

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

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 528/JP/2011
निर्धारण वर्ष / Assessment Year : 2006-07

Rakesh Borad, Prop.- M/s Burad Aluminium & Interior, 136, Janakpuri-1, Imliphatak, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 6(2), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAZPB 9268 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri H.M. Singhvi &
Shri Vijay Mehta (CA)
राजस्व की ओर से / Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 27/04/2017
उदघोषणा की तारीख / Date of Pronouncement : 28/04/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order dated 17/03/2011 passed by the Id CIT(A)-II, Jaipur for the A.Y. 2006-07. The only issue involved in this appeal is against sustaining the addition of Rs. 10,23,031/- in the capital account of the assessee.

2. During the course of hearing, the Id AR of the assessee pleaded that the assessee has filed additional evidence before the ITAT and prayed that

the same may be admitted and the matter may be restored back to the file of the Assessing Officer.

3. On the other hand, the Id DR has submitted that the Assessing Officer provided many opportunities to the assessee during the course of assessment proceedings. The Id. CIT(A) also granted various opportunities to the assessee but all these documents were not submitted before the authorities below. Further she also pleaded that in the submissions made before the lower authorities, the assessee has never taken a plea that the amount brought into the capital account was belonging to the old proprietary concerned Borad Aluminium, for which the assessee is now want to change the stand after 12 years and tried to explain the introduction of the capital by this unreliable and unverifiable document.

4. I have heard both the sides on this issue. I have also perused the various documents submitted even in the additional evidences. The Id. CIT(A) has decided this issue by holding as under:-

“In the third ground of appeal, the appellant has challenged the addition of Rs. 11,51,095/- on account of unexplained capital. From the perusal of the assessment order, it is seen that the AO noticed from the copy of capital account enclosed with the return of income that the appellant had introduced capital of Rs 11,51,095/- during the year under reference. When confronted, the assessee explained that he had substantial savings in the form of old capital and in support of the same, he filed copies of his returns of income tax. The AO disbelieved the version of the assessee on

the ground that the capital account or balance sheets were never enclosed with the returns filed from AY 2003-04 onwards and alleged version of the assessee was nothing more than a concocted story so as to explain the introduction of the capital which was ultimately invested in the new business of fabrication and manufacturing of Aluminum structures. The AO held that it was not known that in what form this capital was held by the assessee and how it was liquidated and introduced in his new business. The AO held that the assessee was an income tax assessee from AY 2003-04 only and since the capital account and balance sheets were never filed, it was difficult to accept the version of the assessee. During the present appellate proceeding, it was argued by the counsel of appellant" that after passing out his B-Com exam in 1987, he started the work of Aluminum from September 1989. The appellant got married in the year 1993 and amount of Rs 51,111/- was received by him from his father in law at the time of marriage ceremony. In support of the same, an affidavit from his father-in-law i.e. Sh. Chandmal Dosi was also filed. The appellant also alleged to have received amount of Rs 95,000/- from his father i.e. Sh. Nemichand Burad at the time of his marriage. Further his father had also allegedly given him amount of Rs 1,10,000/- later on and in support of the same, an affidavit from his father i.e. Sh. Nemichand Burad was also filed. It was further explained that he was employed in private service from 1.4.94 to 31.3.97 and he had received salary of Rs 1,62,000/- during this period. It was also alleged that the appellant had received share in the agricultural income of M/s Nemichand Burad & Sons, HUF from AY 1990-91 to AY 2000-01 and his share of agricultural income was stated to be Rs 3,77,800/-. Thus it was argued that the appellant had sufficient cash on hand which was introduced as capital during the year. With this background, in my opinion it is imperative to examine the income shown by the assessed in the returns of income filed by him. It is seen from the records that the

appellant was a non filer before AY 2003-04 and therefore the claim of opening capital of Rs 10,23,031/- as on 1.4.2002 is non verifiable. I have also perused the copy of Income Tax return (Form No. 2D) of the appellant for AY 2001-02. It is seen that the appellant had shown total income of Rs 78,470/- on which tax of Rs 1,672/- was payable. From the copy of acknowledgement, it is seen that it does not bear the seal and signature of the receiving official of the I T Department. Therefore there are grave doubts whether the said return of income was ever filed or not. The appellant had allegedly not enclosed any capital account with it. I have also perused the copy of Income Tax return (Form No. 2D) of the appellant for AY 2002-03. It is seen that the appellant had shown total income of Rs 77,560/- on which tax of Rs 1,337/- was payable. From the copy of acknowledgement, it is seen that it does not bear the seal and signature of the receiving official of the IT Department. Therefore there are grave doubts whether the said return of income was ever filed or not. The appellant had allegedly not enclosed any capital account with it. Similarly in the return of income for AY 2003-04, the appellant had shown total income of Rs 92,330/- on which tax of Rs 390/- was payable. This return of income was filed belatedly on 31.3.2004. In the return of income for AY 2004-05, the appellant had shown total income of Rs 1,02,140/- on which tax of Rs 786/- was payable. This return of income was also filed belatedly on 31.3.2005. For AY 2005-06, the appellant had shown total income of Rs 1,52,690/- on which tax of Rs 11,407/- was payable. However the appellant had never enclosed any capital account with these returns of income. For the first time, the appellant has filed his capital account with the return of income for AY 2006-07 when the new business of fabrication of Aluminum structures was started and there was capital introduction of Rs 11,51,095/-. It is quite strange that though the assessee had never filed capital account with his returns of income, yet he had audacity to file fabricated copies of capital account before me as

additional evidences. The counsel of appellant has also submitted summary of his capital account from AY 1990-91 to AY 2001-02 whereas in reality the first return of income was filed- by the appellant for AY 2003-04 only. Since these capital accounts were prepared subsequently as an afterthought to explain the sources of capital introduced, I do not accord any cognizance to it. In the acknowledgement of returns of income for AY 2003-04 to AY 2005-06, the only documents attached with the return of income were TDS certificates, copies of LIC receipts, copy of medi-claim insurance policy and computation of income. The assessee had never filed any balance sheet or capital account with the returns of income. Even in AY 2006-07, the appellant had shown Nil opening capital which meant that the present explanation of the appellant is more in the nature of an afterthought whereas he had not filed any returns of income prior to AY 2003-04. There is no documentary evidence that the' appellant had substantial savings to the extent of Rs 11,51,095/- except his self serving statement and same was allegedly utilized in the new business. There is no evidence as to what kind of income was earned by the appellant before AY 2003-04 from alleged job work because neither any documents nor any details in support of the same have been filed. This whole story has been concocted just to explain the introduction of capital. The sources of capital of Rs 3,77,800/- are stated to be share of agricultural income from HUF but not an iota of evidence has been filed for earning of said agricultural income by the HUF. The assessee has filed some illegible documents of land holding but name of said HUF does not appear therein. There are four co-owners of the land in question and it is not known as to what was the agricultural income shown by the other co-owners. Further it is a settled law that classification of land in revenue records is not conclusive and it must be backed up by evidence of actual agricultural operations. The Hon'ble Madras High Court in the case of N K S Rengeswaran (242 ITR 344) held that in the absence of any evidence to

show that the lands were actually cultivated, the income could not have been treated as agricultural income. The reference to the lands being classified as "tope" in the revenue records and the direction by the Commissioner of Agricultural Income-tax on the said basis, had no material to support it, except the classification of the lands as "tope". The classification in the revenue records was not conclusive. The said HUF had never filed its return of income and no details regarding the crops grown, agricultural expenses and labour expenses were submitted. The sale bills of agricultural produce were also not submitted. The appellant has also filed an affidavit from his father-in-law i.e. Sh. Chandmal Dosi wherein it has been alleged that he had given gift of Rs 51,111/- to the appellant at the time of marriage. The affidavit is dated 7.10.2009 and marriage was solemnized on 16.2.1993. The father in law of the appellant is not an income tax assessee and he has not filed any return of income. Nothing has been stated about his credit worthiness and it is not known that what were his sources of income. It is also stated that he had given amount of Rs 35,000/- to the appellant as bakshis on 2.8.99. However it is not known as to what was the occasion. Since his credit worthiness has not been proved, I am constrained to reject his affidavit. Further the appellant has also filed an affidavit from his- father i.e. Sh. Nemichand Burad that he had given amounts of Rs 95,000/- in 92-93 and Rs 1,10,000/- in 93-94 out of his retirement benefits. However no documents regarding retirement benefits, pension, gratuity and provident funds have been filed to explain the sources of payment. Since the father of the appellant was working as a govt. employee, he could have given the amount in question by way of account payee cheques from his bank account. No exigency or ostensible reason for giving the amounts of Rs 95,000/- and Rs 1,10,000/- in cash have been explained by the appellant. Nothing has been stated about his credit worthiness and it is not known that what were his sources of income. The father of the appellant is not-an income tax assessee and he

has not filed any return of income. Since his credit worthiness has not been proved, I am constrained to reject his affidavit. The affidavits of father & father in law of the appellant alleging that they had given substantial amounts to the appellant were nothing more than a self serving document. In a case of the present kind, a party who relies on a recital in a deed has to establish the truth of those recitals, other-wise it will be very easy to make self- serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. The taxing authorities are not required to put on blinkers while looking at the documents produced before them. They are entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents. In the present case, the surrounding circumstances do indicate that all is not well with the alleged claim of receiving marriage gifts and friendly loans from father. The mere admission of the lenders could not lead to the conclusion that they were in a position to advance the moneys to the assessee and since the assessee could not prove that the lenders were in a position to advance the money to the extent they stood in the books, the onus that lay on the assessee under section 68 of the I T Act had not been discharged. In the case of Banarsi Prasad Vs CIT (304 ITR 239), during the previous year relevant to the assessment year 1987-88, the credit entries in the assessee's account showed receipt of Rs. 74,400 from his wife and of Rs. 69,300 from his minor son. It was found that assessee's wife had no source of income and was not taxed either earlier or later. Similar was the case with his son. The Tribunal held that in order to make the explanation satisfactory, the assessee was required to furnish the additional information as to where the assessee's wife and minor son, having no source of income, obtained the money which was given to the assessee.

On a reference, it was held by Hon'ble Allahabad High Court that the explanation to be furnished under section 68 in order to qualify as "satisfactory" would require the assessee to disclose the source of the depositor for establishing the "capacity" of the creditor. Mere explanation regarding the source of the receipt or credits in the account books of the assessee that he received the money from his wife and minor son who were not earning was far from "satisfactory". In the present case, the appellant has further claimed that from 1.4.94 to 31.3.97, he was employed in a private service and had earned salary income of Rs 1,62,000/-. In support of the same, a letter from M/s Swagatam Gallary has been filed wherein he was alleged to be working as marketing executive. I have searched the entire PAN data but no concern by the name of M/s Swagatam Gallary was found existing. Further the address is also incomplete i.e. Janta Store, Bapu Nagar, Jaipur. It is also not known whether the said concern was filing its income tax return or not. It is also not known whether salary paid to the appellant was debited in the books of accounts or not. The appellant was basically a commission agent for LIC and he did not possess sufficient educational qualifications to work as a marketing executive. On the other hand, he was doing meager job works. The appellant has claimed to have made 100% savings out of his salary income and no withdrawals for household expenses were allegedly made. The appellant has also shown commission income of Rs 39,800/- by way of commission from LIC but from the document furnished before me, it is seen that there is one certificate from LIC, Jaipur Division wherein commission income of Rs 1,013/- has been paid to the appellant in respect of 7 insurance policies procured by him. Taking assistance from the decision of Hon'ble Supreme Court in the case of Durga Prasad More (82 ITR 540), I hold that surrounding circumstances do not evoke confidence about the genuineness of alleged capital introduced during the year. There is no factual change in this position even during the present

appellate proceedings. No evidence has been submitted before me to rebut the findings of AO. The claim of the assessee that he had substantial savings which were utilized to introduce capital is also not backed up any documentary evidence. There is no plausible explanation as to how the assessee had accumulated such a huge cash on hand of Rs 11,51,095/- defying all human probabilities. In view of above decisions and facts & circumstances in the present case, I do not have slightest of hesitation in holding that appellant has failed to explain sources of capital introduced during the year. The meager and scanty evidences filed by the assessee deserve to be rejected. The appellant has filed his first return of income for AY 2003-04. From AY 2003-04 to AY 2005-06, the appellant had shown total income of Rs 3,57,837/-. The withdrawals for household expenses are shown at Rs 2,29,773/- leaving a surplus of Rs 1,28,064/- with the appellant. The sources of capital to the extent of Rs 1,28,064/- thus stand explained. I therefore direct the AO to restrict the addition to Rs 10,23,031/- instead of Rs. 11,51,095/- made by him. This ground of appeal is partly allowed.

Thus, the Id. CIT(A) has elaborately dealt this issue in his order. However, after perusing the material available on the record, I hold that the assessee deserved certain deductions out of the sustained addition of Rs. 10,23,031 on the following grounds:

(i) The amount of Rs. 25,850/- on account of machinery brought forwarded from the old firm, which was replied by the assessee in his submissions dated 08/8/2008 before the Assessing Officer.

(ii) The second deduction of Rs. 8,245/- on account of tools and track brought forwarded from the old firm, which is also mentioned in the reply dated 08/8/2008.

(iii) Two entries of transfer in the bank account of the assessee by cheque from the bank account of the old concerned i.e. of Rs. 22,000/- and Rs. 40,000/-. Thus, the assessee shall get relief of Rs. 96,095/-. The balance addition of Rs. 9,26,936/- is hereby sustained. Accordingly, the appeal of the assessee is partly allowed.

5. In the result, the appeal of the assessee is allowed partly.

Order pronounced in the open court on 28/04/2017.

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28th April, 2017.

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Rakesh Borad, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-6(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 528/JP/2011)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar