

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA. No. 165 & 166/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18 & 2018-19

Shri Madan Lal Sharma 01, Gudha Katla Road, Shiv Colony, Bandikui, Dausa.	बनाम Vs.	ITO, Ward, Dausa.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: CLZPS6416C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rajeev Sogani (C.A.)
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 20/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 21/06/2024

आदेश / ORDER

PER BENCH:

This common order is to dispose of the above captioned both the appeals, as common issues are involved.

First mentioned appeal pertains to assessment year 2017-18.

Second mentioned appeal pertains to assessment year 2018-19.

165/JPR/2024

2. Assessee is feeling dissatisfied with the order dated 04.01.2024 passed by Learned CIT(A). Impugned order upholds the assessment order

dated 28.09.2021 passed by the Assessing Officer u/s 147 r.w.s. 144 and 144B of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

Assessing Officer assessed income of the assessee at Rs. 50,55,313/-, by making addition of Rs. 48,41,364/- u/s 69A of the Act as regards certain unexplained money.

At the same time, penalty proceedings u/s 274 r.w.s. 271AAC of the Act, were also initiated. Separate penalty proceedings u/s 270A of the Act, were also initiated as regards unreported income.

The assessee challenged the assessment order by filing appeal before Learned CIT(A).

Vide impugned order, Learned CIT(A) has confirmed the above said addition, and consequently dismissed the appeal.

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3. This is another appeal. Assessee is feeling dissatisfied with the order dated 04.01.2024 passed by Learned CIT(A). Vide impugned order, assessment order dated 24.09.2021 passed by the Assessing Officer u/s 147 r.w.s. 144 and 144B of the Act stands upheld.

Assessing Officer assessed income of the assessee at Rs. 16,53,202/-, by making addition of Rs. 15,83,500/- u/s 69 A of the Act as regards certain unexplained money.

At the same time, penalty proceedings u/s 274 r.w.s. 271AAC of the Act, were also initiated. Separate penalty proceedings u/s 270A of the Act, were also initiated as regards unreported income.

Since Learned CIT(A) has confirmed the above said addition, and consequently dismissed the appeal, Assessee is before us.

4. Arguments heard. File perused.

ITA No. 165 & 166/JPR/2024

Discussion

5. It may be mentioned here that during pendency of the appeals on 28.05.2024, an application came to be filed in each appeal with a prayer to raise additional grounds –

Firstly, that the Learned CIT(A) erred in rejecting the additional evidences submitted in the course of appeal filed there;

Secondly, that Learned CIT(A) also erred in deciding the appeals without waiting for the remand report that was sought from the Assessing Officer during pendency of the appeal.

The above said two grounds are legal grounds. Having heard both the sides on these applications, we deem it just and proper to allow the appellant to raise said two legal grounds, in the interest of justice particularly, when no new fact is required to be adjudicated.

6. Ld. AR for the assessee has raised the above said two legal grounds and submitted that since Learned CIT(A) acted arbitrarily, the matters be remanded for decision afresh. In support of these contentions, our attention has been drawn to the last paragraph of the impugned order passed by Learned CIT(A), in each appeal. He has also placed on record, copy of an application submitted to Learned CIT(A)/NFAC seeking permission to lead additional evidence under Rule 46A(1) of the Income Tax Rules, 1962.

7. Learned DR for the department has opposed the contention raised on behalf of the assessee by submitting that as it transpires from the assessment orders, ample opportunities were provided to the assessee by the Assessing Officer to produce relevant record/documents, specified in different notices, but, even then the assessee failed to produce the relevant record/documents, and ultimately, the finding rightly came to be recorded that the assessee had failed to substantiate his claims.

8. As regards the fact that Learned CIT(A) has decided the appeals without awaiting remand reports from the Assessing Officer, the contention raised by the Learned DR for the department is that for the reasons recorded in the impugned orders, Learned CIT(A) was justified in rejecting the additional evidence submitted by the assessee in those appeals.

9. Admittedly, before Learned CIT(A), during the pendency of two appeals filed by the assessee, copies of certain bank statements, copies of two affidavits, in addition to the affidavit of the assessee himself, were presented as regard the appeal relating to assessment year 2018-19.

10. In the other appeal, relating to assessment year 2017-18, admittedly, copy of bank statement, copies of IT returns with computation sheet in Form 16, copies of affidavits of some farmers, with copies of related documents, in addition of copy of affidavit of the assessee himself, were presented by way of additional evidence.

As is available from the impugned orders, Learned CIT(A) directed the Assessing Officer to submit remand reports in respect of the above mentioned documents, pertaining to each appeal filed there. However, no remand report was received in the office of Learned CIT(A) despite wait. Ultimately, Learned CIT(A) proceeded to dispose of the appeals on merits, while rejecting the additional evidence, for the reasons recorded in the last paragraph of each impugned order.

11. Copy of notice dated 30.10.2023 issued by the Assessing Officer and addressed to the assessee, in respect of each appeal, would reveal that certain information/documents were requisitioned by the Assessing Officer

from the assessee for the purpose of enquiry and submission of remand report to Learned CIT(A).

12. The other document submitted by the assessee to the Learned CIT(A) in each appeal, is e-Proceedings Response Acknowledgement. Same would reveal that the assessee submitted by way of attachments thereto, reply to the said notices along with certain evidence, on 07.11.2023.

13. In this situation, once Learned CIT(A) opted to seek remand report in respect of the documents submitted by way of additional evidence, Learned CIT(A) should have awaited for the said reports, instead of disposing of the appeals forthwith i.e. without said reports.

Remand reports were necessary for adjudication of the subject matter of the appeals. Therefore, Learned CIT(A) should have taken steps for early submission of the said reports for just adjudication of the appeals, instead of proceeding to disposal of the appeals.

14. Since, no such step was taken, and rather the Learned CIT(A) proceeded to dispose of the appeals, it can safely be said to be a case where Learned CIT(A) proceeded in violation of principles of natural justice.

Conclusion

15. In the given situation, impugned orders passed by Learned CIT(A) deserve to be set aside, and the matters deserve to be restored.

Result

16. Consequently, both these appeals are disposed of for statistical purposes and the impugned orders passed by Learned CIT(A), in each appeal i.e. pertaining to assessment year 2017-18 and the other pertaining to assessment year 2018-19 are hereby set aside.

17. We have pondered over as to whether the matters should be restored to the files of Learned CIT(A) or to the files of the Assessing Officer. The Id. AR for the assessee has prayed that instead of restoring the matter, Learned CIT(A) the same be restored to the files of the Assessing Officer.

As noticed above, as regards additional documents/evidences submitted by the assessee in each appeal, remand reports were requisitioned from the Assessing Officer. Remand report is called where some documents are to be verified and certain facts need to be enquired into, for onward transmission to CIT(A) for the purpose of effective adjudication of the appeals.

As noticed above, the Assessing Officer had initiated steps to conduct enquiry for submission of remand reports. In this peculiar situation,

we deem it a fit case to remand the matters to the Assessing Officers for decision afresh, after providing reasonable opportunity to the assessee, of being heard, and after conducting enquiry/verification as regards the additional evidence subsequently produced by the assessee before Learned CIT(A). We order accordingly.

Order pronounced in the open court on 21/06/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 21/06/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Madan Lal Sharma, Dausa.
2. प्रत्यर्थी / The Respondent- ITO, Ward, Dausa.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 165 &166/JPR/2024)

आदेशानुसार / By order,

Sd/-

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

सहायक पंजीकार / Asstt. Registrar