

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. 07/JP/2017
निर्धारण वर्ष/Assessment Year : 2007-08

Om Kanwar, P/o M/s Jaipur Engineers, E- 295, Road No. 14, VKI Area, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 4(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AUDPK 1228 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Notice returned unserved)
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 28/02/2017
उदघोषणा की तारीख / Date of Pronouncement : 28/02/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee against the order dated 26/09/2016 passed by the Id CIT(A)-5, Jaipur for the A.Y. 2007-08, wherein the assessee has raised following grounds of appeal:

- "1. That the Id. CIT(A) has erred in holding that the Assessing Officer was justified in reopening the case of the appellant. The said action is illegal and unjustified. The reopening of assessment

proceedings were incorrectly taken in this case and the order passed U/s 148 is illegal.

2. *That the Id. CIT(A) has erred in holding that the assessee has not been able to substantiate the opening cash balance of Rs. 62,500/- in the case flow statement. The said finding is illegal.*
3. *That the Id. CIT(A) has erred in holding that the assessee has not been able to establish the creditworthiness of the creditors Shri Hanuman Sahai Jat Rs. 19,200/-, Shri Gajanand Jangir Rs. 18,000/- and Smt. Rekha Devi Pareek Rs. 17,400/-. Hence, these cash credits are explained within the meaning of Section 68 of the IT Act. The said finding is illegal and unjustified.*
4. *That the Id. CIT(A) has erred in holding that the assessee had failed to explain the source of capital of Rs. 1,61,000/- introduced in the firm M/s Jaipur Engineers and confirming the addition made by the Assessing Officer. The addition made to the income is illegal, unjustified and excessive.*
5. *That the Id. CIT(A) has erred is not allowing credit even for the income which has been declared by the assessee during the year under assessment and accepted by the lower authorities. The said action is illegal and unjustified.*

2. None attended on behalf of the assessee. Ld. Sr. DR was heard. After hearing the Id. Sr. DR, the appeal is being decided.

3. Ground No. 1 of the appeal is regarding reopening of assessment proceedings by invoking the provisions of Section 148 of the Income Tax

Act, 1961 (in short the Act). The Id. CIT(A) has dismissed this ground by observing as under:-

"2.3. *I have considered the facts of the case, the assessment order and the submissions of the appellant. In this case, the Ld. CIT(A) while deciding the case of M/s Jaipur Engineers for A.Y. 2007-08 has only directed the AO of M/s Jaipur Engineers to intimate the AO of the appellant to take remedial action u/s 147 if so warranted. This is not a direction to the A.O. of the appellant to reopen case of the appellant. The CIT(A) has just given his opinion that applicability of Section 148 needs to be examined in the case of appellant apropos sources in hands of the appellant for 1,61,000/-. In the order u/s 147 r.w.s. 143(3) in case of appellant also, it is mentioned that CIT(A) has opined that amount of Rs. 1,61,000/- was assessable in hands of the assessee. It is nowhere mentioned that there is such direction by CIT(A). The AO, however, took reference from the above information and applied his mind and recorded reasons u/s 148 after arriving at his own satisfaction and initiated the proceedings u/s 147 after approval of the competent authority. Considering the above facts, the reopening of the case of the appellant is in order and accordingly, the first ground of the appeal is dismissed."*

3.1 From perusal of record, I have found that there is no contrary material whatever reported by the Id. CIT(A) in his order, therefore in

absence of any material against the finding of the Id. CIT(A), I have alternate but to concur with the finding of the Id. CIT(A), accordingly, this ground of reopening of assessment proceedings is dismissed as there was sufficient material/information available with the Assessing Officer to record his satisfaction for initiating the proceedings U/s 147 of the Act after approval of the competent authority. Therefore, I uphold the order of the Id. CIT(A) on this issue. Accordingly, this ground of assessee's appeal is dismissed.

4. Grounds No. 2 to 5 of the appeal are against sustaining the addition of Rs. 62,500/-, to establish the creditworthiness of the creditors and to explain the source of capital of Rs. 1,61,000/- introduced in the firm M/s Jaipur Engineering.

5. The Id. CIT(A) has decided these issues against the assessee by holding as under:-

"2.3. I have considered the facts of the case, the assessment order and the submissions of the appellant. The AO has made addition of Rs. 1,61,000/- by treating her investment as capital in M/s Jaipur Engineers, as unexplained cash. The capital contribution amount of Rs. 1,61,000/- has been introduced in cash.

2.3.1 During the appellate proceedings, the appellant submitted cash flow statement of Smt. Om Kanwar. There is an opening balance of Rs. 62,500/- which is

explained by the appellant as her savings over last few years earned by petty job work of sarees but the assessee failed to submit any documentary evidence in support of earning such income, including expenses incurred and investment in the process as well as I.T. Returns showing such income or even bank accounts in which such income was claimed to be credited from year to year. Accordingly, the opening cash balance of Rs. 62,500/- is not substantiated.

2.3.2 The appellant also submitted computation of income of three cash creditors namely Rekha, Hanuman Sahai Jat and Gajanand Jangid but again no bank statement have been submitted in this regard. The appellant submitted that out of the above creditors, only Smt. Rekha has filed her ITR, that too showing income of only Rs. 97,370 and paying no taxes thereon. The rest of the creditors have not filed any ITR for A.Y. 2007-08. The assessee failed to produce the said creditors. Also the amounts claimed to be received from all the creditors is in cash and that too just below Rs. 20,000/- purportedly to avoid the provisions of Sec. 269SS and 269TT. The repayment is also in cash and no interest has been paid. Thus, the veracity of these transactions is not proved. Similarly, creditworthiness of creditors is not proved. Hence, these cash credits are unexplained within the meaning of section 68.

2.3.3 Further the appellant has also submitted that the

appellant was neither maintaining any bank account nor filed any ITR for any year before the year under consideration.

2.3.4 Further the ITR filed for A.Y. 2007-08 shows income below taxable limit and has apparently been filed only as a capital build up exercise. The assessee failed to produce any evidence regarding claimed opening cash balance of Rs. 62,500/-. Further the cash flow statement submitted by her showing such opening balance is not a part of any IT return filed by her. In fact, she has never filed any Balance Sheet with the I.T. Return. Therefore the said cash flow statement appears to be an afterthought. The further source amount of Rs. 54,600 claimed to be loans from above mentioned 3 creditors is also not proved for reasons stated earlier. Moreover, the job work receipts claimed by her are not supported by any evidence and appear to be a capital build up exercise, more so since no tax has ever been paid by her.

2.3.5 Considering the above factual matrix, it is held that the appellant has failed to explain the source of capital of Rs. 1,61,000/-introduced into the firm, Jaipur Engineers. Therefore, the addition of Rs. 1,61,000/- as unexplained cash credit in the hands of the assessee is confirmed.”

6. From perusal of record, I have found that there is no contrary material whatever reported by the Id. CIT(A) in his order, therefore in

absence of any material against the findings of the Id. CIT(A), I have no alternate but to concur with the findings of the Id. CIT(A), therefore, I uphold the order of the Id. CIT(A) on these issues. Accordingly, these grounds of assessee's appeal are dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 28/02/2017.

Sd/-

(भागचंद)

(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28th February, 2017

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Om Kanwar, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 4(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. 07/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar