

आयकर अपीलिय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./ITA. No. 922/Ind/2016

निर्धारण वर्ष /Assessment Year: 2012-13

Late Shri Sanjay Paliya
Through L/H Smt. JaishreePaliya
Pipariya

PAN – ABXPP 5864H

:: अपीलार्थी /Appellant

Vs

Dy. CIT, Circle
Itarsi

:: प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by	Shri Ashish Goyal & Shri N.D. Patwa
राजस्व की ओर से/Revenue by	Shri Mohd. Javed
सुनवाई की तारीख Date of hearing	24.5.2017
उद्घोषणा की तारीख Date of pronouncement	30.5.2017

आदेश / O R D E R

PER SHRI C.M. GARG, JM

This appeal has been filed by the Revenue against the order of the learned CIT(A)-I, Bhopal, dated 10.6.2016 in First Appeal No. CIT(A)-1/BPL/IT-641/14-15 for the assessment years 2012-13.

2. The effective grounds of appeal taken by the assessee are as under :-

- (i) That, on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs.5,00,000/- being loan received from Smt. Parvati Bai Chouhan without considering the explanation offered by the assessee and without considering the documents submitted from which the genuineness of the transaction and identity and creditworthiness of the lender is clearly established.*
- (ii) That, on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the disallowance of Rs.,6,08,632/- of the labour and wages expenses without considering the explanation offered by the assessee that the regular and proper books of accounts are maintained by the assessee and hence no disallowance is called for.*

3. *That, on the facts and in the circumstances of the case, the order of the learned CIT(A) confirming the initiation of penalty proceedings u/s 271(1)(c) is not justified.*
4. *That, on the facts and in the circumstances of the case, the order of the learned CIT(A) confirming the charging of interest of Rs. 28,292/- u/s 234B is not justified.”*

3. Apropos ground no. 1, brief facts are that the Assessing Officer noticed that the assessee had taken loan of Rs. 5 lacs from Smt. Parvati Bai Chouhan on 29.9.2011 vide cheque no. 153401 of Bank of India. In response to query, the assessee explained that the lender was a close relation of the assessee and she, being a teacher, was getting pension of Rs. 14,000/- approx. p.m. However, the Assessing Officer noticed that an amount of Rs. 5 lacs was deposited in cash in the same bank account just before giving of unsecured loan to the assessee. As the lender was an old lady pension who also did not file income tax return and as no justification regarding this deposit of cash was given by the assessee during the assessment proceedings, therefore, in the absence of the creditworthiness of the lender, the Assessing Officer

added this amount to the total income of the assessee. In appeal also the assessee could not prove the creditworthiness and the genuineness of the transaction. The Commissioner of Income Tax (Appeals), therefore, confirmed the action of the Assessing Officer. Now the assessee is in appeal before the Tribunal.

4. Apropos ground no. 1 the learned counsel for the assessee submitted before us that the Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 5 lacs u/s 68 of the Act being the loan received from Smt. Parvati Bai Chouhan without considering the explanation offered by the assessee and without considering the arguments submitted from which the genuineness of transaction, identity and creditworthiness of the lender was clearly established. The learned counsel for the assessee drew our attention to various decisions of the Hon'ble High Courts including the decision of the Hon'ble Madhya Pradesh High Court in the case of CIT vs. Metachem Industries; 245 ITR 160(MP), decision of the Hon'ble Rajasthan High Court in the case of Aravali Trading Company vs. ITO; (2010) 187 Taxman 338(Raj.) and submitted that the assessee submitted confirmation, copy of bank statement,

Adhar card, copy of account in the books of the assessee and an important fact that Smt. Parvati Bai Chouhan was receiving pension of Rs. 14,000/- p.m. and the amount was given to the assessee from her savings over the period of time. The learned counsel for the assessee also pointed out that the assessee received loan from Smt. Parvati Bai Chouhan on 29.9.2011 through cheque no. 153401 of Bank of India and simply because cash was deposited in the bank account of the lender, it does not automatically prove that the cash deposited in the bank account of the lender belongs to the assessee.

5. The learned counsel for the assessee pressed into service the ratio of the decision of the Hon'ble Rajasthan High Court in the case of Aravali Trading Company (supra) and submitted that when the assessee has furnished all the details of lender then unless it is established by the Assessing Officer that the cash deposited by the lender belongs to the assessee, addition cannot be made u/s 68 of the Act. The learned counsel for the assessee strenuously pointed out that the assessee having discharged his burden by bringing existence of the depositor/lender and the depositor/lender owing

the deposits then the assessee is not required to prove the source of source. Placing reliance on the ratio of the decision of the Hon'ble High Court of Madhya Pradesh in the case of Metachem Industries (supra), the learned counsel for the assessee submitted that when cash credit is found in the assessee's books and the assessee has established that the amount has been given to him by a particular person then the responsibility of the assessee is over and there is no requirement on the part of the assessee to further show whether the amount received by him has been properly taxed in the creditors hands. The learned counsel for the assessee submitted that the lender, Smt. Parvati Bai Chouhan, was having only monthly income of Rs. 14,000/- from pension and she was 78 years old senior citizen lady and she might not have filed the return, as she was not required to file the same as her income was not liable to be taxed being lesser in quantum. The learned counsel for the assessee submitted that the Assessing Officer should have brought on record any evidence that the amount in the bank account of the lender was the money of the assessee or not her money and when the assessee has discharged the primary onus to establish identity, creditworthiness of lender and genuineness of the transaction

through banking channel then the addition made by the Assessing Officer and upheld by the Commissioner of Income Tax (Appeals) u/s 68 of the Act cannot be held as sustainable and thus the same may kindly be deleted.

6. Replying to the above, the learned DR strongly supported the action of the authorities below and submitted that as per the ratio of the decision of the Hon'ble Gujarat High Court in the case of Umesh Krishnani (2013) 35 taxmann.com 598(Guj.) where substantial amount was deposited in the bank accounts of the lender shortly prior to the issuance of cheque by them, transaction, in question, being sham, loan amount wasa to be added to the assessee's taxable income u/s 68 of the Act.

7. Placing rejoinder to the above submissions of the learned DR, the cla submitted that the ratio of the decision of the Hon'ble Madhya Pradesh High Court in the case of Metachem Industries (supr) is applicable to the present case being proposition laid down by the Hon'ble High Court, therefore, the addition may kindly be deleted.

8. On careful consideration of the above rival submissions, we are of the view that undisputedly the assessee has filed confirmation, copy of bank statement, Adhar card and copy of account of the lender in the books of the assessee, which are available at pages 9 to 12 of the assessee's paper book. Further, it is also not in dispute that the assessee received loan from his relatives Smt. Parvati Bai Chouhan through cheque. However, controversy arose when the Assessing Officer noticed that cash amount has been deposited in the bank account of the lender immediately before issuance of cheque to the assessee and he made addition u/s 68 of the Act.

9. At this juncture, we respectfully take cognizance of the decision of the Hon'ble Rajasthan High Court in the case of Aravali Trading Company (supra) wherein their Lordships held that it could not be presumed that the deposits made by the creditors were the monies of the assessee and there was no basis for such presumption and in such an event if the creditors not found to be acceptable, the investments owned by such persons may be

subjected to the proceedings for inclusion of such investments as their income from undisclosed sources but in order to fasten liability on the assessee by including such credits as income from unexplained sources, nexus has to be established that the source of deposits has flown from the assessee. Their Lordships have held that in the absence of any such link, additions of cash credits found in the books of accounts of the assessee could not be considered to be unexplained income of the assessee where existence of depositor of such credits was established and such deposits/advances/loan were owned by such existing person. We also take respectful cognizance of the decision of the Hon'ble High Court of Madhya Pradesh in the case of Metachem Industries (supra) wherein their Lordships rendering the proposition for jurisdictional High Court held that when cash credit is found in the assessee's books then the responsibility of the assessee is over and there is no requirement on the part of the assessee to further show whether the amount received by him as loan has been properly taxed in the creditor's hands.

10. In the present case, the assessee has established the identity, creditworthiness and source of loan from Smt. Parvati Bai Chouhan being 78 years old senior citizen pensioner lady and the Assessing Officer without making any inquiry from the lender lady, proceeded to make the addition u/s 68 of the Act merely on the basis that cash was deposited immediately before issuance of cheque to the assessee. Unless it is established that the money deposited by the assessee was flown from the assessee and the same was routed through a fictitious lender by manipulating the book entry then only the amount can be taxed in the hands of the assessee by making the addition u/s 68 of the Act. At this juncture, we respectfully note that since there is a direct proposition of Hon'ble Madhya Pradesh High Court in the case of Metachem Industries (supra) in favour of the assessee, the benefit of ratio of the decision of the Hon'ble Gujarat High Court in the case of Umesh Krishnani (supra) is not available to the revenue in the present case. Accordingly, ground no. 1 of the assessee is allowed and the Assessing Officer is directed to delete the addition.

11. Apropos ground no. 2 the learned counsel for the assessee submitted that the Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 6,08,632/- being 5% of labour and wages expenses without considering the explanation offered by the assessee that the regular and proper books of accounts have been maintained by the assessee, therefore, no disallowance is called for.

12. Replying to the above, the learned DR drew our attention to relevant operative part para 5 at pages 2 and 3 of the assessment order as well as para 6 of the impugned first appellate order and submitted that the ad hoc disallowance of 5% of total expenditure has been made as the AR of the assessee agreed that 5% of such expenses may be disallowed because of discrepancies found by the Assessing Officer in the books of the assessee.

13. Placing rejoinder to the above, the learned counsel for the assessee submitted that merely because the AR has agreed for disallowance, the same cannot be placed as binding on the assessee and, therefore, ad hoc addition made may kindly be deleted.

14. On careful consideration of the rival submissions, we find from para 5 of the assessment order that on being asked and confronted by the Assessing Officer with the discrepancies found in the books of accounts of the assessee, the AR voluntarily agreed that 5% of expenses on wages and labour may be disallowed. Para 5 of the assessment order reads as under :-

“5. On perusal of audited Profit & Loss Account, it was found that the assessee has debited a sum of Rs. 1,21,72,645/- towards labour wages expenses. Vide order sheet entry dated 09.01.2015 the assessee was asked to produce all bills and vouchers of said expenditure. On 12.01.2015, the AR of the assessee produced the asked bills/vouchers for verification. On perusal of bill and vouchers of labour wages expenses, it was observed that some of vouchers are missing and the bills and vouchers are not maintained properly. Some of them are self-made. Therefore, the expenses debited under the above head are not fully verifiable. Vide order sheet entry dated 12.01.2015 the AR of the assessee was confronted with the discrepancy

found and the AR of the assessee agreed that 5% of said expenses i.e. Rs.6,08,632/- should be disallowed because of discrepancies found. Therefore, an amount of Rs. 6,08,632/- should be disallowed because of discrepancies found. Therefore, an amount of Rs. 6,08,632/- is hereby disallowed out of labour wages expenses claimed in P&L account and added back to the total income of the assessee.”

From the relevant para 6 of the order of the Commissioner of Income Tax (Appeals) we observe that the Commissioner of Income Tax (Appeals) dismissed the ground of the assessee by observing that on verification of bills and vouchers it was noticed by the Assessing Officer that the same were not maintained properly and some of the vouchers were self-made and expenses under the head were not fully verifiable, therefore, on being confronted with these serious discrepancies, the AR agreed that 5% of such expenses may be disallowed because of discrepancies found. On being specifically asked by the Bench, the learned counsel for the assessee could not controvert this fact that some discrepancies in the books of

accounts were confronted to the AR of the assessee by the A.O. and instead of submitting proper explanation against the discrepancies pointed out by the Assessing Officer, the AR agreed that 5% of such expenses may be disallowed. From the observations of the authorities below, we clearly observe that the discrepancies were pointed out by the Assessing Officer to the AR vide order sheet entry dated 9.1.2015 and on 12.1.2015 the AR agreed to disallowance of 5%, hence it can be safely presumed that the AR agreed to the impugned disallowance after taking instruction from the assessee and we also point out that as per ground no. 2 mentioned in Form No. 35 before the Commissioner of Income Tax (Appeals) it is not the contention or case of the assessee that the AR agreed to the ad hoc disallowance without any instructions from the assessee. We are, therefore, unable to see any valid reason to interfere with the orders of the authorities below wherein they have made ad hoc disallowance of 5% of total expenses claimed by the assessee on labour and wages. Therefore, the addition made by the Assessing Officer and upheld by the Commissioner of Income Tax (Appeals) is confirmed and consequently ground no. 2 of the assessee, being devoid of merit, is dismissed.

15. Ground nos. 3 and 4 are consequential in nature and ground no. 5 is general in nature and as such they need no adjudication.

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

The order has been pronounced in open Court on 30th May, 2017.

Sd/-

लेखा सदस्य
(O.P.Meena)
Accountant Member
May 30, 2017.

sd/-

न्यायिक सदस्य
(C.M. Garg)
Judicial Member

Dn/