



आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" 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. 1390/JP/2024  
निर्धारण वर्ष/Assessment Year : 2017-18

Mahaveer Oil Distributors Tayal Bhawan Shahpura, Shahpura, Jaipur	बनाम Vs.	ITO Ward Behror
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKFM7870N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : MS. Suhani Meharwal, CA  
राजस्व की ओर से / Revenue by : MS. Harshita Chauhan, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 28/04/2025  
उदघोषणा की तारीख / Date of Pronouncement: 08/05/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Aforesaid appeal by assessee for Assessment Year 2017-18 arise out of the order of the learned National Faceless Appeal Centre, Delhi [ for short CIT(A) ] dated 30/09/2024 in the matter of an assessment order dated 23.03.2022 passed under section 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961 [ for short "Act" ] by National Faceless Assessment Centre, Delhi [ for short AO].

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

*“Ground 1 On the facts and in the circumstances of the case as well as law, Ld AO erred in taking action u/s 148 and thereby making assessment u/s 147/143(3) of the Income Tax Act, 1961 1 and simultaneously Ld. CIT (A) erred in sustaining the action of AO without having reason to believe of escapement of income, which is illegal, without acquiring valid jurisdiction and liable to be set aside.*

*2. Ground 2 On the facts and in the circumstances of the case as well as law, Ld AO erred in making addition in business income amounting to Rs. 62185.00 alleging that the income to that extent was not offered to tax in spite of fact that the receipts are included as credit in audited Profit & Loss Account, which is unjustified and liable to be quashed.*

*Ground 3 Assessee deserves right to amend, alter, delete and modify any ground of appeal on or before the date of hearing of appeal.*

3. Succinctly, the fact as culled out from the records is that on the basis of information received in the case of the assessee, that the assessee firm has given cash of Rs. 18,00,000/- to Shri Mahaveer Prasad Agarwal during the year under consideration. Accordingly, the case was reopened and notice u/s 148 of the IT. Act, 1961 was issued to the assessee on 30.03.2021. In response, the assessee filed ITR on 29.04.2021. Notice u/s 143(2) was issued to the assessee on 30.06.2021. During the course of assessment proceeding, assessee filed the objection to the reopening of the assessee's case which was duly disposed off by speaking order on 22.10.2021 by the Id. AO. Statutory notice as required u/s 142(1)/143(3) were issued from time to time. In the proceeding Id. AO noted that assessee has received interest of Rs. 2,05,090/- from M/s Castrol India Ltd.

whereas the total income credited in the P & L A/c Rs. 1,42,905/- which is interest on security. Therefore, an addition of Rs. 62,185/- was made. In that assessment addition of Rs. 18,00,000/- was also made as per provisions of section 68 of the Act.

4. Aggrieved from the order of the Id. AO, assessee preferred an appeal before the Id. CIT(A). who directed the Id. AO to delete the addition of Rs. 18,00,000/- and sustained the addition of Rs. 62,185/-. The relevant finding of the Id. CIT(A) for the sustained addition reads as follows:

“8.2 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 assessment order that the AO noted that appellant had received interest of Rs.2,05,090/-from M/s. Castrol India Ltd however only Rs.1,42,905/- was credited in the profit and loss account, therefore the AO made addition of Rs.62,185/- on account of undisclosed interest income and completed the assessment.

During the course of appellate proceedings the appellant contended that the M/s. Castrol India Limited made TDS on Rs.2,05,090/- u/s 194C but they have paid interest of Rs.1,42,905/-. The appellant further submitted that M/s. Castrol India Limited has wrongly mentioned the TDS section as 194C instead of section 194A.

I find that this is additional ground of appeal raised by the appellant during remand proceedings. However, since the omission to include this ground in the form of appeal is not willful or unreasonable, the additional ground of appeal is admitted. I have considered the facts of the case, submission filed by the appellant and comments of the AO in the remand report. I find that the appellant has not explained the correct nature of receipt of Rs.2,05,090/- with supporting evidences. The appellant also failed to explain under which head the balance amount of Rs.62,185/-has been offered for taxation. Therefore the explanation submitted by the appellant is not found convincing. Therefore the addition made

by the AO is confirmed and the ground of appeal raised by the appellant is dismissed.

9. In the result, the appeal is partly allowed.”

5. Thus, for the sustained addition the assessee is in appeal before this tribunal. To support the grounds raised by the assessee, Id. AR of the assessee, has filed a detailed written submissions which is reproduced herein below:

“Appellant is a partnership firm filling income tax return regularly. For AY 2017-18 the ITR is filed on 30.09.2017 u/s 139 (1) of Income Tax Act, 1961 declaring total income amounting to Rs. 257377/-. Books of accounts consisting of cash book, ledger, journal, day to day stock register, invoices, bills and voucher are being maintained and audited u/s 44AB of the Income Tax Act, 1961. Assessee has been the distributor of lubricants made by M/s Castrol India Limited, a MNC who provides all the supplies, maintained stock inventory under his monitoring and also provides the customer base spreading of the area entrusted upon assessee. Customers are the small dealers and shop keepers doing business in the jurisdiction of assessee. Payments of purchases are made through banking channels. The sales reliasation are often received in cash, which is deposited into bank and there after payment are done.

The case of assessee was reopened by the issue notice u/s 147 of the Income Tax Act, 1961. The assessment was made u/s 143 (3) /147 of the Income Tax Act, 1961 by making addition of Rs. 1800000 u/s 69 of the Income Tax Act, 1961 & another addition was also made for Rs 62185/- into business income. In the first appeal, Id. CIT (A) deleted the addition of Rs 1800000/- and sustain another addition of Rs. 62186/-. Ld. CIT (A) also sustained the action of AO in respect of re-opening of assessment.

Aggrieved by the order of Id. CIT (A), this appeal was filed before your honours.

#### Ground of Appeal

##### 1. Ground of appeal 1

On the facts and in the circumstances of the case as well as law, Ld. AO erred in taking action u/s 148 and thereby making assessment u/s 147/143(3) of the

Income Tax Act, 1961 and simultaneously Ld. CIT(A) erred in sustaining the action of AO without having reason to believe of escapement of income, which is illegal, without acquiring valid jurisdiction and liable to be set aside.

2. Ground of appeal 2

On the facts and in the circumstances of the case as well law, Ld. AO erred in making addition in business income amounting to Rs.62185/- alleging that the income to that extent was not offered to tax in spite of fact that the receipts are included as credit in audited Profit & loss Account, which is unjustified and liable to be quashed.

3. Ground of appeal 3

Assessee deserves right to amend, alter, delete and modify any ground of appeal on or before the date of hearing of appeal.

Ground no 1.

Your honour in this case initially the action u/s 147 Income Tax Act, 1961 was started against the partner of assessee. Shri Mahaveer Prasad Agarwal. The case of partner was taken under limited scrutiny to verify the source of Rs.1800000/- deposited in bank account. During the course of scrutiny proceedings, the partner of firm submitted that the cash was withdrawn from his partnership firm i.e. assessee firm. To substantiating, he produced confirmation, cash book of this assessee and the relevant financial etc.

And thereafter, the assessments of partner were made without making any addition. However, the AO of partner informed the AO of assessee to reopen the case of assessee.

After filing of ITR in compliances of notice u/s 148 Income Tax Act, 1961 assessee requested to procure the copy of reasons recorded by AO. Id AO provided the copy of reason which is us under-

“The assessee firm has given cash of Rs. 1800000/- to Mahaveer Prasad Agarwal during the year under consideration. I have reason to believe that the amount of Rs. 1800000/- has escapement assessment in the case.” (Copy of letter is enclosed at page no 1 )

Your honour thereafter assessee has filed the objection, which is hereby produce as under: - (Copy of letter is enclosed at page no 1-3 )

“Your honour, assessee firm has been filing the income tax return since 15 years. Form the incorporation regular books of accounts are maintained and audited u/s

44AB of the Income Tax Act, 1961. The facts of income and sales of Assessee and Mahaveer Prasad Agarwal are as under: -

1. Assessee filed his Income Tax Return for A.Y.2017-18 u/s 139(1).
2. Income before interest and remuneration to partners were Rs.1548170/-.
3. Turnover for the year was Rs.10.05 crores.
4. Mahaveer Prasad Agarwal was partner in the firm.
5. Mahaveer Prasad Agarwal deposited Rs.1820000/- into firm and withdrawn Rs.2134021/- from firm/s Mahaveer Oil Distributors. (These figures were wrongly given from next year's financials. During the year, the exact figures are Rs. 6594000/- and 7077078/- respectively).
6. Mahaveer Prasad Agrawal is also regular income tax payer.
7. Mahaveer Prasad Agrawal also filed his ITR u/s 139(1)Income Tax Act,1961 declaring GTI of Rs.844570/-.

Income tax return and audit report along with full financials i.e. sales, capital account of partners was available with your good self. Had income declared by assessee, sales from audit report and withdrawals from partners' capital account been seen and examined than the alleged withdrawals of Rs. 1800000 by Mahaveer Prasad Agrawal would have been explained.

Further, whopping sales of Rs. 10 crores establish the sources of payments of Rs. 18 lakhs. Sir, sale of this much amount cannot be achieved without incurring and paying similar amount reduced by profit element. Payment to any person on account of purchases, direct or indirect expenses or capital expenses or withdrawals by partners supported by regular accounts books, audit report and regular filing of ITR can not be the reason of escapement of assessment.

Since, the transaction of payment to Mahaveer Prasad Agarwal is duly explained for source and nature by capital account appended with Audit Report, please, drop the re-assessment processing based on presumptions. Alternatively, please provide me the background material, investigation and examination done by you which enable you to form reason of escapement of assessment and also provide the permission granted by appropriated authority.

Your honour, Ld. AO dealt with the objections of assessee, which reads us under:-

1. The Assessee has claimed that the assessee firm has given cash of Rs.1800000/- to its partner Sh. Mahaveer Prasad Agarwal. your contention is wrong in view of Point No. 9 of From No. 3CD filed by you for the year under consideration where in the name of partners and their profit ratio is given as under: -

Name	Profit sharing ratio (%)
MAHESH KUMAR GUPTA	40
SARBATI DEVI AGARWAL	20
BEENA DEVI AGARWAL	40

In the aforesaid details, name of Sh. Mahaveer Prasad Agarwal is not mentioned. In view of above discussion. It is clear that Sh. Mahaveer Prasad Agarwal not partner in the Assessee firm M/s Mahaveer Oil Distributors and the assessee firm has made re-payment of Rs. 1800000/- in cash to one Sh. Mahaveer Prasad Agarwal against loans/deposits received from him in contravention to section 269T of the I.T. Act, 1961.

1. The assessee has claimed that "Jurisdiction of assessee as well as partner Mahaveer Prasad Agarwal are vested upon your good self". This contention is also wrong as Sh. Mahaveer Prasad Agarwal was not partner in the assessee firm as discussed above and the jurisdiction over the PAN of Sh. Mahaveer Prasad Agarwal (PAN-ABJPA7069F) is vested with the ITO, Ward-6(2), Jaipur.

2. The assessee's claim that Mahaveer Prasad Agarwal deposited Rs. 1820000.00 into firm and withdrawn Rs. 2134021.00 from firm, M/s Mahaveer oil Distributors is also wrong. Sh. Mahaveer Prasad Agarwal was not partner in the firm as discussed above. As per ledger account of Sh. Mahaveer Prasad Agarwal in the books of account of M/s Mahaveer Oil Distributors, it has been noticed that Sh. Mahaveer Prasad Agarwal has deposited total amount of Rs. 74,25,983/- and the Firm M/s Mahaveer Oil Distributors has made re- payment of Rs. 70,77,078/- during the year under consideration.

Your honour, please see the very surprising reason that was recorded by Ld.AO. He did not proceed in accordance with the law to find out the true income as per section 4 & 5 of the Income Tax Act, 1961. But he proceeded with the reopening on the basis of few omissions and clerical mistake of assessee which did not lead to escapement of income or evasion of income or any technical fault. I am here with dealing of objection as under: -

1. Assessee argued that the withdrawal of Rs. 1800000/- was made by partner of the firm where is Id. AO stated that Shree Mahaveer Prasad Agarwal is not the partner. To substantiate his version, he has pointed out on Para no 9 of from 3CD filed by assessee.

Your honors in the from 3CD point no 9, the assessee mentioned the name of old partners due to oversight. Shree Mahaveer Prasad Agarwal was introduced as new partner and therefore the mistake in Para no 9 was copy paste mistake. Ld.AO took undue benefit of this mistake and ignored the many others filed of ITR, from 3CD and Audited financials.

your honours:-

a. Para no 23 of audit form no 3CD which is particulars of payment made to persons u/s 40A(2)(b) duly shows the remuneration and interest paid to partner Shri Mahaveer Prasad Agarwal.

b. The most important document relevant to assessment is ITR. The ITR form duly recorded the name of Mahaveer Prasad Agarwal as a partner.

c. The return form and 3CD form is approved and signed by Mahaveer Prasad Agarwal as a partner.

d. The correct figures of receipts and payments of sum from assessee firm to Mahaveer Prasad Agarwal was taken by JAO form audited financial accounts (The Partner Capital account is enclosed herewith page no 4-5 of paper book).

Your honour Ld. JAO deal with objection for sake of re-opening only. He preferred to give weightage of omission of assessee over bundle of proof available to him which were ignored.

I am herewith enclosing copy of partnership deed page no 10-13 of paper book and copy of computation along with ITR-V of Mahaveer Prasad Agarwal page no 6-9 of paper book to prove the fact that he was the partner in the assessee firm. In the circumstances Ld.AO has no jurisdiction to re-open the case and thus the re-assessment based on illegal re-opening is liable to be quashed.

Your honour the reopening was baseless and even the reason is not in existent.

Ground No 2

Castrol India Ltd. has given commission, securities interest, inbuilt discount and cash coupon received aggregating to Rs. 564931/- and they have deducted TDS on Rs. 205090/- under 194C (26AS enclosed on page no 14-15 of paper book ). Assessee has considered entire receipts from Castrol India Ltd as income in credit side of profit and loss account 16-18 of paper book). Therefore, this addition was unwarranted and liable to be quashed.”

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

S. No.	Particulars	Page no.
1	Reasons for reopening	1
2	Objection raised	2-3
3	Capital Account	4-5
4	ITR and Computation of Mahaveer	6-9
5	Partnership deed	10-13
6	26AS	14-15
7	Profit and loss	16-18

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the income of Rs. 62,185/- is already offered and reflected in the audit accounts placed on record. The Id. AR of the assessee submitted that in the income of commission received for an amount of Rs. 2,05,090/- reflected at page no. 17 of the paper book which is supported by ledger account filed separately wherein that income of M/s Castrol India Ltd. is reflected and therefore, the contention of Id. AO that it has offered security interest of Rs. 1,42,905/- only is incorrect appreciation of facts and therefore required to be deleted.

8. Per contra, the Id DR is heard who relied on the findings of the lower authorities and submitted that the assessee has not supported their claim appropriately and therefore, relied upon the order of Id. CIT(A).

9. We have heard the rival contentions and perused the material placed on record. The bench noted that only issue in this case raised by the assessee is about charging of income of Rs. 62,185/- being the commission received from M/s Castrol India Ltd. Based on form 26AS, Id. AO assumed that the assessee has offered income of Rs. 1,42,905/- only and therefore, the difference of Rs. 62,185/- was added as in the income of the assessee by the Id. AO. When the matter carried before the Id. CIT(A) he has not considered the contention and hold that the assessee failed to establish under which the balance income of Rs. 62,185/- is reflected. Before us. Ld. AR of the assessee submitted that Id. AO as well as Id. CIT(A) has not appreciated the facts of the case. In fact the assessee has duly offered the income received from M/s Castrol India Ltd. under the various head commission, security interest, scheme discount and cash coupon and in total the same amounts to Rs. 5,64,931/- as detailed herein below :

S.No	Particulars	Amount as per P&L	Amount as per ledger enclosed (Castrol)
1.	Commission Received	2,83,209.45	2,83,209.45
2.	Securities Interest	1,42,905.00	1,42,905.00
3.	Inbuilt Scheme Discount	61,418.56	50290.56+11128(price reduction receive)
4.	Cash Coupon Received A/c	77,398.00	77,398.00
	Total	564931.01	564931.01

As is evident that the assessee has offered much more income than what is disputed. Considering this factual aspect, we do not find any reason to sustain the addition of Rs. 62,185/- in the hands of the assessee. Thus ground No. 2 raised by the assessee is allowed.

As regards ground no. 1 being general and there is no specific grievance raised by the assessee therefore, the same is not required to be adjudicated.

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

Order pronounced in the open court on 08/05/2025.

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:- 08/05/2025

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Mahaveer Oil Distributors, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward Behror
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. 1390/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar