

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री गगन गोयल, लेखा सदस्य, के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI GAGAN GOYAL, AM

आयकर अपील सं./ITA No. 1116/JP/2024
निर्धारण वर्ष/Assessment Year : 2015-16.

Soyala Gram Sewa Sahakari Samiti Ltd., Soyala Gram, Jaipur Road, Tonk.	बनाम Vs.	The Income Tax Officer, Tonk, Tonk.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. AAHAS 1052 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Mukesh Khandelwal (CA)
राजस्व की ओर से / Revenue by : Shri Gautam Singh Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 27/11/2024
घोषणा की तारीख / Date of Pronouncement : 08/01/2025

आदेश / ORDER

PER DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 4th June, 2024 passed under section 250 of the I.T. Act, 1961, for the assessment year 2015-16. The assessee has raised the following grounds of appeal :-

1. *That the ld. AO has erred in law in making disturbance in the ITR filed by the appellant even after satisfying himself about the*

reasons for which proceedings u/s 147/148 were initiated. The said action is in violation to the provisions of section 147 of the Income Tax Act, 1961. Relief may kindly be granted by deleting the additions made on other aspects

2. *That the ld. CIT (A) has erred in law in confirming the action of the Ld. AO in disallowing the claim of the appellant u/s 80P (2) of the Income tax Act, 1961 for Rs. 1,14,509/- on the alleged violation of the appellant in complying with the provisions of section 80A(5) of the Income tax Act, 1961.*
3. *That the ld. CIT (A) has erred in law in confirming the action of the Ld. AO in disallowing the claim of the appellant u/s 80P (2) of the Income tax Act, 1961 for Rs. 5,62,832/- being interest received from Co-operative Bank on the alleged violation of the appellant in complying with the provisions of section 80A(5) of the Income tax Act, 1961*
4. *That the appellant craves leave to add, amend, alter, withdrawn any of the grounds of appeal before hearing.*

2. The appeal filed by the assessee is delayed by 26 days. The ld. A/R has filed condonation applications dated 28.08.2024 and 30.08.2024 along with an Affidavit of Shri Ram Narain, Secretary of Soyala Gram Sewa Sahakari Samiti Ltd., duly verified by Notary Public, which reads as under :-

“ I, Ram Narain Jat S/o Shri Badri Lal Jat, aged years, secretary of Soyala Gram Sewa Sahkari Samiti Ltd., Gram Soyala, Jaipur Road, Tonk (Rajasthan) – 304 001, do hereby solemnly affirm and declare as under :-

1. That for the AY 2015-16 assessment of Income of our society was finalized by the ld. AO, viz. Assessment Unit, NFAC, in terms of section 147 r.w.s. 144B of the Income Tax Act, 1961.
2. Being aggrieved from the order the ld. AO an appeal was preferred before the Hon'ble CIT (A), who passed order u/s 250 of the Income Tax Act, 1961 vide order dated 04.05.2024 and uploaded in the online account on the same day.
3. As the Hon'ble CIT (A) did not allow any relief to us and hence we decided to file appeal before the Hon'ble ITAT, Jaipur Bench, Jaipur and as per provisions of section 253(3) of the Income Tax Act, 1961 the appeal was required to be filed on or before 3rd August, 2024. However, the same could not be filed in time due to the reason that our counsel Shri Ravindra Kumar Jain, Advocate had to be admitted in hospital on 10.07.2024 for cardiac problem and was operated on 11.07.2024 and he was advised by the treating doctor to take bed rest till 1 month from the date of operation. Before expiry of one month on 4th August, 2024 his brother Shri Chandresh Kumar Jain, advocate had expired. On account of these reasons Shri Ravindra Jain could not attend his office till 16th August, 2024. Even during this period from 11.07.2024 to 18.08.2024 his mobile phone was also switched off as per advice of treating doctor. After his joining the office he took stock of his pending matters and only thereafter necessary preparations could be made for filing the instant appeal before the Hon'ble ITAT.
4. That the delay occurred in filing the appeal was due to reasons beyond our control and hence same may kindly be condoned.

Sd/-
(Ram Narain Jat)
Deponent

VERIFICATION

I, Ram Narain Jat, the above deponent do hereby verify that the contents of this Affidavit running from para 1 to 4 are true and correct to the best of my information, knowledge and belief and I have not hide any fact. May God help me.

Jaipur, 27/08/2024.

Sd/-
(Ram Narain Jat)
Deponent “

Considering the reasons mentioned in the said applications accompanied by an Affidavit of the assessee, we feel that the reasons mentioned in the Affidavit constitute sufficient cause for not filing the appeal within the time before us. Therefore, taking a lenient view and considering the principles laid down in the case of Collector, Land Acquisition vs. Mst. Katiji, 1987 AIR 1353 (SC), we condone the delay of 26 days in filing the appeal before us.

3. Ground no. 1 raised in the grounds of appeal herein above is an additional ground which, due to inadvertence, could not be taken up before the Id. CIT (Appeals). The assessee has, thus, prayed that this additional ground being purely legal in nature and does not require any adjudication of facts, the same be admitted for adjudication.

In this regard, the Id. AR placed reliance on the judgment of Hon'ble Supreme Court in the case of NTPC vs. CIT, 229 ITR 383 (SC).

4. We have heard both the sides in respect of admission of additional ground. The additional ground raised by the assessee is purely legal in nature and also goes to the root of the matter regarding the validity of the assessment. The assessee has disputed the action of the AO in violation of provisions of section 147 of the IT

Act, 1961. Therefore, this issue raised by the assessee can be adjudicated on the basis of the facts and material available on the assessment record. Accordingly, in view of the decision of the Hon'ble Supreme Court in case of NTPC vs. CIT, 229 ITR 383 (SC) the additional ground raised by the assessee is admitted for adjudication.

5. The brief facts of the case are the assessee is a cooperative society registered under the name and style "Soyala Gram Sewa Sahakari Samiti Ltd." The assessee society did not file its Return of Income for the year under consideration. On receipt of information that the assessee Samiti had made cash deposits to the tune of Rs.63,33,000/- in its account maintained with Axis Bank Limited during the year under consideration, the AO vide notice under section 148A(b) of the IT Act, 1961 afforded an opportunity to the assessee to explain the source of cash deposit in its bank account. However, no reply was filed by the assessee. Accordingly, the case of the assessee was reopened by issuing notice under section 148 of the IT Act, 1961 dated 29.03.2022 requiring the assessee to file its return of income. In response, the assessee filed its return of income declaring Nil income after claiming deduction of Rs. 1,14,509/- under section 80P on 16.01.2023. The AO framed the assessment under section 143(3) read with section 147, read with section 144B of the IT Act, 1961, after duly considering the submissions enclosing

therewith relevant documents filed by the assessee, by passing the impugned order with an assessed income of Rs. 6,77,341/- on account of proposed addition on account of Interest income under section 56 of the IT Act of Rs. 5,62,832/- and addition on account of proposed disallowance under section 80P of Rs. 1,14,509/-.

6. Aggrieved by the order of the Assessing Officer, the assessee challenged the action of the AO by preferring an appeal before the ld. CIT (Appeals). At the appellate hearing, the ld. CIT (Appeals) considered the submissions furnished by the assessee before him but he was not convinced with the same and resultantly dismissed the appeal of the assessee.

7. Aggrieved by the order of ld. CIT (Appeals), the assessee has come in appeal before us. During the time of hearing before us, the ld. AR of the assessee has submitted that the ld. CIT (Appeals) without making any comment on the action of the AO used another logic for sustaining the assessment. Regarding **Ground No. 1** of the appeal, the ld. AR has submitted as under :-

“The notice u/s 148 was issued by the ld. AO on the basis of information received by him about cash deposit of Rs. 63,33,000/- in the bank account of the assessee society. The same is apparent from the order passed by him u/s 148A(d) of the Income Tax Act, 1961 (APB 1-2). During the assessment proceedings the AO was satisfied about this particular reason as mentioned by him at page no. 6 of the order wherein he has categorically stated that no variation is proposed on the issue of cash deposit of Rs. 63,33,000/- in the

bank account. Meaning thereby that the ld. AO did not make any addition/disallowance on the reason for issue of notice u/s 148. Under such circumstances no disturbance could have been made by him on other issues. The provisions of section 147 of the Income tax Act, 1961 are as under :-

Income escaping assessment.

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of [sections 148 to 153](#), assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in [sections 148 to 153](#) referred to as the relevant assessment year).

Explanation.—For the purpose of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of [section 148A](#) have not been complied with.]

Proviso to section 147 permits the AO to assess or reassess the income in respect of any issue which has escaped assessment and such issues which comes to his notice subsequently in the course of proceedings under this section. The second limb of this proviso i.e. for assessing other issues can only be invoked if first limb is satisfied i.e. when an addition/ disallowance is being made on the issue which was formed the basis for initiation of reassessment proceedings. As in the instant case since no addition/ disallowance was made on the reasons framed for issue of notice u/s 148 the

ld. AO was not entitled to make other disturbances in the ITR. The appellant relies on following judicial pronouncements in this regard :-

1. ***CIT vs Shri Ram Singh [2008] 306 ITR 343 (Raj.) – Relevant Para no. 29 and 32 at case law APB 8.***
2. ***CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom)(HC) – Relevant para no. 16 and 17 at case law APB 17***
3. ***Ranbaxy Laboratories Ltd. - vs. CIT (2011) 336 ITR 136 (Delhi High Court) - Relevant para no. 21 at case law APB 28.***
4. ***ITO v Bidbhanjan Investment & Trading CO (P) Ltd (2011) 59 DTR 345 (Mum) (Trib) – Relevant para no. 17 at case law APB 35.***
5. ***Dy. CIT v. Takshila Educational Society (2016) 378 ITR 520 (Pat.) (HC) – Relevant para is last but one at case law APB 39.***
6. ***Sheela Foam Ltd. v/s DCIT (Delhi ITAT) (ITA No. 4096/Del/2018 vide order dated 27.04.2020) : Relevant Para no. 16 at case law APB 55.***

The theory enunciated by the Hon`ble Courts in all these judgements is clearly applicable in the instant case and hence it is sincerely requested that the assessment order making disallowances on other items may please be quashed.”

8. On the other hand, the ld. D/R has supported the orders of the authorities below and submitted that the order of the ld. CIT (Appeals) be upheld.

9. We have heard the rival submissions and perused the material on record. We note that the notice u/s 148 of the Income Tax Act, 1961 was issued on 29.03.2022 and as per order passed u/s 148A(d) dated 29.03.2022 following ground was taken for issuance of notice u/s 148 :-

“In this case of the assessee, specific information was flagged as per Risk Management Strategy formulated by the CBDT through ITBA software under the head ‘NMS cases’. As per the specific information, Soyala Gram Sewa Sahakari Samiti Limited (PAN : AAHAS1052Q) has carried out following transactions during the financial year 2014-15, relevant to the assessment year 2015-16” :-

<i>S.No.</i>	<i>Name of Bank</i>	<i>Cash Deposited</i>
<i>1.</i>	<i>Axis Bank Limited</i>	<i>Rs. 63,33,000/-</i>
	<i>Total</i>	<i>Rs. 63,33,000/-</i>

“It is further noticed that the assessee has not filed his return of income for the AY 2015-16. In absence of return, the above transactions made by the assessee remains unexplained. Thus income from above transactions has not been offered for tax and due tax has not been paid.”

The issue of cash deposit was examined by the Id. AO during assessment proceedings and in the assessment order on page 6 the Id. AO states that no variation is proposed on the issue of cash deposit by the assessee society in its bank

account and finally he has not made any addition on this score. He has disallowed the claim of the assessee u/s 80P claimed on interest from Bank and the surplus appearing in Profit and Loss Account. It is apparent that no addition has been made by the Id. AO on the issue on which reassessment was undertaken by him. In various case laws relied upon by the Id. AR the Hon`ble Courts including the jurisdictional High Court of Rajasthan have held that if the AO finds that the issue on which reassessment proceedings were initiated does not subsist then the Id. AO loses jurisdiction to assess other issues of concealment that comes to his knowledge. In this regard we quote the relevant findings of the Hon`ble Rajasthan High Court in the case of **CIT v/s Shri Ram Singh (306 ITR 343)** :-

“29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, Which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.

30.xxx xxx

31. xxx xxx

32. The result of the aforesaid discussion is, that the question framed, in the order dated. 23rd May, 2006, is required to be, and is, answered in the manner, that the Tribunal was not justified in holding, that the proceedings for reassessment under section 148/147 were initiated by the AO, on non-existing facts. because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held, that the AO was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion, that the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment."

Further it is noted that The ld. AO was required to stop at the point when he found that the issue of cash deposit of Rs. 63,33,000/- into bank account was out of genuine sources and was required to pass a NIL order. Once it is found that none of the reasons recorded by the Assessing Officer for initiating proceedings under section 147 was germane to initiation of such proceedings, then it has to be held that the AO had no reason to believe that any income had escaped assessment and, therefore, any further proceeding would be without jurisdiction. But still he moved further without having jurisdiction and made other additions in the assessment which is illegal as the AO has exhausted his jurisdiction as soon as he was satisfied

that the cash deposit of Rs.63,33,000/- in the bank account of the assessee, for which the case of the assessee was reopened under the provisions of section 147 read with section 148 of the IT Act, was satisfactorily explained. Therefore, taking into consideration the various case laws discussed herein above, we are of the view that the other disallowances/additions made by the AO in the assessment order are illegal. We, therefore, allow the Ground no. 1 of the assessee and quash the other disallowances/additions made by the AO.

10. Since we have allowed Ground No. 1 and decided to quash all other additions/disallowances made in the assessment order, we do not consider it fit to go into merits of other disallowances/additions raised in Ground nos. 2 & 3 which have become academic in nature.

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

Order pronounced in the open court on 08/01/2025.

Sd/-

(गगन गोयल)
(Gagan Goyal)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 08/01/2025.

Santosh

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

1. अपीलार्थी / The Appellant-soyala Gram Sewa Sahakari Samiti Ltd. Tonk.
2. प्रत्यर्थी / The Respondent-The ITO, Tonk
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File {ITA No. 1116/JPR/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar