

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

श्री भागचन्द, लेखा सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 492 & 493/JP/2016  
निर्धारण वर्ष / Assessment Year : 2011-12 and 2012-13

Shri Daya Ram Poonia A-2, Basant Marg, Banipark, Jaipur	बनाम Vs.	The ITO Ward- 3(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADJPP 6187 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.L. Jain, Advocate  
राजस्व की ओर से / Revenue by: Smt. Poonam Rai, DCIT-. DR

सुनवाई की तारीख / Date of Hearing : 01/03/2017  
घोषणा की तारीख / Date of Pronouncement : 19/04/2017

आदेश / ORDER

PER BHAGCHAND, AM

Both these appeals have been filed by the assessee against two separate orders of the Id. CIT(A)-1 , Jaipur dated 03-02-2016 for the assessment years 2011-12 & 2012-13 raising following grounds of appeal.

ITA No. 492/JP/2016 –A.Y. 2011-12

“1. That on the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and facts in not giving credit of TDS amount of Rs. 2,16,481/- u/s 199 of the Act

which was deducted in the name of appellant being co-owner of property.

2. That on the facts and in the circumstances of the case, the Id. CIT(A) has grossly erred in law and facts in wrongly reduce the total TDS credit while CBDT clarified that the entire TDS benefit (in case of co-owner) was to be given the person in whose name the TDS was deducted. Hence, order is based on conjectures and surmises.

3. That on the facts and in the circumstances of the case the Id. CIT(A) has grossly erred in law and facts and did not deal with the affidavit / declaration and return filed by the co-owner as well as contest are not disputed. The same issue was also raised in assessment year 2006-07 and the same was not allowed in appeal.”

ITA No. 493/JP/2016 –A.Y. 2012-13

“1. That on the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and facts in not giving credit of TDS amount of Rs. 2,41,855/- u/s 199 of the Act which was deducted in the name of appellant being co-owner of property.

2. That on the facts and in the circumstances of the case, the Id. CIT(A) has grossly erred in law and facts in wrongly reduce the total TDS credit while CBDT clarified that the entire TDS benefit (in case of co-owner) was to be given the person in whose name the TDS was deducted. Hence, order is based on conjectures and surmises.

3. That on the facts and in the circumstances of the case the Id. CIT(A) has grossly erred in law and facts and did not deal with the affidavit / declaration and return filed by the co-owner as well as contest are not disputed. The same issue was also raised in assessment year 2006-07 and the same was not allowed in appeal.”

2.1 Apropos Ground No. 1 to 3 of the assessee for the assessment year 2011-12, the facts as emerges from the order of the Id. CIT(A) is as under:-

“3.1.2. Determination

(i) I have carefully perused the submissions of the appellant, assessment order and the material placed on record. The brief facts of the case are that the appellant filed its return of income for the A.Y. 2011-12 declaring total income of Rs. 8,94,060/- which was assessed at the same income u/s 143(3) of the Act on 31-01-2014. In its return of income, the appellant claimed TDS of Rs. 2,38,133/- whereas the AO allowed credit for TDS amount of Rs. 12,533/- only.

(ii) During the appellate proceedings, it was the contention of the appellant that it was one of the co-owner of the property situated at Ramchandra Pura, which owned by 19 persons and the same was let out as godowns to M/s. JICS Logistics Ltd. and M/s. Om Telecom Logistics (P) Ltd. The total rent of the year was Rs. 24,78,631/-. During the year under consideration, the appellant credited full amount of the proportionate rent (gross amount) in the account of the co-owners without deduction of any tax and they had also shown it in their return of income and nobody claimed TDS in his/ her return of income. Hence, the appellant was authorized to receive or claim the whole tax because they had paid the taxes so liable on this rent.

(iii) It was further submitted that for the assessment year 2006-07, on the same issue, the AO disallowed the claim of TDS proportionately which was allowed by the Id. CIT(A). I have gone through the order of the Id. CIT(A) in ITA No. 469/11-12 for the assessment year 2006-07 very carefully. It may be mentioned that the facts of that case are distinguishable from the facts of the instant case under

consideration as in that the Id. CIT(A) quashed the assessment itself as there was no escapement of income. Thus the said decision of Id. CIT(A) is of no help to the appellant.

(iv) It is seen from the assessment order that the AO in view of the provision of Section 199 of the Act has allowed only proportionate credits of TDS relating to the rental income pertaining to the appellant. It would be appropriate to reproduce here the provisions of Section 199(1) as under:-

“[Credit for tax deducted – 199 (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Govt. shall be treated as payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.”

(iv) It may be mentioned that by the IT (6<sup>th</sup> Amendment) Rules, 2009, w.e.f. 01-04-2009 Rule 37BA relating to credit for tax deducted at source for the purpose of Section 199 has been inserted which is produced as under:-

Credit for tax deducted at source for the purpose of Section 199.

37BA. (1) Credit for tax deducted at source and paid to the Central Govt. in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

(2) (i) If the income on which tax has been deducted at source is assessable in the hands of a person other than the

deductee, credit for tax deducted at source shall be given to the other person in cases where.

(a) the income of the deductee is included in the total income of another person under the provisions of Section 60, Section 61, Section 64, Section 93 or Section 94

(b) The income of a deductee being an association of person or a trust is assessable in the hands of members of the association of persons, or in the hands of trustee, as the case may be'

© the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or hindu undivided family, as the case may be;

(d) the income from a property, deposit, security, unit or share held in the name of a dductee is owned jointly by the deducte and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset'

Provided that the deductee files a declaration within the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).''

(ii) the declaration filed by the deductee under clause (i) shall contain the name, address, permanent accountant number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to sub rule (1) and shall keep the declaration in his safe custody.

3(i) Credit for tax deducted at source and paid to the Central Govt. shall be given for the assessment year for which such income is assessable

(ii) Where tax has been deducted at source and paid to the Central Govt. and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

4. Credit for tax deducted at source and paid to the account of the Central Govt. shall be granted on the basis of :-

(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority and

(ii) the information in the return of income in respect of the claim for the credit, subject to verification in accordance with the risk management strategy formulated by the Board from time to time]

(vi) Therefore, as per Sub-rule 2 of Rule 37BA, the credit for the TDS is to be allowed to the person in whose hands the corresponding income is to be taxed and not to the deductee. The above Rule has prescribed procedure for claiming TDS credit by such other person.

(vii) Hence, in view of the Section 199(1) r.w. rule 37BA, it is held that the AO was justified in restricting the TDS credit corresponding to rental income owned by the appellant.

2.2 During the course of hearing, the ld. AR of the assessee mainly prayed that the ld. CIT(A) has erred in not giving the credit of TDS

amount of Rs. 2,16,481/- u/s 199 of the Act which was deducted in the name of assessee being co-owner of the property.

2.3 The Id. DR relied on the orders of the lower authorities.

2.4 I have heard the rival contentions and perused the materials available on record. It is noted that the AO during the assessment proceedings observed that the assessee had shown income from salary, remuneration & interest from partnership firm & AOP and also income from other sources. The AO found that the assessee had deposited total cash of Rs. 35,25,000/- in his saving bank account as had been found in the AIR information. In response to the same, the assessee submitted that he had received cash from his AOP M/s. Poonia Wines, Rewari on various dates which were deposited in his saving bank account. In support of his claim, confirmation from Poonia Wines had also been filed. The AO on examination of the details furnished by the assessee in respect of income from house property noticed that the total rent received by the assessee were Rs. 24,78,675/- on which TDS of Rs. 2,38,312/- deducted by the tenant was also claimed by the assessee in his return. The AO on verifying the rent received shown by the assessee in his return of income found that he has declared rent receipt of Rs.1,30,449/- only. To this

effect, a showcause letter was issued by the AO to the assessee vide letter

No .2188 on 22-01-2014 as under:-

“Please refer to above. On examination of the details furnished in respect of your income for A.Y. 2011-12, the following things have been noticed which is proposed to be treated in the manner mentioned therein.

During the year, you have declared income from house property at Rs. 1,30,449/-. On examination of your rental income, it is noticed that you have claimed TDS made by JICS Logistic Limited amounting to Rs. 2,28,508/- u/s 194-I. However, the income on which TDS was not offered for taxation by you. The total rent received on which TDS made by the JICS Ltd. is Rs. 2,85,062/-. As against this property, you have disclosed rental income of Rs. 1,30,449/- being 1/9<sup>th</sup> share stating that the property let out belonged to 19 persons including yourself. In these situation, as per provisions of Section 199(1) of I.T. Act, TDS claim is allowable in proportion to income shown by you only. Thus the allowable TDS credit to you will be Rs. 12,027/- and the balance TDS claimed by you at Rs. 2,16,481/- is proposed to be disallowed.”

Conclusively, the AO observed that as per provisions of Section 199(1) of the Act, it has been established on record that the assessee has made excess claim in his return of income which is not allowable. According to the AO, the assessee is eligible for TDS in proportion to his share of rental income declared only which comes to Rs. 12,533/- (Rs. 2,38,133/19). Thus the excess TDS claimed and allowed earlier amounting to Rs. 2,25,600/- (Rs. 2,38,133 minus Rs. 12,533) plus interest

granted u/s 244A amounting to Rs. 5,063/- totaling to Rs. 2,30,663/- is withdrawn. In short, the AO thus disallowed TDS claim of the assessee amounting to Rs. 2,16,481/- which has been confirmed by the Id. CIT(A) in first appeal. In appeal before the Bench, the Id. AR of the assessee filed the affidavit, income tax returns alongwith computation of income and confirmation of accounts of all 18 co-owners of the property. It is also noticed from the affidavit/ declaration of 18 co-owners wherein all 18 co-owners have mentioned that they have received the rent without deduction of any tax. The relevant para of the affidavit / declaration by the 18 co-owners is as under:-

“We all joint owner accept Mr Dayaram Poonia hereby declare on oath that any TDS deducted by tenant shall be the property of Mr.Dayaram Poonia and whatever the rent was received on our behalf have been distributed between us as agreed thereupon and we are paying taxes regularly.

That during the F.Y. 2010-11, the above property was under joint ownership was let out to mms Om Telecom Logistic (P) Id and M/s. JICS Logistic Ltd. on the same terms as agreed with M/s. Rajasthan State Beverages Corporation Ltd. mentioned above and accordingly we all hereby declare that the rent was accordingly credited in our A/c by Mr.Dayaram Poonia as full rent without deduction of any tax. Hence, Mr. Dayaram Poonia is authorized to receive or claim the whole tax because we have paid the taxes so liable on this rent.

That during the financial year we have neither claimed any TDS nor we will do so, because we have already received the gross amount. If any tax is deducted on this account Mr. Dayaram Poonia shall have a right to claim.”

Taking into consideration the facts, circumstances of the case and the written submission of the assessee, the assessee is directed to submit the details of income tax returns alongwith computation of income and confirmation of the accounts of 18 co-owners of the property of before the AO. The AO is directed to provide adequate opportunity of being heard to the assessee in this case in accordance with law. Thus the Ground No. 1 to 3 of the assessee is allowed for statistical purposes.

3.1 As regards the appeal of the assessee for the 2012-13, it is noted the grounds of appeal raised by the assessee are similar. The Id. CIT(A) has confirmed the action of the AO by observing as under:-

(vi) Therefore, as per Sub-rule 2 of Rule 37BA, the credit for the TDS is to be allowed to the person in whose hands the corresponding income is to be taxed and not to the deductee. The above Rule has prescribed procedure for claiming TDS credit by such other person.

(vii) Hence, in view of the Section 199(1) r.w. rule 37BA, it is held that the AO was justified in restricting the TDS credit corresponding to rental income owned by the appellant.

Similar issue has been restored to the file of the AO while deciding the ITA No. 492/JP/2016 above with the direction to the assessee to submit

the details of income tax returns alongwith computation of income and confirmation of the accounts of 18 co-owners of the property before the AO. The AO is directed to provide adequate opportunity of being heard to the assessee in this case in accordance with law. Thus the Ground No. 1 to 3 of the assessee is allowed for statistical purposes.

4.0 In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 19 /04/2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19 /04/ 2017

\*Mishra

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

1. अपीलार्थी / The Appellant- Shri Dayaram Poonia, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 3(2), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 492 & 493/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar