

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. 1027/JP/2016  
निर्धारण वर्ष / Assessment Year : 2008-09

M/s Silverwing Patel Carriers, A-3, Sain Colony, Power House Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 3(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABJFS 1218 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 28/04/2017  
उदघोषणा की तारीख / Date of Pronouncement : 15/05/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of the Id. CIT(A)-I, Jaipur dated 27/09/2016 for the A.Y. 2008-09, wherein the assessee has taken following grounds of appeal:-

- "1. Under the facts and circumstances of the case, the direction given by the Id. CIT(A) U/s 150(1) of the IT Act to consider the receipts of Rs. 24,20,688/- on account of alleged unaccounted contract receipts in the hands of the assessee in the status of firm and to make fresh assessment thereof is illegal and bad in law.*

2. *The Id. CIT(A) has erred on facts and in law in not accepting the contention of the assessee that the said receipt is already considered by the firm in its regular return."*

2. This case was reopened for recording the reasons that during the financial year 2007-08, the assessee had received Rs. 24,20,688/- from the various parties and TDS was also deducted U/s 194C of the Income Tax Act, 1961 (hereinafter referred as the Act) and on the examination, it was found that no return of income by the assessee company was filed for assessment year 2008-09.

3. The Id. CIT(A) granted relief to the assessee on the submission of the assessee that the total receipt declared by the assessee firm is Rs. 74,10,868/-. The relevant portion of the Id. CIT(A)'s order is as under:-

*"(i) During the appellate proceeding, it was submitted by the appellant that it was allotted PAN AAHCS3115J in the year 2001 and in the year 2007, it realized that the PAN was allotted in the status of the 'Company' though it is a 'firm'. Consequently, it surrendered this PAN and applied for a new PAN in August 2007 in the status of firm and a new PAN ABJFS1218G was allotted to it in the status of 'firm' and it was filing its return of income by using this new PAN. It was further submitted that in its return of income for the year under consideration, it has considered the entire receipt including receipt as per 26AS of old PAN, which is evident from the following facts:-*

*The receipt declared by the assessee firm is Rs. 74,10,868/- whereas the receipt as per 26AS of new PAN is Rs. 26,12,850/- (52257/ 2%) and receipt as per 26AS of old PAN is Rs. 24,20,688/- aggregating to Rs. 50,33,538/-.*

*The name of parties appearing who deducted TDS as per both the PAN are almost same.*

*Since the name of old concern and new concern was same, the parties under the confusion deducted tax at source by mentioning old PAN.*

- (ii) It was the contention of the appellant that in view of the above facts, no cargo receipt remained escaped assessment. It was further submitted that even otherwise when all the above facts were submitted before the AO in reassessment proceeding, the AO should not have passed the order under the status of the 'company' which is a non-existing person. It is a settled law that assessment made on non existing persons is illegal and bad in law and in support of its contention, the appellant placed reliance upon a number of judicial pronouncements.*
- (iii) I have duly considered the submissions of the appellant, assessment order, the material placed on record and the judicial pronouncements relied upon by the appellant. It was the contention of the appellant that it has included the receipts of Rs. 24,20,688/- in its total receipts of Rs. 74,10,868/- for the year under consideration. However, it is noted that during the assessment proceedings, the AO required the appellant to get verified that the receipts amounting to Rs. 24,20,688/- shown in 26AS containing the old PAN was reflected in its books of accounts, but the appellant did not comply with the same because of the obvious reasons that the same has not been included in its declared receipts for the year under consideration. Thus, the claim of the appellant that no*

*income had escaped assessment has no weight and deserves to be rejected.*

- (iv) *It was the contention of the appellant that the AO made the assessment in the name of a non-existing person and thus is bad in law. It is to be noted that the old PAN was allotted to the appellant firm in the status of a "Company" in 2001 which was continued till 2007. Then the appellant surrendered the same and got a new PAN issued in the status of a 'Firm'. However, it is to be noted that the 'firm' continued to be the same and there was no change in the 'firm' except the change of PAN. The firm continued the same business of cargo with the new PAN. Thus, it is evident that practically, there was no change in the business, partners etc. of the appellant 'firm' but only change in PAN. The 'firm' was not even dissolved as is evident from the material placed on record. Therefore, mere change of PAN of the appellant firm does not invalidate the assessment proceedings. The judicial pronouncements as relied upon by the appellant are distinguishable on facts as in these cases, the assessment was made on a dead or non-existing person. For instance in one case, the company was amalgamated into another company and assessment was made in the name of amalgamating company. In another case, a partnership firm was converted into a company and thus the firm became non-existent. But, in the instant case under consideration, as noted above, the firm remains the same, continued the same business etc. except with a new PAN. In fact, the appellant firm even owned up the transaction stated in 26AS pertaining to old PAN.*
- (v) *However, it is to be noted that there can be only one assessment order for an assessee for one assessment year. Here, the assessment was framed by the AO in the name of the appellant but in the status of a*

*'company' which is not a correct proposition of law as the income is not only to be assessed correctly in the hands of the correct person but in the correct status also. Therefore, the assessment order passed by the AO in the status of 'Company' cannot be allowed to exist and hence quashed. However, the AO is directed to consider the receipts under consideration in the hands of the appellant in the status of 'Firm' and to make fresh assessment thereof. It may be mentioned that the firm has claimed all the indirect expenses in its Profit and Loss account, therefore, only direct expenses relating to earning of contract receipts of Rs. 24,20,688/- are to be only allowed. These directions are being issued under the express provisions of section 150(1) of the IT Act.*

Thus, the Id. CIT(A) has granted relief to the assessee on the basis of the pleadings of the assessee that the amount of Rs. 74,10,868/- declared by the assessee firm includes Rs. 24,20,688/-, which was shown in 26AS in old PAN number allotted in company status. Now the assessee challenges the order of the Id. CIT(A) that he should not have issued direction to the Assessing Officer that to consider the receipts of Rs. 24,20,688/- in the hands of the assessee in the status of the firm and to make fresh assessment thereon. When the assessee himself has stated in his pleadings that the total receipts of Rs. 74,10,868/- includes receipt of Rs. 24,20,688/- also then what grievance remains. The assessment order passed by the Assessing Officer in the status of the company was quashed by the Id. CIT(A) then in my considered view, there is no

grievance remains and the plea of the assessee is unfair and unjustified.

Therefore, I dismiss all the grounds raised in this appeal.

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

Order pronounced in the open court on 15/05/2017.

Sd/-

(भागचंद)

(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 15<sup>th</sup> May, 2017

\*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Silverwing Patel Carriers, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 3(5), 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. 1027/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar