

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 206/JP/2022
निर्धारण वर्ष / Assessment Year : 2018-19

Shri Devendra Prasad Tiwari 27-k-5, Scheme, Khatipura Road Jharkhand Mod, Jaipur	बनाम Vs.	The ITO Ward 2(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AANPT 4866 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sharwan Kumar Gupta
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 12/07/2022
उदघोषणा की तारीख / Date of Pronouncement: 16 /08/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 31-03-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2018-19 wherein the assessee has raised the following grounds of appeal.

“1. The impugned order u/s 154 r.w.s 143(1) dated 14-05-2019 as well as the notices are bad in law, illegal, invalid, void ab initio on facts of the case, for want of jurisdiction, and various other reasons and hence the same may kindly be quashed.

2. Rs.1,56,556/-. The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the action of the AO in not giving the benefit of Rs.1,56,556/- made by the AO on account of interest paid on house loan and erred in sustaining the addition of Rs.1,56,556/- on account of house property which is allowable as per law, also erred in not considering the material in the true perspective and sense. Hence, the addition so made by the AO and confirmed by the ld. CIT(A) is being totally contrary to the provisions of law and facts of the record and hence the same may kindly be deleted in full.

3.The AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234ABC. The appellant totally denies its liability of charging of any such interest. The interest so in charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

2.1 Apropos Ground No. 1 and 2, brief facts of the case are that the assessee is a salaried person in the Bank of Baroda who filed the return of income on 18-7-2018 declaring total income of Rs.12,74,720/- for the assessment year 2018-19 and the same was processed CPC, Bengaluru u/s 143(1) on 31-05-2019 determining the total income at Rs.14,31,270/- and demand of Rs.51,330/- was raised. The AO in the assessment order added back an amount of Rs.1,56,556/- to returned income under the head of House Property Income which was wrongly calculated by the assessee in his return of income. Against the assessment order of the AO, the assessee filed rectification application for which the CPC, Bengaluru passed an order u/s 154 of the Act rejecting the request of the assessee.

2.2 Aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A) who dismissed the appeal of the assessee.

2.3 During the course of hearing, the Id. AR of the assessee argued that the assessee is a salaried person and during the year he had received the salary of Rs.13,10,674/-, received rental income of Rs.4,20,000/- on house property and has also paid the interest of Rs.1,56,556/- on house loan. The Id. AR submitted that all these details are reflecting in Form 16 and while filing the return of income the assessee had shown headwise income and deduction. Thus all these calculations are available in the computation of total income (PBP 11 to 13). As regards the income of House property, the Id. AR has also submitted following total income of house property while uploading the I.T. Return.

Gross Rent Received	Rs.4,20,000/-
30% deduction	Rs.1.26.000/-
Interest Payable	Rs.1,56,556/-
Income chargeable under the head 'House Property'	Rs.1.37,444/-

The Id. AR thus stressed upon his submission that while uploading the IT return the calculation or income of house property as well in the computation of total income, the income chargeable at both the places under the head 'House Property' is same i.e. Rs.1,37,444/-. The Id. AR further submitted that due to some technical error or mistake in the software the interest payable has not come in the form, however, the same was feeded while preparing/ filing or uploading the return. The

ld. AR further submitted that the assessee had come to know the above facts only on receiving the intimation u/s 143(1) dated 12-12-2018 and on the advice the assessee had filed online rectification u/s 154 of the Act on 11-02-2019. He further submitted that it is not possible to file detailed facts but while passing the order u/s 154, the same has been ignored by the Revenue authority and repeated the same order as made u/s 143(1) of the Act. The ld. AR further submitted that both the authorities like AO as well as ld. CIT(A) have ignored the facts that when in both the places the income chargeable under the head 'House Property' is appearing same as Rs.1,37,444/- then the AO should have asked the reasons from the assessee before passing the order either u/s 143(1) or u/s 154 instead of making addition of Rs.1,56,556/- by disallowing the interest paid on house property. In support of his contentions, the ld. AR of the assessee filed the copy of salary certificate (PBP 14-15), copy of ITR PB 2-6), Copy of computation of total income (PBP 11-13). The ld. AR of the assessee filed home loan certificate issued by the Bank (PBP 23). The ld. AR further submitted that in order to provide justice to the assessee, the ld. CIT(A) should have asked the assessee to file the copy of home loan but it was not demanded by him and thus rejected the claim of the assessee. The ld. AR further prayed that when the interest claim has not been taken in the ITR then as to why the total income has not been increased when all the calculations are automatic and if the assessee had not taken the interest claim then

he could not have shown the Income Chargeable under the head 'House Property' at Rs.1,37,444/- rather than the same should have come to Rs.2,94,000/- (Rs.1,37,444 plus 1,56,556/-). He further submitted that it is not the first year of claim of house loan interest but the assessee is claiming the same since 2010 when the loan was taken. To this effect, the ld. AR of the assessee relied on following decisions.

1. Smt. Sneh Lata Jain vs CIT 192 CTR 50 (J&K)
2. Smt. Raj Rani Gulati vs CIT 69 DTR 122 (All)
3. CIT vs B.G. Shrik Construction Technology (P) Ltd. (Bom.)
395 ITR 371
4. Pr. CIT vs Ankit Metal & Power Ltd. 182 DTR 333 (Cal.)
5. Suresh Kumar Agarwal vs JCIT (ITA No. 1073 & 1074/JP/2018 dated 15-03-2022 – Jaipur Trib) – it has been held that ignorance of law is certain no excuse for a default committed but at the same time, there is no presumption in law that everybody knows the law, application of this rule would differ from case to case and person to person.

Thus the ld. AR of the assessee prayed that in view of the above facts and legal position of law, the AO may be directed to give full credit of interest deduction and the resultant demands may also be deleted in full and oblige.

2.4 On the other hand, the ld. DR relied on the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the material available on record. From the records, it is noted that the assessee is salaried person employed from Bank of Baroda who filed the return of income on 18-07-2018 declaring total income of Rs.12,74,720/- for the assessment year 2018-19 and the same was processed CPC, Bengaluru u/s 143(1) on 31-05-2019 determining the total income at Rs.14,31,270/- and demand of Rs.51,330/- was raised. The AO in the assessment order added back an amount of Rs.1,56,556/- to returned income under the head of House Property Income which was wrongly calculated by the assessee in his return of income. Against the assessment order of the AO, the assessee filed rectification application for which the CPC, Bengaluru passed an order u/s 154 of the Act rejecting the request of the assessee. However, in first appeal, the Id. CIT(A) dismissed the appeal of the assessee by observing as under:-

“4. On verification of the copy of the return filed by the appellant, it is found that there was no any claim of interest payable on borrowed capital. In that column i.e. in the column B2(v), it is mentioned as Nil. There are no any merit in the claim of the appellant that the Id. AO has grossly erred in law as well as on the facts of the case in not giving the benefit of Rs.1,56,556/- of interest paid on house loan and erred in making the addition of Rs.1,56,556/- on account of house property which is allowable as per law. The

appellant has also not filed the copy of Home Loan Interest Certificate to allow. In the absence of claim in the return filed and non-submission of evidence during the appeal proceedings, the relief cannot be granted. Hence, the appeal is dismissed.’’

From the order of the Id. CIT(A), it appears that the Id. CIT(A) has not taken into consideration the entire submission of the assessee but observed *‘‘that the appellant has also not filed the copy of Home Loan Interest Certificate to allow. In the absence of claim in the return filed and non-submission of evidence during the appeal proceedings, the relief cannot be granted. Hence, the appeal is dismissed.’’*

Further the order of the Id. CIT(A) does not indicate that he has asked for the copy of such home loan interest certificate as well as other evidences to settle the issue in dispute. However, the assessee has very explicitly filed the details as to the calculation in the income tax return as well as income from house property and the details of the same are as under:-

Gross Rent Received	Rs.4,20,000/-
30% deduction	Rs.1.26.000/-
Interest Payable	Rs.Zero
Income chargeable under the head ‘House Property’	Rs.1.37,444/-

It is also pertinent to mention that in computation of total income the figure is appearing as under:-

Gross Rent Received	Rs.4,20,000/-
30% deduction	Rs.1,26,000/-
Interest Payable	Rs.1,56,556/-
Income chargeable under the head 'House Property'	Rs.1,37,444/-

This indicates that at both the places, the income chargeable under the head 'House Property' holds good similar amount of Rs.1,37,444/-. Hence, there is no question of confirming the disallowance of interest paid on house property amounting to Rs.1,56,556/-. Keeping in view the above facts, circumstances of the case, computation of ITR, salary certificate issued by Bank of Baroda and house property income shown at Rs.1,37,444 in the ITR Form of the assessee as well as the Certificate dated 26-04-2021 issued by the Manager (Credit) Bank of Baroda, Jaipur as to the payment of Rs.1,56,556/- against the loan taken by the assessee from the Bank support the contention of the assessee. Hence, we do not concur with the findings of the Id. CIT(A) which is reversed. Thus the Ground No. 1 and 2 of the assessee is allowed.

3.1 The Ground No. 3 of the assessee is regarding charging of interest u/s 234A, 234B and 234C. Since we have allowed Ground Nos. 1 and 2 of the assessee, therefore, the ground No. 3 being consequential in nature, has become infructuous.

4.0 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 16/08/2022

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 16/08/2022

*Mishra

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

1. The Appellant- Shri Devendra Prasad Tiwari, Jaipur,
2. प्रत्यर्थी / The Respondent- ITO, Ward 2(1), Jaipur
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. 206/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar