

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A-Bench" JAIPUR

श्री गगन गोयल, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI GAGAN GOYAL, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 91/JPR/2025
निर्धारण वर्ष / Assessment Year : 2011-12

Subhash Pareta 3/148 Basant Vihar, Dada Bari Genesh Talab, Kota.	बनाम Vs.	The Addl.CIT, Range-1, Kota.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AGGPP4046H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri P.C. Parwal, C.A.
राजस्व की ओरसे / Revenue by: Mrs. Anita Rinesh, JCIT-DR

सुनवाई की तारीख / Date of Hearing :14/05/2025
उदघोषणा की तारीख / Date of Pronouncement:15/05/2025

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER .

This order is to dispose of the above captioned appeal filed by the assessee, while challenging order dated 30.11.2024, passed by Learned CIT(A), whereby an appeal filed by the assessee challenging penalty order 29.10.2015, passed u/s 271D of the Income Tax Act (hereinafter referred to as "the Act") has been dismissed.

Vide above mentioned penalty order, the Assessing Officer levied upon the assessee penalty to the tune of Rs. 60,29,868/-, for violating

provisions of Section 269SS of the Act, by accepting the cash deposits/loans for the said amount during financial year 2010-11.

2. Arguments heard. File perused.

Contentions

3. Ld. AR for the appellant has submitted that this is a case where the assessee has come up in appeal before this Appellate Tribunal, for the second time, first round of litigation from the level of the Assessing Officer upto the Appellate Tribunal having already taken place.

4. Further, submission of Ld. AR for the appellant is that in the first round when the matter came up before this Appellate Tribunal, vide order dated 01.09.2017, the appeals filed by the Revenue were allowed for statistical purpose, whereas the cross objections filed by the assessee were dismissed, but the matter was remanded to Learned CIT(A) to examine as to the nature of transactions of loans and advances and their repayment, both in cash, leading to violation of provisions of section 269SS and 269T of the Act, without any reasonable cause.

As further pointed out by Ld. AR, order of remand came to be passed when the Appellate Tribunal observed that there was no enough material on record to take a view in the matter.

Ld. AR has submitted that on remand of the matter, the assessee produced before Learned CIT(A) certain additional evidence, whereupon Ld. CIT(A) called for remand report in respect thereof, but the Assessing Authority neither called the assessee to participate in remand proceedings nor issued summons or process to the concerned deponents, whose affidavits were submitted by the assessee by way of additional evidence, in addition to copies of ledger accounts.

The contention therefore, is that since principle of natural justice was not followed, the impugned order passed by Learned CIT(A) rejecting the additional evidence and dismissing the appeal, deserves to be set aside.

5. On the other hand, Ld. DR for the department admits that on remand of the matter by the Appellate Tribunal, when the assessee submitted evidences before Learned CIT(A), the same was forwarded to the Assessing Officer for remand report and submission of remand report in respect thereof, but, as is available from record, said evidences had already been considered by the Assessing Officer and the same could not be termed to be additional evidence, and that is how, the remand report recommending that the said evidence be not taken into consideration, was considered by Learned CIT(A).

The contention is that there being no cogent and convincing evidence in support of the claim of the assessee-appellant, Learned CIT(A) was justified in dismissing the appeal. In this regard, Ld. DR has placed reliance on Rule 46A of the Income Tax Rules, and also on the reasons recorded by the Assessing Officer in the remand report, and by Learned CIT(A) in the impugned order.

Discussion

6. Admittedly, when the matter was remanded to Learned CIT(A), under the orders of the Appellate Tribunal, with the directions mentioned above, the assessee submitted an application with the request for admission of additional evidence under Rule 46A.

7. Vide letter dated 10.05.2024, Learned CIT(A) called for remand report requesting Ld. Additional CIT, Range-2, Kota to submit remand report/specific comments. Learned CIT(A) was also empowered to carryout enquiry, if need be , in respect of the issues involved.

8. Record reveals that the Assessing Officer submitted report through JCIT(A), Range-2, Kota, and the same came to be forwarded to Learned CIT(A).

9. As is available from the last paragraph of the remand report, the Assessing Officer had requested that the **additional grounds**(sic) actually

additional evidence, submitted by the assessee, at the time of hearing of the appeal, be not considered.

As regards the additional evidence, the Assessing Officer observed in the remand report as under:-

“Further, it is also here mentioned that as additional evidences i.e. copy of affidavits furnished by the assessee of the aforesaid persons are merely a self-serving documents prepared on afterthought for cooking up the storey of payment towards site expenses, as the assessee had first received the payments from the aforesaid persons or even there are opening balances standing at the credit some of the aforesaid persons and then repaid the same to the aforesaid persons. In some cases there are only cash receipts. Therefore, these entries in any way cannot be counted as payments made by the assessee for meeting site expenses through these persons.”

10. As is available from the impugned order passed by Learned CIT(A), a copy of the remand report was made available to the assessee for rejoinder/comments.

In response thereto, Ld. AR for the appellant furnished rejoinder/comments before Learned CIT(A) on 22.08.2024 and 11.11.2024.

Relevant portion extracted from the said rejoinder as is available in the impugned order reads as under:-

“The Ld. A.O. have not applied his statutory duties, have not verified the facts & evidences submitted by us and out rightly he has brushed aside all the evidences.

That the Ld. A.O. retreated the earlier observation, whereas when the assessee submitted additional evidence then the Ld. A.O. has to verify the same with the books but instead there of when the additional documents say account statements, affidavits are there then the Ld. A.O. has to verify properly by calling

the books of Accounts or issue of summon to the persons submitted papers. When the action of penalty have been taken against the assessee, but no summon was issued to the persons submitted A/c statement, Affidavits etc.

When the assessee submitted account statements based on Books & when the Ld. A.O. rejected the books then when the account statements submitted it is the duty of the Ld. A.O. to verify with the books.

That when the plea of the Assessee allowed by your honour then it is the duty of the A.O. to consider the additional evidences & then submit the report. The A.O. has out rightly rejected the papers submitted by assessee through your honour.

That the Ld. A.O. is required to give factual report after verifying with the books or after calling of person submitted affidavits if the A.O. will not verify the facts & evidences then at which forum the assessee will submit his submission. We now request your honour to verify the account statement from books also call to persons by issue of summons to get to the facts of the case or write the another Ld. A.O. to verify properly by calling with summon to all those peoples.

We thus request your honour to get tallied the statement with the books since the A.O. accepted the certain GP/NP then why other issue be taken up.

Sir, the additional evidence is provided in rule 46A for verification by Ld. A.O. but if the A.O. do not verify then what is the use of said provision in the rules.

The A.O. have not accepted the rules, though he is bound to accept the rules & circulars etc. issued by the Board.

The Ld. A.O. ought to call the assessee and all the people by issue of summon to verify the evidences submitted by the assessee.

More ever the then Ld. CIT(A) deleted the addition in the elaborate orders made on penalty u/s 271D & 271E which is on facts & legal precedence's case since the Ld. CIT(A) had already allowed the appeal of the assessee.

We also request your honour to direct the Ld. A.O. to verify the evidences submitted by the Assessee and then submit report for proper justice in the matter.

Vide dt. 11/11/2024

In our earlier submission we have submitted that on calling of remand report the Ld. A.O. have not done any thing, thus the following issues are not taken up.

Thus the issue is that-

There is nothing on record to have verified the 13 persons by A.O. neither the Ld. A.O. cross examined to all 13 persons. Thus to meet with the requirements of order of Hon. ITAT the Ld. A.O. has to do further verification, but he has not done any thing.

Hence based on his remand report no new facts are coming us then the order of Hon. CIT(A), Kota dtd. 19.12.2016 holds good.

That even after your letter for remand report the Ld. A.O. directs your honour not accept the additional evidences whereas it was as per the direction of your honour and Hon. ITAT.

In view of above we request your honour either the Ld. A.O. has to prepare a detailed remand report after proper verification or to hold good the order of Hon. CIT(A) Kota dtd. 19.12.2016.”

11. While dealing with the aspect of the additional evidence, Learned CIT(A) observed in para 4.6 of the impugned order as under:-

“4.6 Admission of additional evidence:-

I have considered the additional evidences, the submissions made in this regard and also the remand report of the AO, as reproduced supra. The additional evidences submitted by the A/R of the appellant are copy of some ledger accounts with affidavits. Since the matter was set-aside by the Hon'ble ITAT with a decision that onus is on the appellant and that the sufficient documents were not on record, and thus the appellant was required to place on record the additional evidences /documents as per the decision of the Hon'ble ITAT. Therefore without going into any technicalities and in the interest of natural justice, the additional evidences areadmitted considering the facts and circumstances of the case.

At the same time it is found that these affidavits were already on record of the assessing authority and these affidavits have been filed as additional evidences only after the notarization. For illustration, in para (v) on page 4 of the penalty order u/s 271E for the AY 2010-11 the Id. Jt.CIT has referred and mentioned that these affidavits are mere self-serving documents. As these are already on record these can be considered in appeal.”

12. As noticed above, Learned CIT(A), without going into any technicality but taking into consideration the directions already issued by the Appellate Tribunal, in the first round of litigation, and in the interest of justice, admitted the additional evidence.

In the given situation, the contention raised by Id. DR that the affidavits and documents i.e. ledger account submitted before Learned CIT(A) were actually not additional evidence as the same had already been submitted even before the Assessing Officer, relegates to the back ground.

13. As is available from the impugned order, the additional evidence consisted of certain affidavits and copies of ledger account.

14. Learned CIT(A) dealt with the affidavits and copies of the ledger accounts and rejected the same by observing in the manner as under:-

“Analysis of the Affidavits:-

Onus is on the appellant to have shown and proved that the transactions mentioned in the impounded documents pertaining to site expenses.

On perusal of the affidavits submitted by the appellant following defects were noticed:-

(i) No documentary evidence as regards identity of the staff/employee was enclosed.

(ii) The PAN No. of the assessee was also not mentioned in the affidavit. Even the AADHAR number or Voter ID card number etc. is not mentioned.

(iii) Substantiating evidence such as salary slip, Form 16 etc. issued by the appellant to his staff was not enclosed.

(iv) No documentary evidence such as employment agreement other agreement is submitted by the appellant in support of his claim that these person are their staff/contractor.

(v) There is a mismatch in the name of the person in the affidavit in comparison to the name mentioned in the ledger account as the name mentioned in the ledger account has been stated to be the nickname / alias name only. Example - name mentioned in ledger is "shahsi ji" whereas in the affidavit the name mentioned is "sukhvir suman alias shashi ji". No evidence has been filed regarding the nickname/alias name.

(vi) complete address like the house number etc. is not mentioned.

The appellant has not filed the evidences regarding the following:-

- Evidence regarding employment during the relevant period. Employment agreement, Form 16, bank transactions of salary payment etc.
- Evidence regarding working on that site during the relevant period
- Evidence regarding role of handling of cash in terms of earlier and later Transaction from the books of accounts
- Identification details and documents of these persons
- Evidence regarding giving of the funds as imprest cash for the business expenses
- Evidence regarding usage of the given funds for the business

Appellant has also not placed on record material to show that similar kind of site expenses transactions were carried out by the appellant with such persons in earlier period. This also shows that these transactions are not regular transactions and are not in the nature of business expenses.

The appellant has also not been able to prove:-

- For what expense the fund were given.
- For what expense and to whom the payments were made
- Linkage between the recorded expenses in books with such cash payments.

Thus the identity and the genuineness of the affidavits is not proved and the affidavits have been prepared as an engineer document to mislead the proceedings.

Therefore, mere submission of affidavit by these persons that they are the staff of the appellant and that the amount received by them was related to site expenses and they have never taken or repaid any loan without establishing the identity and nature of employment cannot be considered.

In view of the above discussion is affidavits are found to be colourable devices and are hereby rejected.

These affidavits were already on record of the assessing authority and these affidavits have been filed as additional evidences only after the notarization. For illustration, in para (v) on page 4 of the penalty order u/s 271E for the AY 2010-11 the Id. Jt.CIT has referred and mentioned that these affidavits are mere self-serving documents. Thus these affidavits already stand not accepted and thus rejected by the honourable ITAT when the matter was set aside to the CIT Appeal for fresh adjudication.

Ledger Accounts:-

(i) Appellant failed to discharge onus casted on him to substantiate that ledger account found during survey are imprest A/c mostly transaction for making payment at sites through authorized person of the firm.

(ii) Further on perusal of ledger accounts it is noticed that there is debit and credit entries in round figure which is unlikely in case of site expense.

(iii) In general course, the staff will submit bills and vouchers against expenses and if any amount is left after that expense, it is likely that staff will return said remaining amount and it is unlikely that the remaining amount may be same.

For example, on perusal of ledger account of Sh. Mohanji, it is observed that there was payment of Rs.500000/- on 20.04.2010 and same amount was received back on 12.05.2010.

Further, on perusal of ledger account of Mishraji Baran, it is observed that there was receipt of Rs.80000 on 18.06.2010 and payment of Rs.80000 on 29.06.2010.

Similar instances are noticed in the ledger account of the other person also.

(iv) On perusal of copy of ledger account furnished by appellant as per paper book (Page No.65), in ledger account of Bharat Construction, there is credit opening balance of Rs.6,00,000 as on 01.04.2009. Therefore, it is pertinent to mention that if these amount were for site expense why there are opening credit balance in round figure.

(v) In the impounded books, there are specific entries like Lalaji/Bobby/Dagaljikejama".

The transactions which are found during the course of survey were not recorded in the books of accounts of the appellant as on date of the survey. Further the entries in the ledger accounts support the case of the Addl. Commissioner regarding the levy of the penalty. These ledger accounts have been prepared by the appellant after the survey and apparently even after the assessment order has been passed and after the penalty order had been levied and others mere afterthought and the appellant has also not filed any supporting journal entries and the supporting documents were the same.

Even in the ledger accounts for example of Galav Ji A/c the entries are only for giving and receipt of cash of the same amounts. No expense has been incurred. This shows that the payment was not done by the appellant for the purpose of site expenses.

The ledger account claimed for Munna Bhai as submitted by the appellant does not appear to be the ledger account and appears to be appellant out of some tabulated data without having any linkage with the books of accounts.

As such these ledger accounts are mere self-serving documents and colourable devices and are rejected.

In view of the above detailed discussion these ledger accounts are also rejected.”

15. We have considered the defects pointed out by Learned CIT(A) made basis for rejection of the additional evidence i.e. affidavits and copies of the ledger accounts.

16. As noticed above, while seeking remand report in respect of the said additional evidence, Learned CIT(A) had empowered Learned Addl. CIT(A) to conduct enquiry, if required and then submit report as regards the issues involved, and as to the admissibility of said evidence under Rule 46A.

17. As already mentioned above, Learned CIT(A) after going through the remand report in the nature of additional evidence opted to admit the same

for considering the facts and circumstances of the case. It is significant to note that the Assessing Officer, empowered to conduct an enquiry, nowhere observed in the remand report that he did not deem to be a fit case to conduct enquiry as regards, the additional evidence.

In the given facts and circumstances of the case and the issues involved, the Assessing Officer was required to call upon the assessee to participate in the remand proceedings.

Admittedly, the assessee was never called by the Assessing Officer in connection with the remand proceedings, as regards additional evidence. Admittedly, the Assessing Officer never issued any summons or process to the assessee or deponents whose affidavits were sent by way of additional evidence, by issuing notices.

Had the assessee and the deponents, whose affidavits were furnished, been called to participate in the remand proceedings as regards their deposition in the respective affidavit, and as regards the ledger account, only then defects pointed by Learned CIT(A) could gain any significance. By not calling upon the assessee or summoning any of the deponents of the affidavits, it can safely be said to be gross violation of one of the principles of natural justice i.e. non providing of opportunity of being heard.

Conclusion

18. In view of the above discussion and the well settled law on the point of providing of reasonable opportunity of being heard, when neither the Assessing Officer, conducting the remand proceedings nor Learned CIT(A), while seized of the appeal, provided opportunity of being heard to the assessee as regards the additional evidence/defects pointed out for rejecting the same, we are of the considered view that the impugned order passed by Learned CIT(A) upholding the penalty order deserves to be set aside.

Result

19. As a result, the appeal is allowed and the impugned order passed by Learned CIT(A), upholding the penalty order is hereby set aside.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 15/05/2025.

Sd/-

(गगन गोयल)
(GAGAN GOYAL)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 15/05/2025

Sd/-

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

*Santosh

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

1. The Appellant- Subhash Pareta, Kota.
2. प्रत्यर्थी / The Respondent- Addl.CIT, Range-1, Kota.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 91/JPR/2025)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar