

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "SMC", JAIPUR
BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1248/JPR/2024 (A.Y.2011-12)

Santosh Kumar,

Garg Stone and Suppliers,

Bazar No. 7, Ramganj Mandi- 326519

PAN No.:BKKPK 5571K

..... Appellant

Vs.

ITO, Ward-4,

Bharatpur – 321 001

..... Respondent

Appellant by	:	Mr. P. C. Parwal, FCA, Ld. AR
Respondent by	:	Mr. Gautam Singh Choudhary, JCIT
Date of hearing	:	09/12/2024
Date of pronouncement	:	20/12/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of NFAC, Delhidated 27.08.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2011-12. The assessee has raised the following grounds of appeal:-

1 The Ld. CIT (A), NFAC has erred on facts and in law in confirming the addition of Rs. 25, 56,700/- by treating the cash deposit in the bank account as income from undisclosed sources. He has further erred in confirming the addition by not admitting the additional evidence filed by the assessee under Rule 46A of IT Rules, 1962.

2. THE assessee craves to amend, alter and modify any of the grounds of appeal.

3. THE appropriate cost be awarded to the assessee.”

2. The brief facts of the case are that the assessee individual was amongst the non-filers of return for the year under consideration. In the year under consideration, the assessee deposited Rs. 25, 56,700/- in cash with ICICI Bank, Dholpur on different dates. Based on this information a notice u/s. 148 of the Act was issued vide dated: 28.03.2018. In compliance to notice u/s. 148 of the Act also, the assessee did not file any return and ultimately, the case of the assessee was assessed *ex-parte* u/s. 144 of the Act at a figure of Rs. 25, 56,700/- as income from other sources. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), who in turn dismissed the appeal of the assessee on the ground that additional evidence filed under rule 46A of the I.T. Rules, 1962 are not admissible and the assessee intentionally avoided the proceedings before the AO and has not adduced any evidence/submissions before him. The assessee being further aggrieved with the order of the Ld. CIT (A) preferred the present appeal before us.

3. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith the grounds taken before us. It is observed that the findings of the Ld. CIT (A) are correct as far as the behavior of the assessee is concerned before the AO. There is no doubt that the assessee intentionally avoided the proceedings and has not bothered to comply before the AO, but we place our reliance on the powers of the Ld. CIT (A) as provided in section 251 of the Act as under:

Powers of the Joint Commissioner (Appeals) or the Commissioner (Appeals).

251. (1) in disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

- (a) *in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;*

Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment;

- (aa) *in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;*
- (b) *in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*
- (c) *In any other case, he may pass such orders in the appeal as he thinks fit.*

(1A) *in disposing of an appeal, the Joint Commissioner (Appeals) shall have the following powers—*

- (a) *in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;*
- (b) *in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*
- (c) *In any other case, he may pass such orders in the appeal as he thinks fit.*

(2) *The Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

Explanation.—In disposing of an appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals), may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, by the appellant.

4. In view of the above explanation below section 251 of the Act, the Ld. CIT (A) which were not the part of proceedings before the AO. As observed (supra)

that the behaviour of the assessee was not appreciable before the AO, still in our opinion only real income can be taxed and there is no scope of taxing the notional income. As it is transpired that the assessee, came forward fully to adduce the evidences and to discuss the matter before the Ld. CIT (A). In that situation, in our opinion, a liberal view needs to be taken by the Ld. CIT (A) and matter is to be decided on its merits.

5. Before us the assessee submitted that he was involved in the business of trading of Kota Stones. The purchases were made by the assessee from Ramganj Mandi, Kota sale and most of the sales are made at Delhi, Gurgaon, Noida and Jaipur etc. where the buyer of the goods deposit the sale proceeds in the bank account of the assessee. The amount so deposited was withdrawn by the assessee for making payments of the purchases. To substantiate its indulgence in business the assessee produced and filed before us the registration certificate issued by the VAT Department, confirming his details like name, address, type of business etc.

6. It was submitted before the Ld. CIT (A), that for A.Y. 2010-11, i.e. immediate preceding year, the revenue has accepted the income of the assessee at Rs. 1,42,000/- on cash deposit of Rs. 13,69,875/-, while assessed the income of the assessee u/s. 143(3) r.w.s. 147 of the Act. Alternatively, the assessee relied on Peak Credit Theory and figure comes out to be Rs. 1, 39,000/-. It is observed that the assessee is in the business of retail, where section 44AD of the Act can be applied and Gross deposit can be taxed @ 8% on total deposit as net profit of the business, which comes to Rs. 2,04,536/-.

7. This fact is not under challenge now that the assessee was indulge in the business of Kota Stone on retail basis, as the same position has been accepted by the Revenue in immediate preceding A.Y. In view of this fact, Ground No. 1 raised by the assessee is partially allowed and addition is restricted upto Rs. 2, 05,000/- and addition made by the AO of Rs. 25, 56,700/- and further confirmed by the Ld. CIT (A) is deleted.

8. **In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 20th day of December 2024.

Sd/-

Sd/-

(Dr. S. SEETHALAKSHMI)

JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 20/12/2024

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt.Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	20.12.2024		Sr.PS/PS
2	Draft Placed before author	20.12.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM

5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8.	Date on which the file goes to the Head clerk			
9.	Date of Dispatch of order			