

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

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 432/JP/2018
निर्धारण वर्ष/Assessment Year: 2014-15

M/s. Mundra & Jain Marbles 16, Jhalawar Road, Kota	बनाम Vs.	The DCIT Central Circle Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHFM 4225 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri C.M. Birla, CA
राजस्व की ओर से / Revenue by: Shri Varinder Mehta, CIT - DR

सुनवाई की तारीख / Date of Hearing : 18/06/2018
घोषणा की तारीख / Date of Pronouncement : 25/06/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the Id.
CIT(A)-4, Jaipur dated 1-02-2018 for the Assessment Year 2014-15
raising therein following grounds of appeal.

“1. That under the facts and circumstances of the case the Id. CIT(A) erred in not considering that F.Y. 2013-14 being the search year the issuance of notice u/s 142(1) r.w.s.s 153A for Asstt.Year 2014-15 was beyond legislative powers of the AO and therefore, entire proceedings based on this illegal notice being void the order u/s 143(3) r.w.s. 153B(1) deserves annulment.

2. That without prejudice to GOA 1 above
 - (i) The Id. CIT(A) erred in confirming addition of Rs. 5,39,033/- on 13-08-2013 (date of search) ignoring explanation of the assessee before the AO that it is supported by Software Tally since Assessment Year 2010-11 to 2014-15 (date of search) as well as purchase bills; and
 - (ii) The Id. CIT(A) further erred in not appreciating this fact that stock sheets were prepared by search team not before partners of firm but in presence of employees of firm who were not aware of purchase cost and therefore, they had given price qua sales price less reasonable profit as per their wisdom.

2.1 Apropos Ground No. 1 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“3. In the present case, it is seen that appellant derives its income from buying and selling of marble stone and granite. Appellant filed its original return of income on 28-11-2014 for the A.Y. 2014-15 declaring total income at Rs. 22,230/-

Appellant belongs to Mundra Group, Kota on whose premises, a search u/s 132 of the Act was carried out on 13-08-2013. Various assets/books of accounts and documents were found, inventorized and seized as per annexure prepared during the course of search. Pursuant to this, AO issued a notice u/s 142(1) r.w.s. 153A of the Act to the appellant, in compliance of which, appellant filed its return of income on 19-01-2015 for the A.Y. 2014-15 declaring total income at Rs. 27,190/-. Finally, AO completed assessment u/s 143(3) r.w.s. 153B(1)(b) of the Act vide order dated 29-01-2016 at a total income of Rs. 5,66,220/-.

4....

5. The appellant has taken a legal ground that since notice u/s 153A was issued to him for the instant A.Yr. the entire assessment should be quashed. The appellant has cited Sec 153A to state that for this A. Yr. notice cannot be issued.

I have perused the ground and submission made. I am of the view, though notice u/s 153A need not be issued for the instant A.Yr. being search assessment year (date of search being 13-08-2013), it does not cause any prejudice to the appellant. Further, admittedly no dispute, legal or procedural, is raised by the appellant either before the AO or before me regarding completion of assessment u/s 143(3). I may point out AO has issued notice u/s 143(2) before completion of assessment. Merely issue of notice u/s 153A and mentioning of same in the top header of assessment order does not vitiate the entire order. On the facts and in the circumstances of the, in my view the legal objection raised by the appellant deserves to be dismissed. Appellant's appeal in Ground No. 1 is dismissed

2.2 During the course of hearing, the Id.AR of the assessee prayed for quashing of the assessment order for which the Id.AR of the assessee filed the following written submission.

"Before we proceed further we submit sec.153A has been amended by the Finance Act 2017 w.e.f. 01.04.2017. Because of amendment in section 153A(1)(a), 153A(1)(b), its three provisos, section 153B and 153C after six assessment years - 'and for the relevant assessment year or years' - is inserted.

We however submit this amendment is effective from 01.04.2017; it does apply where search under section 132 of the Income-tax Act is initiated or requisition under section 132A of the Income-tax Act is made on or after the 1st day of April, 2017 and it applies to assessment years preceding to search years only.

Though the Hon'ble CIT(A) has accepted that this Ass.Year being search year the AO should not have issued notice u/s 153A but to him as it has not caused any prejudice to assessee and as the AO has issued notice u/s 143(2) before assessment u/s 143(3) is finalized merely issue of notice u/s 153A and mentioning of same in the top header of assessment order does not vitiate the entire order. We submit Hon'ble CIT(A) failed to appreciate that there are plethora of judgments wherein because of failure to give notice u/s 143(2) assessment completed u/s 143(3) are vitiated.

In circumstances akin to us Hon'ble Chandigarh Bench in Rajeev Kumar vs. ACIT (2017) 186 TTJ 522 relying on decision of Hon'ble Delhi Bench of ITAT in Upendra Kumara Sharma vs DCIT, Circle 9(1) (ITA No.3141/DEL/09 dated 12.04.2010) have quashed assessment order. We may add that decision of Hon'ble Chandigarh Bench (supra) does answer doubts raised by Hon'ble CIT(A) also.

We therefore submit assessment order be quashed. “

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.4 We have heard the rival contentions and perused the materials available on record. It is not imperative to repeat the facts and circumstances of the case as the ld. CIT(A) has elaborately discussed the issue in his order. However, it is noted that on the similar issue the ITAT Chandigarh Bench in the case of Rajeev Kuamr vs ACIT (2017) 186 TTJ 522 relying on decision of ITAT Delhi Bench in the case of Upendra Kumar Sharma vs DCIT Circle – 9(1) (ITA No.3141/Del/09 dated 12-04-2010) has quashed the assessment order. The relevant observation of ITAT Chandigarh Bench is as under:-

“11.....It is well settled that an assessment is to be framed for the previous year which precedes the assessment year. Therefore, for

the previous year 2006-07, the assessment year 2007-08, this assessment year succeeds the period of search and not precedes. From the plain language of the provisions contained in cl. (b) of sub-s(1) of section 153A of the Act, it is clear that the assessment under section 153A of the Act could have been framed for the 6 Assessment Years which precedes the assessment year 2007-08. Therefore, we are of the confirmed view that the assessment under section 153A of the Act could have been framed from the Assessment Years 2001-02 to 2006-07 only and not for the Assessment Year 2007-08. As the assessment for the Assessment Year under consideration was framed by the AO under section 153A of the Act, therefore, this assessment was not valid in the eyes of law and of initio. Thus the same is quashed. Since we have quashed the assessment order under consideration considering the same as invalid, no findings are given on other grounds raised by the assessee.”

Respectfully following the decision of ITAT Chandigarh Bench in the case of Rajeev Kumar vs ACIT (supra), it is noted that the legal objection raised by the assessee before the Id. CIT(A) has merit and we concur with the submissions of the assessee. Thus Ground No. 1 of the assessee is allowed.

3.1 Apropos Ground No. 2 (i and ii) of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“6. With reference to Ground No. 2, it is see that during the course of assessment proceeding, at the business premises of the concern of appellant M/s. Mundra & Jain Marbles, inventory of the stock was prepared and the position of stock was worked out herein as under:-

Total Stock as per inventory prepared	Rs. 41,13,947/-
Stock as per books	Rs. 35,74,974/-
Excess stock	Rs. 5,39,033/-

The appellant was required to explain the excess stock found amounting to Rs. 5,39,033/-. After examining the reply of the appellant and discussion made, AO came to the conclusion that the appellant failed to substantiate that the excess stock found at his premises was on account of sale price taken by the department. An addition of Rs. 5,39,033/- was made in the income of the appellant u/s 69B of the Act on account of excess stock found.

7.

8. I have perused the submissions made and order of the AO making addition of Rs. 5,39,033/- on account of stock difference between books and found during the course of search. Contention of appellant that employee present during the course of search are not aware of cost and they quote sale price has no merits as the valuation of stock was done in presence of 2 independent witnesses and no objection was raised in the statement recorded during the course of search. The AO has already factually rejected the contentions of appellant in his order in para6.3 which may be reproduced for ready reference.

6.3 I have examined the submission of the assessee and the same is not found tenable. The following facts needs special mention in this regard.

- (i) Persons working in the assessee concern was present at the time of preparing physical inventory of the stock.
- (ii) There was no evidence in the form of register/bills that could prove that the value taken of the inventories / stock of the concern is taken by the search team was sale price. If the contention of the assessee that the sale price were taken in the inventories prepared by the Department is genuine, the same could be arrived after adopting GP Rate of around 29% consistently declared by the

assessee, this means the stock at the time of preparation of the inventories is of Rs. 46,56,050/-
[36,09,341+10,46,709(36,09,341x29%)]
on sale price basis. Thus the contention of the appellant that the inventories prepared by the Department is on sale price is not have any truth.

- (iii) Further the details of stock / inventories furnished by the appellant is in a summary manner whereas the inventories prepared by the department is in detailed manner

I find that AO has factually rebutted the submission made for the excess stock found. On the facts and in the circumstances of the case, in my view findings of the AO does not require any interference. The Ground raised is dismissed. ‘

3.2 During the course of hearing, the Id.AR of the assessee prayed that the Id. CIT(A) has erred in confirming the addition of Rs. 5,39,033/- and the Id. CIT(A) has further erred in not appreciating this fact that stock sheets were prepared by search tem not before the partners of the firm but in presence of employees of firm as they were not aware of the purchase cost. To this effect, the Id.AR of the assessee filed the following written submission.

- (i) Our's is a partnership firm wherein 2 families are involved.

(ii) We are dealing in marble and granite. In this business there is every possibility of time gap of 4-5 years and even more in purchase and sale of a part of stock.

(iii) There is no denial to this fact by lower authorities that since inception of firm valuation of inventory is taken by us on average cost method / weighted cost method which is a scientific method approved by ICAI also in AS-2 – ‘Accounting Standard-2 – Valuation of Inventories’.

(iv) It is true that inventory was taken by search team in presence of our employees which we are not denying. We are not denying quantity also wherein learned AO is also not finding any deficiency. Our only objection is to the rate. Since inception of firm we are valuing inventory on average cost method/weighted cost price which is verifiable from statement of accounts appended to ROI also. In view of decision of Hon’ble Apex Court in UCO Bank vs CIT (1999) 156 CTR 380 – a method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation.

(v) In view of aforesaid facts and decision of Hon’ble Apex Court (supra) as same method of valuation of inventory is followed consistently since inception of firm we submit the same be not interfered and addition of Rs.539033/- be deleted.

3.3 On the other hand, the Id. DR supported the order of the Id. CIT(A).

3.4 We have heard the rival contentions and perused the materials available on record. The assessee is a partnership firm and deals in the business of marble and granite. The issue in question is that during the course of search inventory of stock was taken by search team in presence of employees of the assessee. The rate quoted by the employees was sales

price and the employees were not aware of the purchase cost of the material. The assessee is taking the valuation of the stock qua weighted average cost. The Id.AR of the assessee submitted that since inception of the assessee firm is valuing inventory on average cost method/weighted cost price which is verifiable from the statement of accounts appended to Return of Income. The Id.AR of the assessee relied on the decision of Hon'ble Supreme Court in the case of UCO Bank vs (1999) 156 CTR 380 wherein it was held that a method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation. It is also noted that the assessee firm is has adopted the valuation of inventory on average cost method / weighted cost which is a scientific method approved by ICAI in AS-2—Accounting Standard-2 –Valuation of Inventories. The assessee has also filed the copy of inventory of stock taken by search team containing pages 18 to 26 assessee's paper book. Looking into the facts and circumstances of the case and also the decision of Hon'ble Supreme Court in the case of UCO Bank vs CIT (supra), it is noted that there is merit in the submission of the assessee and we concur with the same. Thus Ground No. 2 of the assessee is allowed.

4.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 25-06-2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य /Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 25 /06/ 2018
*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Mundra & Jain Marbles, Kota
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle, Kota
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.432 /JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar