

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, JM

आयकर अपील सं./ITA No. 843/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18.

Shri Viju Kumar Nair, 82-A1, Janta Nagar-D, Sodala, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 7(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No. ACPPN 2812 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri K.L. Moolchandani, ITP

राजस्व की ओर से / Revenue by : Shri Gautam Singh Choudhary, JCIT D/R

सुनवाई की तारीख / Date of Hearing : 26/09/2024

उदघोषणा की तारीख / Date of Pronouncement : 17/10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 10.04.2024 of Id. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the Income Tax Act, 1961 for the assessment year 2017-18. The main grievance of the assessee is that the Id. CIT (A) though admitted the additional evidences produced by the assessee, but erred in ignoring the claim of the appellant regarding nature and sources of the investment of Rs. 17,15,800/- made in Credit Card purchases out of sale

proceeds as recorded in the Cash Book and sustaining an addition of Rs. 8,30,820/-out of total addition of Rs.17,15,800/-made by the AO.

2. The brief facts of the case are that the assessee is an individual, e-filed his return of income under section 139(1) of the IT Act, 1961 on 07.02.2018 declaring total income of Rs. 2,39,330/-. The case was selected for limited scrutiny under CASS to identify and examination of credit card payments. Accordingly, notice under section 143(2) of the IT Act, 1961 was issued on-line on 13.08.2018 through ITBA Portal which was served upon the assessee through e-mail and Registered Post. Further notices under section 142(1) of the IT Act along with questionnaire were issued from time to time. The assessee complied with the notices and furnished necessary details along with supporting documents through electronically "E Proceeding" on ITBA Portal which were examined by the AO. The AO, while going through the assessment record for the year under consideration, noticed that the assessee has made cash payments for credit card purchases of Rs. 17,15,800/-. Accordingly, vide notices under section 142(1) dated 04.09.2019 and 05.10.2019 the assessee was asked to furnish necessary details and supporting document with explanation regarding the source of the cash payments made for credit card purchases during the year under consideration. In compliance, the Id. A/R of the assessee submitted computation of income along with ITR for Assessment Year 2017-18 and copy of bank account statement and copy of credit card statement (credit card no. 4477478096918010 & 524216xxx8701). On examination of the details, the AO observed that the assessee has not furnished the requisite details

and documents as required vide notice under section 142(1) of the IT Act. Therefore, the AO could not verify the source of credit card payments to the tune of Rs. 17,15,800/-. From perusal of computation of income, the AO noted that the assessee was having salary income of Rs. 3,66,000/- only. The AO, therefore, held that how a person having a meager salary income, can afford to invest such a huge amount of Rs. 17,15,800/- for credit card purchases. The AO observing that since the assessee could not produce any document/evidence in support of credit card purchases of Rs. 17,15,800/-, made the addition of the said amount treating the same as unexplained money of the assessee under section 69 of the IT Act and added the same to the total income of the assessee framed at Rs. 19,55,130/- and assessed to tax under section 115BBE of IT Act, 1961. Being aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) after considering the documents/evidences furnished before him, partly allowed relief by deleting the addition to the tune of Rs. 8,84,980/- thereby sustaining an addition of Rs. 8,30,820/-.

Now the assessee is in appeal before the Tribunal.

3. Before us, the Id. A/R of the assessee reiterated his submission as were made before the Id. CIT (A). He has also submitted his written submission as under :-

“The case of the Appellant for this year was picked up for **'Limited Scrutiny'** under CASS to examine the cash payments of Rs.17,15,800/- to purchase the Cash Cards. During the course of the assessment proceedings, the appellant was prevented by reasonable and honest cause from making compliance of the notice issued u/s 142(1) of the Act to submit the required explanation regarding so called investment of

Rs.17,15,800/-. In the circumstances, the Id. AO had presumed that the appellant had only salary income of Rs.3,66,000/- so it was not possible for him to make investment of the magnitude of Rs.17,15,800/-. Accordingly, such investment was taken as unexplained money of the appellant u/s 69A of the Act and the same was added back to the income of the appellant.

2. Aggrieved by the above addition in this manner, the appellant had preferred an appeal and filed detailed written submissions along with a request letter for admission of the additional evidences under Rule 46A of IT Rules, 1962. Having received such written submissions and additional evidences, the Id. CIT (A) had obtained comments and counter comments from the Id. AO and the appellant in remand proceedings which have duly been re-produced by the Id. CIT (A) in the appeal order itself. Having considered the comments and counter-comments as submitted in the 'Remand Proceedings', the Id. CIT (A) had admitted the additional evidences under 46A of IT Rules, 1962 vide para 5.3 of the Appeal Order at page No.13 which is being re-produced hereunder for ready reference:

'Considering the explanation submitted by the appellant the additional evidences produced by the appellant are admitted and the grounds of appeal raised by the appellant are adjudicated in the subsequent paras'.

2.1: Having considered the comments and counter-comments as obtained in the '**Remand Proceedings**', the Id. CIT (A) had restricted the addition of **Rs.17,15,800/-** made under section 69A of the Act to **Rs.8,30,820/-** with the following findings as recorded at page no.14 vide para 6.2 of the Appeal Order as re-produced hereunder for ready reference:

'As per the discussions made in para 5.3 above, I have admitted the additional evidences. Considering the facts of the case, the findings of the AO given in the remand report on merits of the case is found to be acceptable. Further I find that the appellant has not rebutted the observation of the AO about the unexplained cash deposits of Rs.10,48,705/- with supporting evidences. However I find that total addition made by the AO was Rs.17,15,800/- only and the source of cash deposits found explained for Rs.8,84,980/- Therefore addition to the extent of Rs.8,30,820/- is confirmed and balance addition of Rs.8,84980/- is hereby deleted.'

2.2 On going through the above findings it is noted the CIT (A) had confirmed the addition of **Rs.8,30,820/-** on the ground that the *'appellant has not rebutted the observations of the AO about the un-explained cash deposits of Rs.10,48,705/- with supporting evidences'*. Obviously, such findings are factually and patently incorrect and the same do not hold good for the following reasons:

- (a) As evident vide Para (b) of the counter- comments of the appellant as re-produced by the Id. CIT (A) in his appeal order at page No. 10, the appellant had strongly and vehemently objected to the observations of the Id. AO about the un-explained cash deposits of Rs.10,48,705/- with supporting evidences submitted under Rule 46A of the IT Rules, 1962. In the circumstances, the observations of the Id. CIT (A) are factually and patently incorrect which do not hold well.
- (b) As mentioned in the fore-gone para, the Id. CIT (A) had himself admitted the additional evidences submitted by the appellant under Rule 46A of IT Rules, 1962 consisting of Cash Book, Trading A/c, Purchase and Sales Ledgers and Bank A/c and Credit cards etc. In the circumstances, the above observations of the Id. CIT (A) are self-contradictory and absurd. With the help of such additional evidences only, the appellant had rebutted the observations of the AO as evident from the counter comments vide para i(b) as re-produced in the appeal order. It appears that the Id.CIT (A) did not consider the counter comments of the appellant as submitted in the remand proceedings in right perspective.
- (c) Again the recommendations and the observations as conveyed by the AO in his remand report (as re-produced by the Id. CIT (A) in the appeal order itself appear to be misconceived and full of flaws as high-lighted here-under:
 - (1) In the remand proceedings, the appellant had clearly explained that all the cash payments of Rs.17,15,800/- were made out of the sale proceeds of the Marble Idols as per cash book submitted in the additional evidences. (Kindly refer para (b) of the counter comments. The Id. AO however did not take note of this explanation. Instead of examining and verifying the correctness of the sales and its sale proceeds as recorded in the Cash Book, the Id. AO opted to verify the purchases with reference to the Credit Cards only and had opined that the purchases of Rs.8,84,980/- made through credit cards only were verifiable. There was no whisper about the correctness of the sales and its sale proceeds as claimed by the appellant. Meaning thereby the Id. AO did not dispute the correctness of the sales and its sale proceeds. Obviously, the enquiry results regarding

correctness of the purchases did not lead to any conclusive finding regarding the nature and sources of the cash payments of Rs.17,15,800/-.

- (2) While forwarding this report, the Id. AO did not follow the principles of Accountancy. The Id. AO had opined that since the purchases of RS.8,84,980/- made through credit cards were satisfactorily explained so the sales to this extent stood explained. The balance Purchases were not verifiable in absence of supporting documents like purchase bills etc. In light of these facts the cash sale corresponding to purchases are verifiable. Regarding balance Sales as stood recorded in the Sales Ledger and Cash Book, the Id. AO did not whisper a single word. Obviously such findings are contrary to the principles of Accountancy. Once the sales are found properly recorded and accounted for in the books and these have not been disputed by the Id. AO by pointing out any discrepancy or mistake in any manner, then as a natural corollary and as per principles of Accountancy, the purchases stood automatically verifiable as in absence of purchases, no sale could have been effected. Thus the Id. AO had over-looked this vital fact of Accountancy while forwarding report on the point. The Id. CIT (A) had also omitted to point out such basic flaw in the Remand Report of the Id. AO.
- (3) Again the Id. AO had grossly erred in observing that except the purchases of RS.8,84,980 made through Credit Cards, remaining purchases were not verifiable without examining the fact that all the purchases were fully and properly vouched and verifiable. Like-wise, all the sales were also fully and properly vouched and verifiable from the Books. This is an undisputed fact as evident from the Cash Book and the vouchers etc. Thus such findings of the Id. AO were factually incorrect and contrary to the principles of Accountancy.
- (4) Further, on the basis of part verification of the Purchases from Credit Cards, it cannot be logically and definitely concluded that the appellant had no sale proceeds of the Marble Idols, ignoring the Additional Evidences of Cash Book, Trading A/c, Sales and Purchases of the Marble Idols and other supporting vouchers and Bank A/c etc. Once the additional evidences have been admitted by the Appellate Authority to adjudicate the appeal proceedings, then these additional evidences should not be ignored by the Id. AO without pointing out any mistake or discrepancy in these additional evidences. In the present case no discrepancy or mistake had

been pointed out by the AO in these additional evidences so the correctness and genuineness of these evidences should not be disputed.

In view of above discussions, the findings of the Id.AO as conveyed in his Remand Report is not factually and legally maintainable as the same is full of legal and factual flaws as pointed out above. Thus the same deserves to be quashed summarily as per objections communicated to the Id. CIT (A) vide para (b) of the counter comments re-produced by the Id. CIT(A) in the appeal order.

Lastly, while deciding the appeal, the Id. CIT (A) did not address the objections and various contentions of the appellant as rose in para (b) of the counter-comments. (Copy of such counter comments are once again enclosed for ready reference). Such objections and contentions are self-contained and deal with all the points at issue. The Id. CIT (A) did not whisper a single word about such explanation and contentions; meaning thereby that the contentions as made by the appellant appear to have been accepted by the Id. CIT (A).”

4. On the other hand, the Id. D/R supported the orders of the revenue authorities and submitted that the order of the Id. CIT (A) be upheld.

5. I have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. From perusal of assessment order, it is noticed that the AO made the addition only on the ground that the assessee could not furnish proper evidence/explain the source of such cash payment made for credit card purchases and treated the same as un-explained money under section 69A of the IT Act. The Id. A/R submitted that the assessee was prevented by reasonable and honest cause for not being able to furnish the required evidence regarding investment of Rs. 17,15,800/- for credit card purchases. At the appellate proceedings before the Id. CIT

(A), the assessee furnished explanation and placed before him the additional evidences and requested admission of additional evidences under Rule 46A of IT Rules, 1962. The Id. CIT (A) having received the additional evidences, sought comments by way of remand report from the AO and counter comments from the assessee. Accordingly, after considering the comments and counter comments from AO and appellant, the Id. CIT (Appeals) admitted the additional evidence by observing in para 5.3 of his order as under :-

"5.3 I have perused the assessment order, grounds of appeal and written submission filed by the appellant, remand report submitted by the AO & comments of the appellant carefully. I find from the remand report that appellant has not explained as to how the conditions mentioned in Rule 46A of the IT Rules are fulfilled. Therefore, the AO in the remand report has reported in the remand report that the additional evidence may not be admitted. The appellant vide submission uploaded on 01.04.2024 contended that he has submitted the affidavit explaining that subsequent notices issued by the AO were not viewed by the appellant and hence he was prevented from submitting the evidences before the AO. Considering the explanation submitted by the appellant the additional evidences produced by the appellant are admitted and the grounds of appeal raised by the appellant are adjudicated in the subsequent paras."

At the appellate proceedings, the appellant contended that he was carrying on the business of trading of marble idols and out of sale proceeds of the business, the cash was deposited for credit card purchases. The assessee submitted that he suffered loss from trading of marble idols and hence the same was not disclosed in the return of

income. In support of assessee's version, he produced cash book, ledger, details of purchases, details of sales, copies of three credit cards of HSBC, ICICI, HDFC and bank statement and other details before the AO during remand proceedings. The AO submitted his comments on the additional evidences after due verification. In the remand report, the AO accepted the source of cash deposits to the extent of Rs. 8,84,980/- and recommended for confirming the addition of Rs. 10,48,705/- as against Rs. 17,15,800/- made by the AO. The Id. CIT (A) on the basis of remand report, deleted the addition to the extent of Rs. 8,84,980/- as explained by the appellant, and in respect of balance addition of Rs.10,48,705/-, the Id. CIT (A) observed that the appellant has not rebutted the observation of the AO. However, the Id. CIT (A) finding that the total addition made by the AO was Rs. 17,15,800/-, he restricted the addition to Rs. 8,30,820/-.

5.1 The Id. CIT (A) while remanding the matter to the AO, was expected to verify the additional evidences and examine the claim of the appellant with regard to the nature and source of acquisition of money owned by the assessee to the purchase through credit cards of Rs. 17,15,800/-. However, in the remand proceedings, the AO, instead of examining the nature and sources of the acquisition of money for purchases through credit cards of Rs.17,15,800/-, had proceeded to examine the point at issue entirely on different lines i.e. instead of examining the nature and sources of investment made, the AO had opted to examine the genuineness of the purchases with reference to the credit cards. Thus the enquiries so made by the AO during the remand

proceedings were totally misdirected, immaterial and irrelevant having no bearing of the fate of the nature and sources of the investment made by the appellant for credit card purchases of Rs. 17,15,800/-. The appellant had claimed the nature and sources of such investment out of the sale proceeds of the Marble Idols only. Accordingly, the AO was required to examine the genuineness and correctness of the sale proceeds as recorded in the Books of accounts of the appellant with reference to the Cash Book only. In the Remand Proceedings, the AO did not dispute the correctness of the Trading activities of the appellant as accounted for in the books produced during the remand proceedings. In the remand proceedings, the AO had admitted the trading activities of Marble Idols. At no stage, the AO had ever disputed the correctness and genuineness of the sale vouchers and the sale proceeds shown through such sale vouchers. At the remand proceedings, copies of all the sale and purchase vouchers were submitted for verification and examination of the AO, but not a single item of the sale and purchase was found un-vouched or unverifiable. In the remand report, the AO did not point out any discrepancy or any mistake in the trading account and trading results of the appellant. Thus in absence of any discrepancy or mistake, the trading results and sale proceeds cannot be ignored on the plea that the purchases were not made through credit cards as alleged the AO in the remand proceedings. From perusal of material available on record, I also find that the AO has not brought any material on record to controvert the submissions of the appellant in respect of credit card purchases of Rs. 17,15,800/-. On going through the remand report and also considering the counter submissions and evidences produced by the appellant, I find no

justification to sustain the addition of Rs. 8,30,820/- keeping in view that the same material/evidence produced by the appellant were considered by the Id. CIT (A) while deleting the addition of Rs. 8,84,980/-. Thus on the basis of discussions made hereinabove, I am of the view that the assessee deserves to succeed. The addition is deleted.

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

Order pronounced in the open court on 17/10/2024.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 17/10/2024.

Das/

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

1. अपीलार्थी / The Appellant- Shri Viju Kumar Nain, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO Ward 7(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 843/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

