-. Assessee has declared Remuneration income from Firm Ramesh Mahesh & Co., income from business u/s 44AD, Income from STCG on shares sold, income from commission, income from LIC Matured, interest income from saving bank a/c and interest from other sources. Assessee had not filed his regular return u/s 139 of the Act. Notices u/s. 143(2) & 142(1) were issued from time to time and same were compiled by the assessee. In the search operation at the residential and business premises of the assessee various incriminating documents has been found and seized on analysis of seized documents at Page No. 1 to 11 of Exhibit-28 of Annexure-AS (found and seized from the residence of Shri Mahesh Kumar Ladiwala at B-24, New Light Colony, Tonk Road, Jaipur) and these were the pages of a diary which contains the details of cash loans. The amount of cash loan from the those pages was worked at Rs. 82,37,000/-. Ld. AO considered the same as unexplained investment of the assessee in form of cash loans. Further, assessee had paid Rs. 50,000/- to a travel agent and working unaccounted interest receipts of Rs. 41,100/- was noticed. As the assessee has not

disclosed these transactions in his books of accounts, AO called for the explanation of the assessee on these transactions. Assessee submitted the written reply contending that the papers were kept only for the purpose of memory and to show other partners of M/s. Ramesh Mahesh & Co., where he is partner. The entries noted on those pages have already been accepted by M/s Ramesh Mahesh & Co. in the application filed before ITSC. This reply of the assessee was verified by the AO but not accepted and to protect the interest of revenue these transactions were added to the total income of the assessee on protective basis u/s. 69, 69C & 68 respectively. As explained by the Id. AR of the assessee fairly accepting the fact that when the last two notices issued for hearing by the Id. CIT(A) he was advised bed rest and the other notices were being covid -19 period. But the Id. CIT(A) did not call for the remand report to ascertain the truth on the grounds so taken by the assessee that the firm has accepted the transaction before ITSC.

Before us, during the hearing the Id. AR of the assessee explained that the transactions reflected on those loose papers found has already been considered by the firm M/s. Ramesh Mahesh & Co. and that is why even the Id. AO has made the addition only to protect the interest of revenue only. In support of the contention Id. AR of the assessee relied

upon the order of the Settlement Commission dated 03.12.2020 in the case of Ramesh Mahesh & Co and report of the Id. PCIT (Central) u/s. 245D(3) dated 09.12.2019. Ld. AR of the assessee also invited our attention to the submission made before the Id. AO in the assessment proceeding pursuant to search wherein the assessee submitted as under :

"I would like to submit that as evident from the seized material that assessee was not engaged in any cash loan business in his individual capacity. The transaction under consideration has been carried out by him on behalf of the firm. The papers were kept only for the purpose of memory and to show other partners, as and when required. The entries now have been already accepted by M/s Ramesh Mahesh & co. in the application before ITSC.

It is relevant to mention that the same has already been examined in 245D(3) report by the office of PCIT (Central)-Jaipur. There relevant pages of the report are enclosed. Perusal of the comment of PCIT Jaipur shows that after examination contention of the Ramesh Mahesh & Co., that these pages has already been incorporated have been accepted. The relevant pages have also reproduced in the report which we have highlighted."

As is evident from the record that the order of the assessment was passed on 31.12.2019 whereas the application was filed on 27.03.2019 by the firm where the assessee was partner. The said application being not finalized the Id. AO partly accepting the contention of the assessee decided not to make the addition substantially but he has made these additions with a view to protect the interest of the revenue on protective basis vide order dated 31.12.2019.

Now before us, the order of the ITSC dated 03.12.2020 was placed on record, which contains the entry starting from sr. no. 1 to 2402, all these

entries incorporate the entries for which the addition was made by the Id. AO protective basis. The Id. AO neither disputed that working at the time of assessment proceeding in the case of the assessee nor before us through Id. DR. Therefore, once at the stage before us also the order of the settlement commission dated 03.12.2020 not being disputed the addition accepted by the firm, not disputed by the revenue cannot be sustained in the hands of the assessee on protective basis. Based on these observations ground no. 3, 4 & 5 raised by the assessee stands allowed.

Ground no. 1 relates to the challenging the order of the assessment on technical ground, since we considered the merits of the case this ground becomes educative in nature.

Ground no. 2 relates to the fact that the assessee was not given appropriate opportunity by the Id. CIT(A), since we have considered the appeal of the assessee on merits this ground becomes educative in nature.

Ground no. 6 relates to the levy of special rate on the addition as per provision of section 115BBE of the Act, since the assessee got relief on the merits this ground becomes infructuous.

Ground no. 7 being general it does not require any adjudication.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10/10/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/10/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Mahesh Kumar Ladiwala Through Legal Heir Smt. Anita Ladiwala
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 340/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar