

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 956/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09.

Shri Deepak Gupta, 37, Milap Nagar, Tonk Road, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 2(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AEXPG 3058 D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri H.M. Singhvi (CA)
राजस्व की ओर से/ Revenue by : Smt. Neena Jeph (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 30.08.2018.
घोषणा की तारीख/ Date of Pronouncement : 04/09/2018.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 21st September, 2017 of Id. CIT (A)-1, Jaipur for the assessment year 2008-09. The assessee has raised the following grounds :-

1. That the learned CIT Appeal went wrong in confirming the assessment u/s 147/143(3).
2. That the learned CIT Appeal went wrong in not following the procedure laid down in the decision of Hon'ble Supreme Court GKN Drive Shafts India Ltd. vs. ITO (259 ITR 19)
3. That the learned CIT Appeal went wrong in confirming the disallowance of rs. 90,834/- for HRA exemption claimed u/s 10(13A) on the facts, through the same was shown in Form 16.
4. That no show cause was given by AO before completion of assessment.

5. That the appellant be allowed to add, alter or amend any grounds of appeals before or at the time of hearing of appeal.
6. Whether as the facts & circumstances of the case the learned CIT (A) the assessment was 147 since income escaped shown in the reasons recorded was not added and accepted as genuine."

2. At the time of hearing the Id. Counsel for the assessee has stated at bar that the assessee does not press ground nos. 1 & 2 of the appeal and the same may be dismissed. The Id. D/R has raised no objection if ground nos. 1 & 2 are dismissed as not pressed. Accordingly, ground nos. 1 & 2 of the assessee's appeal are dismissed being not pressed.

Ground Nos. 3 & 4 are regarding disallowance of HRA exemption of Rs. 90,834/- claimed under section 10(13A) of the IT Act.

3. In this case the AO issued a notice under section 148 on 25th March, 2015 proposing to assess the income on account of credit card expenditure of Rs. 3,00,117/- from his bank account with ICICI Bank. The AO also noted in the reasons that as per the system no return of income has been filed for the assessment year under consideration. The assessee filed e-ITR on 24.08.2015 in response to the notice under section 148 of the Act wherein the assessee has declared gross salary income of Rs. 9,08,341/- and total income of Rs. 6,98,600/- after claiming the exemption/deduction inter-alia house rent allowance of Rs. 1,07,084/- under section 10(13A) of the Act. The AO issued notice under section 142(1) of the Act with queries and asked the assessee to justify the claim of exemption/deduction under section 10(13A) with supporting evidence. In reply, the assessee did not furnish any evidence in support of the claim and the exemption of HRA was based from the actual payment without working out the same as per Rule

2A of the IT Rules. Accordingly, the AO worked out the exemption of HRA at Rs. 16,250/- as against the claim of Rs. 1,07,084/- and disallowed balance of Rs. 90,834/-. The assessee challenged the action of the AO before the Id. CIT (A) and contended that whatever evidence available with the assessee was submitted before the AO and further the original rent receipts were given to the employer and therefore the AO was to obtain necessary details from the employer of the assessee. Thus the assessee contended before the Id. CIT (A) that when the deduction under section 10(13A) was to the satisfaction of the employer or DDO of the employee then the same is an allowable claim. The Id. CIT (A) was not impressed with the contention of the assessee and confirmed the addition made by the AO.

4. Before us, the Id. A/R of the assessee has reiterated his contention as raised before the Id. CIT (A). He has submitted that the assessee has given the rent receipts to his employer and the employer after verification given the deduction under section 10(13A) in Form No. 16A. Same was filed before the AO. However, the AO did not conduct any enquiry from the employer of the assessee regarding the HRA exemption under section 10(13A) of the Act. Hence the disallowance is not justified when the AO has made the same without any enquiry conducted from the employer.

4.1. On the other hand, the Id. D/R has submitted that the AO has issued show cause notice and specific queries regarding the claim of deduction under section 10(13A) of the Act. However, the assessee expressed his inability to produce any evidence in support of the claim. Accordingly, the AO has computed the deduction as per the provisions of the Act and Rule 2A of the IT Rules. The assessee has even not pointed out any defect or mistake in the computation made by the A.O. on

deduction under section 10(13A) of the Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. We note that the AO has issued notice under section 142(1) and raised specific queries regarding the claim of deduction under section 10(13A) of Rs. 1,07,084/-. This is evident from the para 3 of the assessment order wherein the AO stated that vide notice under section 142(1) with queries the assessee was asked to justify the claim of deduction/exemption under section 10(13A) with supporting evidence. We find that neither before the authorities below nor before us the assessee has produced any evidence to show the actual payment of rent. Even if the amount of Rs. 1,07,084 is considered as actual payment of rent by the assessee, the allowable deduction computed by the AO as per the provisions of Rule 2A of the IT Rules comes to Rs. 16,250/- being the excess of 10% of the salary or the actual rent paid whichever is less. Thus the salary of the assessee is undisputedly Rs. 9,08,341/- and 10% of the same comes to Rs. 90,834/-. Thus the excess of Rs. 90,834/- of actual rent paid is an allowable deduction and hence the difference between actual rent paid of Rs. 1,07,084/- and Rs. 90,834/- is Rs. 16,250/-. The AO has adjudicated this issue in para 3.3 and 3.4 of the assessment order as under :-

" 3.3. In view of the above facts & circumstances of the case and the provisions of the law and above judgments, the claim of the assessee for exemption of HRA is not verifiable in absence of any substantial evidence of actual payment of expenditure as claimed exempt in respect of residential accommodation occupied by him. The assessee has failed to explain the claim of exemption of HRA with supporting

evidence. From perusal of the bank statement of the assessee, it is also not verifiable whether the assessee has actually incurred of expenditure Rs. 1,07,084/- or more on payment of house rent. The assessee has not furnished any evidence to prove about submission of any receipt of payment of rent, if any, submitted to his employer for verification. However, on perusal of the Form No. 16, it is revealed that the assessee has received Rs. 1,07,084/- from the employer and the same has been claimed as exempt. It is also evident from the Form No. 16 that the assessee has received gross salary of Rs. 9,08,341/- and the 1/10th thereof works out at Rs. 90,834/-. In view of the Rules, the admissibility of claim of HRA exemption is worked out after carefully considering the details furnished by the assessee and material facts available on the record. Thus, the admissible amount of HRA exempt works out at the least of the three conditions i.e. (a) HRA received Rs. 1,07,084/-; (b) rent paid as claimed in excess of 10% of salary – Rs. 16,250/- (i.e. Rs. 107084 – 90834=16,250/-); and 40% or 50% of salary i.e. Rs. 3,63,336/- or Rs. 4,54,670/-. Thus, it is fairly construed that the claim of exemption of HRA would not exceed to the least amount, as above, in absence of any evidence of expenditure to have actually incurred more than that of the above claim on rent for residential accommodation occupied by the assessee, as per the law. Accordingly, the exemption of HRA is admissible at Rs. 16,250/- as against the claim of Rs. 1,07,084/- as per the Rules.

3.4. Considering the above facts & circumstances of the case, it is averred that the claim of the assessee for exemption of HRA of Rs. 1,07,084 is not justified in absence of any evidence and fulfillment of conditions as prescribed in the provisions of the Act and the Rules. Therefore, I disallow Rs. 90,834/- out of the claim of exemption of HRA of Rs. 1,07,084/- on this account and the same is added to the total income of the assessee during the year under consideration.”

In the absence of any contrary material brought on record by the assessee, we do not find any error or illegality in the order of the AO restricting the claim of exemption of HRA to Rs. 16,250/-. Accordingly, ground nos. 3 & 4 of the assessee are dismissed.

Ground No. 6 regarding the addition made by the AO in the reassessment proceedings is challenged as not sustainable on technical reason.

6. The Id. A/R of the assessee has submitted that the AO has reopened the assessment to assess the income of Rs. 3,00,117/- on account of credit card bill during the year under consideration. However, the AO has not made any addition on account of credit card expenditure in the reassessment order. Therefore, the AO cannot make any other addition. He has thus contended that when the AO has not made any addition of income which he initially formed reason to believe has escaped assessment but finally found no escapement, then it is not open to him to assess some other income. In support of his contention, he has relied upon the decision of Hon'ble Jurisdictional High Court in case of CIT vs. Shri Ram Singh. 306 ITR 343 (Raj.) as well as decision of Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (India) Ltd., 195 Taxman 117 (Bombay). The Id. A/R has also raised an objection against the reopening and submitted that initially the assessee filed his return of income on 28th July, 2008. However, the AO did not consider the same while recording the reason for reopening and issued notice under section 148 though the return was filed under wrong PAN. However, prior to the notice issued under section 148, the AO conducted an enquiry by issuing a notice under section 133(6) and in response to the same the assessee pointed out that he had already

filed a return of income on 28th July, 2008. Thus it was in the knowledge of the AO that the assessee had already filed a return of income.

6.1. On the other hand, the Id. D/R has submitted that the AO has reopened the assessment to assess the income escaped assessment on account of credit card expenditure of Rs. 3,00,117/-. Therefore, the income as per the reasons recorded was proposed to be assessed on account of the source of income for payment of credit card expenses. The assessee has declared salary income in the return of income and the AO has finally assessed the total income of the assessee which is the source of payment of credit card expenses. Therefore, the issue as subject matter of reasons recorded has subsumed in the total income assessed by the AO in the reassessment order passed under section 143(3) read with section 147. Thus the Id. D/R has submitted that the decisions relied upon by the assessee are not applicable in the case of the assessee when the AO has assessed the income which is the only source of the credit card expenditure. He has relied upon the orders of the authorities below.

6.2. As regards the return of income filed on 28th July, 2008, the Id. D/R has specifically pointed out that the said return filed under a different PAN was not available in the system and even if the assessee has pointed out the filing of the said return under wrong PAN at the time of issuing the notice under section 148, there was no other remedy available with the AO at that point of time to process the earlier return filed by the assessee, though the same was not a valid return. He has referred to the orders of the AO as well as Id. CIT (A) and submitted that the AO has specifically given the finding that the said return was not a valid return as it was not

available in the system. Therefore, the return which is non est cannot be considered as a return available with the AO.

7. We have considered the rival submissions as well as the relevant material on record. The assessment was reopened by the AO by recording the reasons as under

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" As per AIR information generated from the system, the assessee has made payment against credit card bill amounting to Rs. 3,00,117 from his bank account with ICICI Bank, during F.Y. 2007-08 relevant to A.Y. 2008-09.

Since as per system no return of income has been filed for A.Y. 2008-09, the above transaction is not verifiable. I have therefore reasons to believe that on account of not filing of return by the assessee, income chargeable to tax has escaped assessment.

In view above, I have reasons to believe that the income to the extent of Rs. 3,00,117/- has escaped assessment within the meaning of section 147 of the IT Act, 1961 and this is a fit case for issuance of notice u/s 148."

Thus the AO proposed to assess the income on account of credit card bills amounting to Rs. 3,00,117/-. Though the credit card expenditure itself is not an income but the source of the said expenditure has to be explained by the assessee and, therefore, what is to be assessed as income of the assessee is the source of expenditure. The assessee filed his return of income and declared the salary income of Rs. 6,98,600/-. Therefore, the issue as raised in the reasons recorded by the AO has subsumed in the salary income declared by the assessee. The salary income is the only income of the assessee as source of the expenditure incurred by the assessee through credit card and hence this is not a case of an item of income proposed to be assessed while forming the belief that the said income was escaped assessment. But the source of credit card expenditure was proposed to be assessed

in the reasons recorded and, therefore, when the AO finally assessed the salary income along with the other additions and disallowances then the case of the assessee does not fall in the category that the AO has finally found that no income has escaped as he considered the same while recording the reasons for reopening. In the case in hand, the income as considered escaped assessment in the reasons recorded by the AO was very much part of the salary income which was finally assessed by the AO. Accordingly, we are of the view that the decisions relied upon by the assessee on this point would not help the case of the assessee. As regards the return of income filed by the assessee on 28th July, 2008, admittedly the assessee has filed the said return of income under PAN : AJFPG 6152 K whereas the correct PAN of the assessee is AEXPG 3058 D. The assessee had admitted that the return was filed under wrong PAN. The AO has recorded in the reasons that as per the record the assessee did not file any return of income, therefore, the non availability of the return of income in the system and with the AO at the time when the AO proposed to initiate the proceedings under section 147/148 of the Act is not in dispute, though in the enquiry conducted by the AO prior to the issue of notice under section 148 the assessee pointed out that he had filed a return of income on 28th July, 2008 but under wrong PAN. We find that the said response of the assessee of filing return of income under wrong PAN will not change the situation and remedy for processing the return of income as by that point of time in the month of March, 2015 all the time limitation of processing the return of income originally filed under wrong PAN were expired. Therefore, the AO had only remedy under the provisions of the Act to issue notice under section 148 to assess the income of the assessee as there was no valid return and the return filed under wrong PAN was a non est

return. Hence, we do not find any error or illegality in the action of the AO initiating the proceedings under section 147/148 of the Act. This ground of the assessee is dismissed.

8. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 04/09/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 04/09/2018.

Das/

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

1. The Appellant- Shri Deepak Gupta, Jaipur.
2. The Respondent – The ITO Ward 2(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 956/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

