

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

श्री भागचन्द्र, लेखा सदस्य एव श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 606/JP/2016  
निर्धारण वर्ष/Assessment Year : 2009-10

The ACIT Central Circle- 1 Jaipur	बनाम Vs.	Smt. Kulsum Malik 73, Suraj Nagar East, Civil Lines, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADAPM 3662 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Pratima Kaushik, CIT - DR  
निर्धारिती की ओर से / Assessee by: Shri Vijay Goyal, CA and  
Shri Gulshan Agarwal, CA

सुनवाई की तारीख / Date of Hearing : 20/04/2017  
घोषणा की तारीख / Date of Pronouncement : 25/04/2017

आदेश / ORDER

PER BHAGCHAND, AM

The Revenue has filed an appeal against the order of the Id.  
CIT(A)-4, Jaipur dated 31-03-2016 for the assessment year 2009-10  
raising therein following grounds of appeal.

“1. Whether on the facts and in the circumstances of the case the Id. CIT(A) was right in restricting the addition to Rs. 14,63,159/- (correct figure Rs. 10,75,114/-) against Rs. 25,38,273/- made on account of undisclosed receipt from beauty parlors ignoring the contents of the seized material and statements of the assessee.

2. Whether on the facts and in the circumstances of the case the ld. CIT(A) was right in deleting the addition of Rs. 16.00 lacs made on account of goodwill receipts without considering the decision in the case of CIT vs. Milerant Co. Ltd. ,246 ITR 316.”

2.1 Apropos Ground No. 1 of the Revenue, the facts as emerges from the order of the ld. CIT(A) is as under:-

“4.1.3 I have considered assessee's submission and also taken a note of judicial pronouncement relied upon the appellant as well as the factual matrix of the case. I found the AO has compared the receipts of the parlour from seized records to determine suppressed receipts of the parlour. He ignored the expenditure side of the seized records. He merely relied on the search statement and held that all the expenses relating to the parlour are recorded in the regular books of account of the assessee. The search statement cannot override the evidence seized by the department in the shape of documents. The gross receipts cannot be taxed as income. Therefore, under the facts and circumstances of the case, I direct the AO to give credit of the expenses recorded in the seized documents but not found recorded in the regular books of account . The A/R of the assessee has made working for this. The comparative chart is placed at PB pg 100 to 102 which shows the total expenses of Rs. 14,63,159/- are recorded in the seized documents but not in regular books of the parlour. This expenses were incurred to earn the suppressed receipts of the parlour therefore, it should be deducted from the suppressed receipts of the parlour. Therefore, I direct the AO to delete the addition of Rs. 14,63,159/- and rest of the addition of Rs. 25,38,273 – Rs. 14,63,159 = Rs. 10,75,114/- is sustained.”

2.2 During the course of hearing, the ld. DR relied on the order of the AO and submitted that the ld. CIT(A) has erred in sustaining the addition to Rs.10,75,114/- as against Rs. 25,38,273/-made on account of undisclosed receipts from beauty parlors ignoring the contents of the seized material and statement of the assessee.

2.3 On the other hand, the ld. AR supported the order of the ld. CIT(A) and submitted the following written submission on the issue in question.

**“3.1.2 Submission of the assessee**

1. The ld AO made the addition of Rs. 25,38,273/- which was reduced to Rs. 10,75,114/- by giving relief of Rs. 14,63,159/- by allowing the expenses recorded in the same seized documents. The findings of ld CIT(A) are at pg 15 of his order. The assessee relies on the findings of ld CIT(A).
2. While computing the income of the assessee on the basis of seized papers the ld. AO added the entire receipts of the parlor recorded on the seized papers over and above to recorded in regular books of accounts as income of the assessee presuming that the expenses relating to such receipts have been recorded in regular books of accounts of such parlor. Though the presumption taken by the ld. AO is based on the statements of the assessee but the seized documents clearly show that the statement of the assessee in this regard was not correct and some of the expenses were also unrecorded. Thus, the conclusion drawn by the ld AO is not in accordance to documents seized during the course of search.
3. The papers on the basis of which the unaccounted receipts of parlors were work out by ld. AO also contain the details of expenditure of such parlor for the same period. While computing the income of assessee on the basis of such seized documents the ld. AO only compared the receipts recorded on such documents from regular books of accounts and no comparison of expenses recorded on such documents was made. If the same would have been made it would be clear that against the unaccounted receipts there are some unaccounted expenses too which has not been accounted for in regular books of accounts of the

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But this exercise has not been done by the Id. AO and he added the entire unaccounted receipts as income of the assessee. It is admitted legal position that the seized documents should be read as whole and the undisclosed income on the basis of seized material should be computed by taking into consideration all the contents of such seized documents but the same has not been happened in the case of the assessee and the part of the entries of the seized documents were only considered by the AO.

Further in support of his action, the Id. AO relied upon the statement of the assessee wherein she admitted that the entire expenses of the parlor have been accounted for in books of accounts. But the oral statements cannot supersede to the seized documents and the seized documents which contain the details of receipts as well as the detail of expenses.

It is settled law that the AO is quasi-judicial authority and should be governed in his function by judicial consideration and must conform to the rules of natural justice and must proceed without bias- **Tin Box Co. Vs CIT 249 ITR 216 (SC)**. It is also settled law that the AO must act honestly on the material before him and not vindictively, capriciously, or arbitrarily- **Gurumukh Singh Vs CIT 12 ITR 393, 427 (FB)**, **Dakeshwari Cotton Mills Ltd Vs CIT 26 ITR 775**,

4. We have submitted the parlor wise chart before Id CIT(A) which consist the head to head comparison of expenses recorded on seized material and against which the expenses recorded in regular books of accounts. From the perusal of such chart the Id CIT(A) found that position of expenses as per seized paper viz a viz recorded in regular books of accounts was as under: -

a) **Mahaveer Nagar Parlor**

Month	Expenses as per seized documents	Expenses as per regular books of accounts
April-08	1,77,609	48,836
May-08	2,12,726	59,141
June-08	2,17,518	65,284
July-08	1,95,700	61,289
Aug-08	2,01,337	66,041
Sept. 08	2,10,832	60,539

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Oct 08	2,04,957	96,468
Nov 08	2,46,015	1,02,855
Dec 08	2,49,691	85,094
<b>Total</b>	<b>19,16,385</b>	<b>6,45,547</b>

Excess of expenses of Mahaveer Nagar parlor as recorded in seized documents in excess to expenses recorded in regular books of accounts Rs. 12,70,838/-

**b) Hanuman Nagar Parlor**

Month	Expenses as per seized documents	Expenses as per regular books of accounts
Nov.-08	1,36,926	32,248
Jan-09	90,249	50,810
Mar-09	85,085	51,384
<b>Total</b>	<b>3,12,260</b>	<b>1,34,442</b>

Excess of expenses of Hanuman Nagar parlor as recorded in seized documents in excess to expenses recorded in regular books of accounts Rs. 1,77,818/-

**b) Bani Park Parlor**

Month	Expenses as per seized documents	Expenses as per regular books of accounts
Oct.08	42,843	28,340

Excess of expenses of Bani Park parlor as recorded in seized documents in excess to expenses recorded in regular books of accounts Rs. 14,503/-

5. Thus after above submission the total additions in total income of the assessee should be of Rs. 10,75,114/- only as against Rs. 25,38,273 added by ld. AO detail of which is as under: -

Name of parlour	Unaccounted receipts as added by ld. AO	Unaccounted expenses against unaccounted receipts	Net unaccounted receipts
Mahaveer Nagar	22,10,059	12,70,838	9,39,221

Hanuman Nagar	2,71,705	1,77,818	93,887
Bani Park	56,509	14,503	42,006
<b>Total</b>	<b>25,38,273</b>	<b>14,63,159</b>	<b>10,75,114</b>

**Therefore, Id CIT(A) has rightly sustained the addition of Rs. 10,75,114/- as against Rs. 25,38,273/- made by AO.’’**

2.4 We have heard the rival contentions and perused the materials available on record. Brief facts of the case are that the assessee is individual and during the year under consideration main source of income of assessee was from business of beauty parlors. The assessee filed her regular return u/s 139(1) of Income Tax Act on 28.09.2009 declaring total income Rs. 12,43,400/-. The department carried out search & seizure operations on assessee on 11.11.2010 . The case of assessee was centralized at Central Circle-1, Jaipur. Notice u/s 153A was issued on 09.08.2011, which was served to assessee on 10.08.2011 . In pursuant to notice u/s 153A of Income Tax Act, the assessee filed her return on 24.10.2011 declaring the same income which she declared in original return i.e. income of Rs.12,43,400/-. It is also noted that the assessment was completed by AO vide his order dated 30.03.2013 assessing the total income at Rs. 61,16,804/- as against returned income of Rs. 12,43,400/- It is further noted from the assessment records that the AO had made an addition of Rs. 25,38,273/- on account of alleged suppressed receipts of

The ACIT, Central Circle- 1, Jaipur vs. Smt. Kulsum Malik, Jaipur Mahaveer Nagar, Hanuman Nagar and Bani Park Parlor of the assessee which has been reduced by the ld. CIT(A) in first appeal by Rs. 14,63,159/- and sustained addition of Rs. 10,75,114/- by observing as under:-

*“.....The search statement cannot override the evidence seized by the department in the shape of documents. The gross receipts cannot be taxed as income. Therefore, under the facts and circumstances of the case, I direct the AO to give credit of the expenses recorded in the seized documents but not found recorded in the regular books of account . The A/R of the assessee has made working for this. The comparative chart is placed at PB pg 100 to 102 which shows the total expenses of Rs. 14,63,159/- are recorded in the seized documents but not in regular books of the parlour. This expenses were incurred to earn the suppressed receipts of the parlour therefore, it should be deducted from the suppressed receipts of the parlour. Therefore, I direct the AO to delete the addition of Rs. 14,63,159/- and rest of the addition of Rs. 25,38,273 – Rs. 14,63,159 = Rs. 10,75,114/- is sustained.”*

Thus looking to the submissions of the ld. AR of the assessee at para 4 and 5 of the written submission describing the bifurcation of the amounts at Mahaveer Nagar, Hanuman Nagar and Bani Park Parlour's as above besides the observation of the ld. CIT(A) in this ground of appeal, we feel that the ld. CIT(A) is justified in restricting the addition to the extent of Rs. 10,75,114/-. Thus Ground No. 1 of the Revenue is dismissed.

3.1 Apropos Ground No. 2 of the Revenue, the facts as emerges from the order of the Id. CIT(A) is as under:-`

4.2.3. I have considered assessee's submission and - also taken a note of judicial pronouncement relied upon by the appellant as well as the factual matrix of the case. I found that the assessee has repaid the amount of Rs. 21,50,000/- as against the receipt of amount of Rs. 21,00,000/- from Smt.Saroj Joshi which includes impugned amount of Rs. 16.00 lacs. In the books of account, the assessee treated Rs. 16,00,000/- as receipt on account of "Goodwill" and Rs. 5,00,000/- on account of contribution to capital account of firm. Income tax can be levied on a particular item after analyzing the true nature of the receipt -whether it is taxable receipt or not. It is undisputed fact that litigation in between the assessee and Saroj Joshi were into Courts and High Court appointed an Arbitrator - a retired High Court Judge (PB Pg 52-54) who decided a dispute in favour of Saroj Joshi directing the assessee to pay Rs. 21,50,000/- to Saroj Joshi (copy of award at PB page 55). The assessee has paid this amount by four cheques, copy of which is at PB pg 56-59. The outcome of this litigation proves beyond doubt that the amount was liability of the assessee not the income and the assessee made wrong entry in her account under bona fide belief that this amount is not repayable. The taxability of an amount depends on nature of the transaction and entries in the books of account cannot be decisive or conclusive in the matter. In this case, the arbitrator was appointed by the Hon'ble Rajasthan High Court and the assessee has repaid the amount in compliance of the Award passed by the Arbitrator. Considering the above facts and circumstances of the case, I am of the opinion that the amount of Rs. 16.00 lacs is not taxable receipt in the hands of assessee, accordingly , therefore, direct the AO to delete the addition of Rs. 16.00 lacs made by him on account of goodwill.'`

3.2 During the course of hearing, the ld. DR relied on the order of the AO and submitted that the ld. CIT(A) has erred in deleting the addition of Rs. 16.00 lacs made on account of goodwill receipt without considering the decision in the case of CIT vs. Milerant Co. Ltd., 246 ITR 316.

3.3 On the other hand, the ld. AR of the assessee supported the order of the ld. CIT(A) and filled the following written submission on the issue in question.

**“Submission of the assessee: -**

- 1) The ld AO made the addition of Rs. 16,00,000/- on account of receipt of alleged “goodwill” from Smt Saroj Joshi. During the course of appeal proceedings the assessee filed additional evidence as mentioned at pg 4 of CIT (A)’s order to prove that the receipt was against liability which the assessee repaid in compliance of order of arbitrator appointed by Hon’ble Rajasthan High Court. The findings of ld CIT(A) are at pg 19 of his order. The assessee relies on the findings of ld CIT(A).
2. During the year under consideration the assessee vide partnership deed dated 14.01.2009 entered into a partnership with Smt. Saroj Joshi to carry on the business of beauty clinic at Mahaveer Nagar. The assessee received total sum of Rs. 21,00,000/- from Smt. Saroj Joshi on various dates out of which the amount of Rs. 5,00,000/- was credited in capital a/c of Smt. Saroj Joshi and a sum of Rs. 16,00,000/- was credited in capital a/c treating the same received against goodwill though there was no written agreement regarding receipt of Rs. 16,00,000/- as goodwill. The payee party Smt. Saroj Joshi treated this sum as loan to Smt. Kulsum Malik, therefore she demanded back this amount from assessee for which several legal communication were exchanged between assessee and Smt. Saroj Joshi and finally by the order of arbitrator dated 30.9.2013 the assessee had to pay back amount of Rs. 21,50,000/- to Smt. Saroj Joshi. We have submitted the following documents in this regard before ld CIT(A) along with application filed u/r 46A of Income Tax rules dated 25.08.2014: -

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- a) Copy of legal notice issued by Smt. Saroj Joshi dated 11.05.2011 to assessee for refunding the amount paid to assessee along with interest.
- b) Copy of reply dated 23.05.2011 given by assessee in response to notice dated 11.05.2011.
- c) Copy of notice dated 02.06.2011 given by Smt. Saroj Joshi for appointment of arbitrator.
- d) Copy of notice dated 02.06.2011 given by assessee for disapproval on name of arbitrator suggested by Smt. Saroj Joshi and for appointment of arbitrator suggested by assessee.
- e) Copy of notice dated 17.06.2011 given by Smt. Saroj Joshi for disapproval on name of arbitrator suggested by assessee.
- f) Copy of application dated 23.06.2011 filed before Additional district & session Judge, Jaipur for appointment of arbitrator.
- g) Copy of order dated 27.09.2011 passed by Additional district & session Judge, Jaipur.
- h) Copy of appeal filed before The High Court, Jaipur Bench.
- i) Copy of order of High court, Jaipur Bench, Jaipur dated 06.12.2012 wherein he appointed to Mr. Justice Bhanwroo Khan, former Judge of High court as arbitrator.
- j) Copy of entry recorded on order sheet by Mr. Justice Bhanwroo Khan (arbitrator) wherein he order to assessee to pay Rs. 21,50,000/- to Smt. Saroj Joshi.
- k) Copies of cheques of Rs. 21,50,000/- given to Smt. Saroj Joshi.

Thus from the above documents this is clear that Smt. Saroj Joshi paid the amount of Rs. 16,00,000/- to assessee as loan and the assessee wrongly treated this amount as Goodwill. Now from the legal dispute settled between assessee and Smt. Saroj Joshi this has been proved that the amount was received as loan and the same has been repaid by now thus the amount of Rs. 16,00,000/-; therefore it should not be taxable in the hands of the assessee. .

3. The submission on objections of the ld. AO on this issue in his remand report dated 30.10.2014 has been reproduced by ld CIT(A) at pg 8-9 of his order, which is as under: -

- a) *At very first para the ld. AO submitted that none of the circumstances in which the additional evidence can be admitted as provide u/r 46A of Income Tax rules is satisfied in the case of the assessee. The case of the assessee is covered in circumstances (c) provided in rule 46A of I. Tax Rules. Since at the time of assessment proceedings the legal dispute was pending, therefore the assessee could not submit the legal documents to the assessing officer.*

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*However the ld. AO wrong in holding in the remand report that the assessee deliberately avoided production of such evidences, in order to conceal correct nature of the transactions mentioned in the letter and to avoid proper examination of the transactions. In fact there was no any reason to conceal the real nature of transactions because as per legal documents Smt. Saroj Joshi was claiming this transactions as Loan as against Goodwill treated by the assessee and the loan cannot be taxed as income of the assessee.*

- b) *The ld. AO held that most part of this new evidentiary document was available with the assessee during the assessment proceedings also but the assessee neither mentioned anywhere about it nor produced any part of it during the assessment proceedings. In this regard, we submit that whatever specifically demanded by the ld AO or the counsel of the assessee for assessment purpose, the assessee provided.*

*In this regard this is to submit that during the course of assessment proceedings the legal dispute was pending as in such dispute the assessee was claiming the amount under question as non refundable while the claimant party was claiming this as loan and demanding back. Since up to the assessment stage as per the assessee there was no change in the nature of receipt, therefore in view of the assessee these documents were not required to submit the ld. AO because the same would not served any purpose and nature of receipt.*

*Further in the case of the assessee these documents were not submitted before the ld. AO for sufficient cause, therefore the case of the assessee is duly covered by the circumstances provided u/r 46A of Income Tax rules and the additional evidence should be accepted in the interest of the justice. Further the facts of case law relied by the assessee in her application are identical and support the claim of the assessee.*

- c) *So far as submission of the ld. AO in para 1 that no partnership deed was produced along with application filed for admission of additional evidence. In this regard this is to submit that the copy of partnership deed was submitted to AO during the course of assessment proceedings and after that the receipt of Mahaveer Nagar parlor from January-2009 was treated by ld. AO as assessable in the hands of the firm. The copy of partnership deed is at **PB Page105-108**. In the partnership deed there is no reference of payment of Rs. 16,00,000/- to the assessee by Smt. Saroj Joshi. There was no written*

The ACIT, Central Circle- 1, Jaipur vs. Smt. Kulsum Malik, Jaipur agreement/understanding between assessee and Smt. Saroj Joshi regarding receipt of sum of Rs. 16,00,000/- as Goodwill. Further if the assessee has credited something in wrong head the same cannot be taxed in the hands of the assessee. The real income can only be taxed in the hands of the assessee. After settlement of legal dispute between assessee and Smt Saroj Joshi it has become clear that sum of Rs. 16,00,000/- was not income of the assessee but refundable amount to Smt. Saroj Joshi, therefore the same cannot be taxed as income of the assessee.

- d) The ld. AO claiming in para 2 that once the assessee herself claimed that the amount received from Smt. Saroj Joshi was against the goodwill, therefore now she cannot deny it. In this regard as stated in earlier paras that when this amount was received from Smt. Saroj Joshi there was no written agreement/understanding between assessee and Smt. Saroj Joshi regarding receipt of sum of Rs. 16,00,000/- and nature of receipt. The assessee treated as goodwill while Smt. Saroj Joshi paid this to assessee as a loan repayable back. Therefore merely something has been credited by the assessee in wrong head under wrong belief, the same cannot be treated as income of the assessee. For taxing a receipt as income of the assessee the real nature of receipt is required to be taken into consideration and after settlement of legal dispute it is very well clear that the assessee wrongly treated this amount as goodwill while the same was refundable loan and once it is proved that the receipt is repayable/refundable to payer the same cannot be treated as income of the payee. Reliance is placed on the following decisions:-
- (i) **CIT vs. Hazarimal Milapchand Surana 263 ITR 573** wherein Hon'ble Rajasthan Highcourt has held that mere book entry does not create income and surplus on revaluation of asset is not to be treated as income.
- (ii) **Kedarnath Jute Manufacturing Co. vs. CIT 82 ITR 363**, the Hon'ble Supreme Court has held that mere accounting entry would not give rise to income unless income has resulted in real terms.
- e) So far as submission of the ld. AO in para 3 that from the order of arbitrator it cannot be established whether this total payment of Rs. 21,50,000/- by the assessee to Smt. Saroj Joshi was to be made on account of that amount of Rs. 16,00,000/- which is in question here. In this regard this is to submit the from the legal

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*notice of Smt. Saroj Joshi issued to assessee, wherein she claimed the refund of Rs. 21,00,000/- from assessee (which were paid by her to the assessee on different dates). Out of this the amount of Rs. 5,00,000/- was credited in capital a/c of Smt. Saroj Joshi in partnership firm and a sum of Rs. 16,00,000/- was credited in capital a/c of assessee treating the same received against goodwill. Thus from the legal notice it is clear that Smt. Saroj Joshri was only demanding her money along with interest whatever was paid by her to the assessee earlier, therefore there is no reason with ld. AO to suppose that the payment of Rs. 21,50,000/- was made to Smt. Saroj Joshi other than for the amount received from her earlier.*

- f) *As regard to finding of ld. AO in para 4 regarding justifying the taxability of Rs. 16,00,000/- in hands of the assessee as revenue receipt this is to submit that something can be taxed as revenue receipt when the same was received against sales of goods/services and the receipt is not refundable. In the instant case no goods/services were sold by the assessee to Smt. Saroj Joshi, therefore the same cannot be taxed as revenue income of the assessee. Further this amount cannot be treated as taxable capital receipt too because the same was refundable to the payer and later on the same was refunded back.*
- g) *As regard to finding of ld. AO in Para 5 regarding non treating the amount in question as loan; this is to submit that how the same can be treated as taxable revenue/capital receipt in the hands of the assessee more so when the same amount has been refunded back by the assessee to the payer. No income can be taxed on the basis of wrong entry passed by the assessee in her books of accounts at her own. The assessee is not changing the nature of receipt but proving the real nature of receipt which was wrongly treated as goodwill in books of accounts. Further there is no provision in the law that the refundable receipt should be taxed in the hands of the assessee in the year of receipt and the same can be claimed as expenses in the year of payment.”*

3) The revenue has cited case reported in 246 ITR 316. The facts of this case is totally different to the case of assessee. In the case the issue was whether the receipt against the trade mark and copy right is capital receipt or revenue receipt. Further in the case there was written agreement under which the company received amount of Rs. 50000/- against use of license and trade mark “miller” . In the case of the assessee the receipt was against liability which was actually repaid by assessee and there was no written agreement to justify the receipt against “goodwill”

In view of above this is to submit that the amount of Rs. 16,00,000/- credited by assessee claiming the same as receipt against goodwill was actually refundable amount to Smt. Saroj Joshi which has been refunded to her, therefore the same cannot be taxed as income of the assessee and Id CIT(A) has rightly deleted the addition.’’

3.4 We have heard the rival contentions and perused the materials available on record. In this case, the AO observed that an amount of Rs. 16.00 lacs was credited in the capital account of the assessee as a goodwill receipt for which the AO required the assessee to explain the nature of receipt and as to how the same is not a taxable receipt. It is further observed that the Id. AR of the assessee vide letter dated 15-02-2013 submitted that she had received a sum of Rs. 16.00 lacs from Smt. Saroj Joshi on account of goodwill during the year as a creation of goodwill which is a first time realization. The Id. AR of the assessee further submitted that the assessee herself generated the name for herself by setting up and creation of chain on this account which is capital in nature only and not liable to tax being not a revenue receipt. The AO did not accept the contention of the assessee. In first appeal the Id. CIT(A) has deleted the addition made by the AO. It is noted from the available records that the assessee had repaid the amount of Rs. 21.50 lacs as against the receipt of amount of Rs. 21.00 lacs from Smt. Saroj Joshi

which includes the impugned amount of Rs. 16.00 lacs. In the books of account the assessee treated Rs. 16.00 lacs as receipt on account of goodwill and Rs. 5.00 lacs on account of contribution in capital account of firm. It is further noted that there was litigation between the assessee and Smt. Saroj Joshi for which Hon'ble High Court appointed an Arbitrator a Retired High Court Judge who decided the dispute in favour of Smt. Saroj Joshi by directing the assessee to pay Rs. 21.50 lacs to Saroj Joshi. She had paid the amounts by four cheques. The Id. CIT(A) has also observed in his order *that the outcome of this litigation proves beyond doubt that the amount was liability of the assessee not the income and the assessee made wrong entry in her account under bona fide belief that this amount is not repayable.* It is also notable that Hon'ble High Court had appointed an Arbitrator to decide this issue between the assessee and Smt. Saroj Joshi and as per direction of an Arbitrator, the assessee had made compliance and repaid the amount of Rs. 21.50 lacs. Hence taking into consideration all the facts and circumstances of the case, we find no reason to interfere with the order of the Id. CIT(A) wherein he observed as under:-

*“Considering the above facts and circumstances of the case, I am of the opinion that the amount of Rs. 16.00 lacs is not taxable receipt in the hands of assessee, accordingly ,*

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*therefore, direct the AO to delete the addition of Rs. 16.00  
lacs made by him on account of goodwill.’’*

Hence, in view of the above deliberations, the Ground No. 2 of the  
Revenue is dismissed.

4.0 In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 25 -04-2017.

Sd/-  
(कुल भारत)  
(KUL BHARAT)  
न्यायिक सदस्य /Judicial Member

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

जयपुर /Jaipur

दिनांक /Dated:- 25 /04/ 2017

\*Mishra

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

1. अपीलार्थी /The Appellant- The ACIT, Central Circle- 1, Jaipur
2. प्रत्यर्थी / The Respondent- Smt. Kulsum Malik, Jaipur
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. 606/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar