

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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 Nos. 1071 & 1069/JP/2024
निर्धारण वर्ष/Assessment Years : 2017-18 & 2018-19

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| Pradeep Kumar Ladiwala 242 Haryana Colony, Barkat Nagar, Tonk Phatak, Jaipur | बनाम Vs. | CIT(A), Jaipur-4, Jaipur |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AARPL 0752 F | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by: Mrs. Anita Rinesh, JCIT-Sr. DR

सुनवाई की तारीख / Date of Hearing : 08/01/2025
उदघोषणा की तारीख / Date of Pronouncement : 16/01/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are two appeals filed by the assessee aggrieved by the order passed by Commissioner of Income Tax (Appeals), Jaipur-4 (for short 'CIT(A)') passed on 14.06.2024. The appeal for Assessment Year 2018-19 was numbered as ITA No. 1071/JP/2024 and that the appeal of Assessment Year 2017-18 was numbered as ITA No. 1069/JP/2024.

2. In ITA No. 1071/JP/2024, the assessee has taken following grounds of appeal;

“1. On the facts and circumstances of the case, the Ld. Appellate authority grossly erred in law and facts by rejecting application of the assessee for admission of additional evidences summarily. Further, the Ld. Appellate authority also erred in referring to a remand report of Ld. AO which was never called upon. Even otherwise it is hereby prayed that when the matter is related to facts, it was gross injustice on the part of Ld. CIT(Appeals) to refuse admission of documents that are material to form an opinion just because they have been produced late by the assessee for whatsoever reason.

2. On the facts and circumstances of the case, the Ld. Appellate authority grossly erred in treating the documents submitted by the assessee as sketchy, incomplete and irrelevant without properly appreciating them. Further, there were many evidences which were not considered by Ld. Appellate authority at all. It is thus hereby prayed to delete the additions so made.

3. On the facts and circumstances of the case, The Ld. Appellate authority grossly erred in approving the action of the Ld. A.O A.O of making the additions under section 68 as against the provisions of the act. The addition is thus bad in law and hereby prayed for being deleted.

4. On the facts and circumstances of the case, The Ld. Appellate authority grossly erred in approving the action of the Ld. A.O A.O of treating long term capital gains of the assessee as income liable to be taxed under section 68. The addition is illegal and thus prayed for being deleted.

5. On the facts and circumstances of the case, the Id. Appellate authority grossly erred in law and facts by not considering the legal ground raised by the assessee on account of alleged delay in raising such ground as well as other irrelevant reasons. The ground raised by assessee was that the jurisdictional notice issued under Section 143(2) is void ab initio as it has been issued on wrong premise of survey which is factually incorrect. Hence, it is hereby prayed to quash the said notice and proceedings in pursuance thereof.

6. The appellant hereby craves the leave to add, delete, amend or substitute any or all grounds of this appeal at the time or before the actual hearing of the case.

3. In ITA No. 1069/JP/2024, the assessee has taken following grounds of appeal;

“1. On the facts and circumstances of the case, the Ld. Appellate authority grossly erred in law and facts by rejecting application of the assessee for admission of additional evidences summarily. Further, the Ld. Appellate authority also erred in referring to a remand report of Ld. AO which was never called upon. Even otherwise it is hereby prayed that when the matter is related to facts, it was gross injustice on the part of Ld. CIT(Appeals) to refuse admission of documents that are material to form an opinion just because they have been produced late by the assessee for whatsoever reason.

2. On the facts and circumstances of the case, the Ld. Appellate authority grossly erred in treating the documents submitted by the assessee as sketchy, incomplete and irrelevant without properly appreciating them. Further, there were many evidences which were not considered by Ld. Appellate authority at all. It is thus hereby prayed to delete the additions so made.

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4. On the facts and circumstances of the case, The Ld. Appellate authority grossly erred in approving the action of the Ld. A.O A.O of treating long term capital gains of the assessee as income liable to be taxed under section 68. The addition is illegal and thus prayed for being deleted.

5. The appellant hereby craves the leave to add, delete, amend or substitute any or all grounds of this appeal at the time or before the actual hearing of the case.

4. At the outset of hearing, the bench noted that the assessee's appeal for both years was filed with a delay of three days as reported by the registry. To this effect the assessee filed an application for condonation of delay stating that no message or email was received to be aware of the passing of the order. On being aware the assessee immediately filed the appeal. The application supported by an affidavit. Considering the facts which were not controverted by revenue we condone the delay in bringing the present appeals i.e. of 3 days.

5. Firstly, we take up the appeal of the assessee for Assessment Year 2017-18 in ITA No. 1069/JP/2024.

6. The brief facts of the case are that a search & seizure operation under section 132(1) of the Income-tax Act, 1961 (hereinafter "the Act") was carried out on 30-10-2017 at the various premises of Ladiwala and Kanoongo Group, Jaipur. Consequent to search action, notice u/s 153A of the Act was issued to the assessee on 29-10-2019 which was duly served. In response to notice issued u/s 153A, the assessee furnished his return of income on 07-11-2019 declaring total income of Rs. 2,72,040/- which was same as filed u/s 139 of the Act on 17-08-2017.

7. Ld. AO noted in the assessment proceeding that the assessee had claimed exempt income of Rs. 2,66,279/-, but not substantiated his claim. Assessee could not file any details regarding the script in which the assessee claimed to have transacted to find out as to whether the sale of shares effected by the assessee has suffered the payment of the security transaction tax (STT) or not especially when assessee failed to furnish details of sale and purchase of share along with the demate account in support of his claim.

Thus, Id. AO noted that the assessee failed to establish claim of exempt income, and thereby treated the proceeds as unexplained credit entries in the books of the assessee.

8. Aggrieved by the order of the Assessing Officer, assessee preferred an appeal before Id. CIT(A) wherein the assessee submitted all the details which they could not place before Id. Assessing Officer. Ld. CIT(A) did not consider that additional evidence and accordingly, the same was not admitted. The assessee vide additional ground raised before Id. CIT(A), contended that no incriminating material was found at assessee's premises relating to the amount of addition made and therefore, no addition could be made. In this case, Id. CIT(A) did not admit that additional ground on the reason that the assessee had failed to place on record,

any reason as to why the said ground could not be raised before Id. AO. As regards the merit of the dispute regarding addition made u/s 68 of the Act in respect of income claimed by the assessee as the assessee has not substantiated claim of exempt income. Thus, with those observations the appeal filed by the assessee was dismissed by the Id. CIT(A).

9. Aggrieved by the order of Id. CIT(A), assessee preferred the present appeal on the grounds as reiterated herein above. These appeals were listed for hearing on more than three occasions. On all the occasions. Bench noted emails on same ground with a prayer to adjourn the hearing of the case. The assessee has not filed any paper book or written submission after filling the present appeal. Looking to this aspect of the matter, Bench feels to decide the appeal based on material available on record. As regards ground No. 4 raised by the assessee, the bench notes that to decide that ground the office note as attached to the assessment order which was placed on record. The said **office note** reads as under :

“The assessment proceedings for this assessment year were not pending on date of search i.e. 30-10-2017. Therefore, the assessment proceedings in this case will be considered completed (non-abated). IN respect of these proceedings, apart from other case laws, there is a judgment of the jurisdictional High Court of this office, i.e. the Rajasthan High Court. In the case of Jai Steel (India), Jodhpur Vs. Assistant Commissioner of Income-tax [2013] 36 taxmann.com 523 (Rajasthan), High Court of Rajasthan, the facts of the case were the search u/s 132(1) of the Act was conducted and notices u/s 153A of the Act were issued in those cases. It has been held in this case that:-

"(a) the assessments or reassessments, which stands abated in terms of second proviso to section 153A, the Assessing Officer acts under his original jurisdiction, for which, assessments have to be made;

(b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and

(c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made."

Also, in the case of CIT (Central)-III Vs. Kabul Chawla [2015] 61 taxmann.com 412(Delhi) High Court of Delhi, it was held that:-

"Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment 'can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this section only on the basis of seized material.

In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in section 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to complete assessment proceedings."

Also, this legal position has been reiterated in the following case laws:-

(i) [2011] 16 taxmann.com 232 (All.) Commissioner of Income-tax (Central), Kanpur v/s Smt. Shaila Agarwal.

(ii) CIT Vs. Continental Warehousing Corporation (NhavaSheva) Ltd. [2015] 374 ITR 645/232 Taxman 270/58 taxmann.com 78 (Bom.)

(iii) The Hon'ble ITAT "I" Bench, Mumbai order dated 31-12- 2015 in the case of M/s. Ideal Appliances Co. Pvt. Ltd., Mumbai V/s DCIT-Central Circle-44, Mumbai.

For this AY, no incriminating seized documents or electronic record has been found. Therefore, in the absence of any incriminating material, the completed assessment is being reiterated.

The Hon'ble apex court has dismissed the SLP filed by the revenue in the case of Pr. CIT Central IT, New Delhi vs Meeta Gutagutia (2018) 96 taxmann.com 468(SC) where Hon'ble High Court held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year.

However, without prejudice to above, the documents pertaining to the assessee for the relevant A.Y. have been verified and nothing adverse could be noticed.”

10. The bench also takes note of the fact that while considering the admission of the additional ground by Id. CIT(A), he noted that the assessee had not taken it before lower authority and therefore he considered that technical grounds lacked merits. Whereas Id. AO was fully aware and conscious about the contention and that is why he specifically recorded the office note recording his satisfaction that “No addition can be made as no incriminating documents were found”. Therefore, considering the decisions of Hon’ble Apex Court in the case of Principal Commissioner of Income-tax, Central-3 vs. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC) technical ground is covered.

11. When this aspect of the matter was brought to notice of Id. DR, she did not controvert the fact recorded in the office note but at the same time, she relied upon the orders of lower authorities.

12. We have heard the rival contentions and perused the material placed on record. The Apple of discord as raised vide ground no. 4 by the

assessee was that whether in the case of the search assessment initiated u/s 153A, the addition can be made without having any incriminating material or not where the assessment is not abated. As is evident from the office note, reproduced herein above, Id. AO was aware of the decision of Hon'ble High Court of Delhi in the case of CIT(Central)-III vs. Kabul Chawla [2015] 61 taxmann.com 412, reported in office note. That decision of Kabul Chawla (Supra) was confirmed by Hon'ble Apex Court in the case of Principal Commissioner of Income Tax, Central-3 Versus Abhisar Buildwell P. Ltd. [293 Taxman 141 (SC)] wherein the highest court has held that;

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that **no addition can be made in respect of the completed assessments in absence of any incriminating material.**

14. In view of the above and for the reasons stated above, it is concluded as under: i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A; ii) all pending assessments/reassessments shall stand abated; CA No. 6580/2021 Etc. Page 55 of 59 www.taxmann.com iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of

powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved. The question involved in the present set of appeals and review petition is answered accordingly in terms of CA No. 6580/2021 Etc. Page 56 of 59 www.taxmann.com the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

Respectively, following the above finding of the highest court of country, we direct the Id. AO to delete the addition of Rs. 2,66,279/- made in the hands of the assessee.

In the result, appeal of the assessee in ITA No. 1069/JP/2024 is allowed.

13. Now we take up the appeal of the assessee in ITA No. 1071/JP/2024. As the facts of the case are that a search & seizure operation under section 132(1) of the Income-tax Act, 1961 (hereinafter "the Act") was carried out on 30-10-2017 at the various premises of Ladiwala and Kanoongo Group, Jaipur. Consequent to the search the assessment was completed wherein the Id. AO made the addition in the absence of the evidence called for not being submitted. The assessee submitted those evidence before the Id. CIT(A), who did not consider and this being the assessment being abated revenue can take up all the issues. The bench notes from the order of Id. CIT(A) that Id. CIT(A) did not admit additional evidence. But considering the principle of natural justice, we admit said

additional evidence. As said additional evidence was not admitted and examined by both the lower authority, we consider it fit to remand the matter to the file of the Id. Assessing Officer, who will after granting the sufficient opportunity of being heard to the assessee, decide the issue. At the same time, Id. AO may also call any other documents related to the issue of completing assessment. Therefore, we remand back the issue raised in this appeal to the file of Assessing Officer. Since the assessee did not appear and represent the case properly before lower authorities and before us also we deem it fit to levy exemplary cost on the assessee i.e of Rs. 1,000/- in this case which is required to be deposited in the "Prime Minister Relief Fund" and the receipt of the same be presented before the Id. Assessing Officer.

In term of this observation, appeal of the assessee in ITA No. 1071/JP/2024 is allowed for statistical purposes.

Order pronounced in the open court on 16/01/2025.

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur
दिनांक / Dated:- 16/01/2025

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Pradeep Kumar Ladiwala, Jaipur
2. प्रत्यर्थी / The Respondent- CIT(A), Jaipur-4, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA Nos. 1071 & 1069/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar