

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

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

आयकर अपील सं./ITA. No. 283/JP/2019
निर्धारण वर्ष/Assessment Years : 2010-11

Shri Badri Narayan Choudhary 3356, Govind Rao Ji Ka Rasta, Chandpole Bazar, Jaipur.	बनाम Vs.	The ITO, Ward-4(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADEPC 3076 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Khandelwal (C.A.)
राजस्व की ओर से / Revenue by : Smt. Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 22/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 24/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 27.12.2018 for the Assessment Year 2010-11 wherein the assessee has taken the following grounds of appeal:-

"1. That the Id. A.O. has erred in law as well as in facts of the case in assuming jurisdiction u/s 148 of the I.T. Act, 1961.

2. That both the lower authorities have erred in law as well as in facts of the case in considering cash deposit into bank account as

unexplained and thereby made addition/sustained addition of Rs. 20,90,070/- to the returned income.

3. That Id. CIT(A) has erred in law as well as in facts of the case in not affording sufficient opportunity of being heard, hence violated principle of natural justice.”

2. Briefly the facts of the case are that the assessee is engaged in the business of trading of commodity derivatives on MCX and NCDEX stock exchanges. The Assessing officer, on receipt of certain information, noticed that the assessee has carried out commodity transactions worth Rs. 7,33,80,90,800/- during the financial year 2009-10 and basis the same, formed the belief that the income of Rs. 7,33,80,90,800/- has escaped assessment and notice U/s 148 of the Act was issued to the assessee on 29.03.2017 after seeking necessary approval. In response, the assessee filed his return of income declaring loss of Rs. 20,83,207/- from transactions in commodity derivative. The loss so claimed on account of commodity trading was examined by the Assessing Officer and the same was not allowed to be carried forward given that the assessee has not filed its return of income U/s 139(1) of the I.T. Act. Further, during the course of assessment proceedings, on perusal of bank account of the assessee, the AO observed that there are cash deposits in the bank account of the assessee to the tune of Rs. 20,90,065/- which was considered by the AO to be unexplained income and brought to tax in the hands of the assessee. Being aggrieved the assessee carried the matter in appeal before the Id. CIT(A) who has dismissed the appeal of the assessee and now the assessee's is in appeal before us.

3. Firstly, we take up ground no. 2 of the assessee's appeal where he has challenged the addition of Rs. 20,90,070/- by considering the cash deposit in his bank account as unexplained and brought to tax. In this regard, the Id. AR submitted that from the perusal of the reasons so recorded by the AO before issuance of notice u/s 148, it may be noted the sole reason for exercising jurisdiction U/s 147 of the Act was formation of belief by the AO that income from commodity derivative has escaped assessment. However, on perusal of the assessment order, it may be noted that no addition was made by the AO on account of commodity derivative transactions and the addition which has been made by the AO is on altogether different ground i.e. unexplained cash deposit into the assessee's bank account. It was submitted that it is a settled legal position that where the alleged income in respect of which the reasons were recorded were not brought to tax by the Assessing Officer, no addition on account of any other transactions can be made and the jurisdiction of the Assessing Officer comes to an end and even the rigors of explanation no. 3 to Section 147 of the Act cannot be save the jurisdiction of the Assessing Officer. In support, reliance was placed on the decision of the Hon'ble Bombay High Court in case of CIT vs. Jet Airways 331 ITR 236 where the decision of the Hon'ble Rajasthan High Court in case of CIT vs. Shri Ram Singh 306 ITR 343 has also been followed. It was accordingly submitted that in view of the factual matrix of the case and the binding judicial precedents where the alleged income in respect of which the notice has been issued U/s 148 of the Act was found non-existent, then the AO is precluded to extend his jurisdiction to tax any other income in the hands of the assessee.

4. Per contra, the Id. DR is heard who has relied on the orders of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. In order to appreciate the contention so advanced by the Id. AR, we refer to the reasons so recorded by the AO before issuance of notice U/s 148 of the Act which reads as under:-

"Reasons of reopening of the case:

On perusal of details available on record, it is seen that the assessee has made commodity transaction of Rs. 7,33,80,90,800/- during the FY 2009-10 but no return of income has been filed for the AY 2010-11. Thus, the assessee did not disclosed fully & truly all material facts necessary for his assessment. Therefore, I have reason to believe that income of Rs. 7,33,80,90,800/- has escaped assessment.

In view of the above reasons, it is requested that necessary approval may kindly be accorded."

6. Further, on perusal of the assessment order passed by the AO U/s 143(3) r.w.s. 147 of the Act, the relevant finding of the AO in relation to the commodity transaction carried out by the assessee during the year under consideration reads as under:-

"5. In response thereto, the assessee has filed details of commodity trading and shown gross sales of Rs. 9,12,54,31,410/, gross purchase of Rs. 9,12,75,14,617/- and declared net loss of

Rs. 20,83,206/-. On perusal of details, it is found that assessee has made net sales/turnover of commodity of Rs. 1,28,02,922/- (11449211-1353711) and earned loss of (-) Rs. 20,83,207/-.

6. Assessee is not allowed to carry forward the speculation loss, as the assessee has not filed return of income u/s 139(1) of the IT Act, 1961."

7. In light of above, it is clear that the reasons which has been recorded before issuance of notice U/s 148 of the Act relates to income in respect of commodity transaction which has escaped assessment during financial year 2009-10 relevant to the impugned assessment year. During the course of assessment proceedings, the said transactions were examined and the returned loss of Rs. 20,83,207/- was accepted by the Assessing Officer however the assessee was not allowed to carry forward the same as the assessee has not filed return of income U/s 139(1) of the Act. It is therefore clear that income in respect of which the reasons for escapement of income were recorded has not been brought to tax and is not subject matter of assessment by the Assessing Officer. Therefore, in light of the settled legal proposition of law as laid down by the various Courts including the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (supra) wherein it was held that in terms of Section 147 of the Act, the Assessing Officer has to assess or reassess the income which has escaped assessment and which was the basis for the formation to belief and it he does so he can also assessed or reassess any other income which has escaped assessment which come to his notice during the course of assessment proceedings. However, if after issuing notice U/s

148 of the Act, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him to independently assess some other income and if he intends to do so, a fresh notice U/s 148 would be necessary, we are of the considered view that the addition made by the Assessing Officer towards unexplained cash deposit in the assessee's bank account cannot be sustained as the very reasons for reopening the assessment has not been made the subject matter of assessment in the hands of the assessee. In light of above ground no. 2 is decided in favour of the assessee.

8. In light of above discussions, though various contentions have been raised by both the parties regarding legality of notice and assumption of jurisdiction U/s 147 of the Act in ground no. 1 and on merits of the additions so made by the AO, we do not deem it necessary to examine the said ground and the contentions so advanced by both the parties. In the result, the same are treated as infructious and not adjudicated upon.

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

Order pronounced in the open Court on 24/04/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य/Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-24/04/2019.

***Santosh**

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

1. अपीलार्थी / The Appellant- Shri Badri Narayan Choudhary, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 283/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar