

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

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 395/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12.

The ACIT, Circle-2, Alwar.	बनाम Vs.	Smt. Kamla Lamba Prop. M/s Kamal Wires, Behind 220 KVA, Industrial Area, Bhiwadi, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABKPL 0295 R		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

राजस्व की ओर से/ Revenue by: Shri R.A. Verma (Addl. CIT)
निर्धारित की ओर से/ Assessee by : Shri Kranti Mehta (CA)

सुनवाई की तारीख/ Date of Hearing : 28.08.2017.
घोषणा की तारीख/ Date of Pronouncement : 15/09/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the Revenue is directed against the order of Ld. CIT (A)-22,
Alwar, dated 26.02.2016 pertaining to A.Y. 2011-12.

The Revenue has raised the following grounds of appeal:-

- "1. That the Ld. CIT(A) has erred on facts & circumstances of the case in deleting the addition made by the AO on account of unexplained cash credits for Rs. 55,94,288/-.
2. That the Ld. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance made by the AO out of depreciation on air conditioners which were not put to use for business purpose of the assessee.
3. That the Ld. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance made by the AO on account of building repair expenses of Rs. 5,97,825/-.
4. That the Ld. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance made by the AO on account of unexplained cash deposits for Rs. 14,85,000/-.

That the appellant craves leave to add, amend or alter the grounds of appeal on or before the date of appeal is finally heard for disposal.”

2. Briefly stated the facts of the case are that, the case of the assessee was picked up for scrutiny assessment and the assessment was framed under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) vide order dated 31.01.2014. While framing the assessment, the AO made on account of unverified unsecured loans of Rs. 55,94,288/-. The Assessing Officer observed that as per audit report submitted by the assessee, the assessee claimed unsecured loans from Shri Gaurav of Rs. 2,81,385/-, K.C. Industries of Rs. 33,97,410/- and Bank of Baroda of Rs. 21,96,878/-. The assessing Officer made addition as there was no representative on behalf of the assessee to explain these. Further, the Assessing Officer made disallowance out of depreciation of Rs. 13,305/-, deduction under Chapter VI-A of the Act of Rs. 6,750/-, disallowance u/s 40(a)(ia) of Rs. 4,72,848/-, disallowance in respect of the expenses covered under the provisions of section 43B of the Income-tax Act, 1961 of Rs. 19,74,100/- and also made disallowance in respect of building repair expenses of Rs. 5,97,825/-. Further the Assessing Officer made addition in respect of unexplained cash deposits of Rs. 14,85,000/- and addition on account of adhoc disallowance of Rs. 22,544/-.

3. Aggrieved by this order, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions partly allowed the appeal. While partly allowing the appeal, the Ld. CIT(A) deleted the addition made on account of unverified unsecured loans of Rs. 58,75,673/-. Ld. CIT(A) deleted the disallowance on depreciation and restricted the disallowance of Rs. 1,47,328/- as against Rs.

4,72,848/- made by invoking the provision of Section 40a(ia) of the Act. Ld. CIT(A) further deleted the disallowance in respect of the expenditure following u/s 43B of the Act, in respect of the disallowance of expenditure related to building repairs the Ld. CIT(A) deleted the same, in respect of unexplained cash deposits of Rs. 14,85,000/- the Ld. CIT(A) deleted the same. However, in respect of adhoc expenses, the ground was not pressed before Ld. CIT(A), therefore, same was rejected.

4. Now, the Revenue is in present appeal.

5. **Ground No. 1** of the Revenue's appeal is against deleting the addition made by the AO on account of unexplained cash credits for Rs. 55,94,288/-.

5.1 Ld. D/R vehemently argued that the Ld. CIT(A) was not justified in deleting the disallowance. He submitted that the AO has given a categorically finding that the assessee has failed to prove the identity, genuinity and credit-worthiness of the unsecured loans. He submitted that the Assessing Officer observed that the assessee has failed to file neither the a/c statement nor the details of bank account. Therefore, the loans were not subject to verification.

5.2 Per contra Ld. Counsel for the assessee supported the order of the Ld. CIT(A).

5.3 We have heard the rival contentions, perused the material available on record. The Ld. CIT(A) has decided this issue in para 4.5 to 4.10 of his order, which is reads as under:-

"4.5 I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations and cross reply of the appellant and find that an addition of Rs. 58,75,673/- has been made by the

AO on account of unsecured loans u/s 68 of the Income Tax Act. AO has stated that appellant has failed to furnish the details as required under the provisions of section 68 of the Income Tax Act in respect of the loans raised from the following persons:-

<i>A. Gaurav</i>	<i>Rs. 2,81,385</i>
<i>B. K.C. Industries</i>	<i>Rs. 33,97,410</i>
<i>C. Bank of Baroda</i>	<i><u>Rs. 21,96,878</u></i>
<i>Total</i>	<i><u>Rs. 58,75,673</u></i>

4.6 The appellant has in the course of appellant proceedings filed complete details of confirmation of the creditors, copy of the bank account, copy of the ledger accounts and other details etc. Which were forwarded to the AO for examination. AO has in the remand report reiterated the reasons given in the assessment order and stated that appellant has failed to discharge the onus placed upon him u/s 68 of the Income Tax Act.

4.7 The appellant has filed a copy of the ledger account of the loans of Sh. Gaurav duly confirmed along with a copy of his election card, complete address of the creditors and its stated that the loan amount of Rs. 2,81,385/- is an opening balance which is being carried forward from the preceding year. As regards an amount of Rs. 33,97,410 is concerned a copy of ledger account with confirmation of the proprietor of M/s K.C. Industries, sh. V.N. Gupta has been filed. A copy of the photo I.D. Card along with a copy of the bank account and ledger account for the succeeding three years has been filed to prove that loan has been repaid through the banking channels. The appellant has also filed a copy of the loan sanction letter from the bank to substantiate the credit of Rs. 21,96,878/- from Bank of Baroda.

4.8 Having considered the details evidence placed on record in the course of appellate proceedings, I find that as regards the loan received from Mr. Gaurav is concerned; no addition is warranted as the amount of loan has been carried forward from the previous years. Further, as regards a loan of Rs. 33,97,410 from K.C. Industries is concerned, I find that appellant has filed

a copy of the confirmation along with PAN, Photo ID of the proprietor of K.C. Industries and also it is stated that the said firm was a registered dealer having VAT/CST number as well as Central Excise registered number. A copy of the purchase bills from material purchased from the firm has been placed on record and also proof of closure of that business in the records of state Government as on 31.03.2013 has been filed. The appellant has also filed a copy of the bank account showing the payment of an amount of Rs. 30,00,000 on 31.03.2015 vide cheque No. 000902. Thus, considering all these factors, I do not find any justification in the action of the AO in making an addition on this account.

4.9 Further, as regards the loan of Rs. 21,96,878/- from Bank of Baroda is concerned, the appellant has placed on record a copy of the sanction letter of the Bank for the OD limit of Rs. 21,80 lakhs. Thus, I find that appellant has discharged the onus placed upon him u/s 68 of the IT Act.

4.10 Thus, in view of the above discussion, I hold that here is no justification in the action of the AO in making a disallowance on this account. Accordingly, I delete the addition of Rs. 58,75,673 made by the AO under this head."

5.4 The above finding on fact the Ld. CIT(A) is not rebutted by the Revenue by placing any contrary material on record. Therefore, this finding on fact without any contrary material in our view cannot be disturbed. Accordingly, Ground no. 1 of Revenue's appeal is dismissed.

6. Ground No. 2, is against deleting the disallowance made by the AO out of depreciation on air conditioners.

6.1 Ld. D/R submitted that the AO has given a finding on fact that the Air Conditioners were not used for business purposes and were installed at the residence of the assessee. Ld. D/R drew our attention to the Assessment Order

wherein the Assessing Officer has observed that the copy of Bill filed, the bill has been issued in the name of Sh. Parveen Lamba which has been strike through and above it Kamla Wires has been written. As per the bills, these air-conditions have been delivered at the residence of the assessee i.e. 47, Ashiana Gulmohar, Bhiwadi and not at the premises of the assessee. He submitted that, further, the Assessing Officer has observed that no evidence was supplied in respect of the purchases of Computer and Television.

6.2 On the contrary, Ld. Counsel for the assessee supported the finding of the Ld. CIT(A).

6.3 We have heard the rival contentions, perused the material available on record. The Ld. CIT(A) has decided this issue in para 5.5. of his order, which is reproduced as under:-

"5.5 I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations and cross reply of the appellant and find that a disallowance of Rs. 13,305 was made by the AO on the ground that purchase bills of the assets purchased during the year could not be produced. The appellant has in the course of present proceedings filed a copy of the purchase bill for computer and TV on which depreciation has been claimed. Therefore, I hold that there is no justification in the action of the AO in making a disallowance of depreciation. Thus, I delete the disallowance of Rs. 13,305 made by the AO on this account.

6.4 The Ld. CIT(A) has given a finding on fact, that the assessee has produced copy of purchase bill for computer and television.

6.5 In our view, it is sufficient to place on record the purchase bills but some evidence suggesting that assets was to be use for business purpose in the absence

of such evidence in our view, no depreciation cannot be allowed. Therefore, the finding of the Ld. CIT(A) on this issue is reversed and the finding of the AO is restored. Thus, Ground of the revenue is allowed.

7. Ground No. 3, is against in deleting the disallowance made by the AO on account of building repair expenses for Rs. 5,97,825/-.

7.1 Ld. D/R supported the assessment order.

7.2 On the contrary, Ld. Counsel for the assessee supported the order of the Ld. CIT(A).

7.3 We have heard the rival contentions, the Ld. CIT(A) has given a finding on this issue in para 8.5 to 8.7 of his order as under:-

"8.5 I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations and cross reply of the appellant and find that in addition of Rs. 5,97,825 has been made by the AO on account of building repair expenses claimed by the appellant. The addition was made on the ground that no bills of the same could be filed and also the expenses claimed on account of repair are disproportionately higher as compared to the value of the block of assets under this head.

8.6 The appellant has in the course of present proceedings filed a copy of all the bills of building repairs along with a copy of ledger account of the party, copy of the bank account through which payments have been made and TDS challans etc. to substantiate its claim. A copy of the commercial taxes department challan showing closure of the business by the said party on 31.3.2013 has been filed by the appellant.

8.7 having considered the material placed on record, I find that appellant has been able to prove that expenses were incurred on repairs, payments have been made through the banking channels and TDS was made on such payments and therefore, there is no justification in making a disallowance under this head. As regards, the value of opening WDV of the block is

concerned it is only a depreciated book value and thus, the amount of repairs being too high cannot be a ground for making the disallowance. Hence, I delete the disallowance of Rs. 5,97,825 made by the AO under this head."

7.4 This finding on fact is not controverted by the Revenue by placing any contrary material on record. Therefore, we do not see any reason to interfere into the finding of the Ld. CIT(A), same is hereby affirmed. This ground of Revenue's appeal is dismissed.

8. Ground No. 4 is against in deleting the disallowance made by the AO on account of unexplained cash deposits for Rs. 14,85,000/-.

8.1 Ld. D/R supported the order of the Assessing Officer and submitted that the AO observed that, the assessee deposited cash of Rs. 4,85,000/- on 22.02.2011, Rs. 2,50,000/- on 05.03.2011 and Rs. 7,50,000/- on 04.03.2011 in its HDFC Bank a/c. The Assessing Officer further observed that the assessee did not produce any books of accounts for verification. Ld. D/R submitted that the Ld. CIT(A) failed to appreciate that the Assessing Officer in remand report stated that on perusal of cash book it is revealed that the assessee had shown opening cash balance as on 01.04.2010 of Rs. 22,28,531/- whereas as per income tax return filed for the A.Y. 2010-11 cash in hand as on 31.3.2010 was shown at Rs. 2,87,338/- only. It is also recorded by the AO in remand report that the assessee was maintaining bank a/c no. 17189 with HDFC and a/c No. 87603 with PNB but the assessee did not cooperate by way not furnishing the requisite details or production of copy of bank book of PNB account maintained by assessee. Under these facts, the Ld. CIT(A) ought to have confirmed the addition.

8.2 On the contrary, Ld. Counsel for the assessee reiterated the submissions as made before the Ld. CIT(A). Ld. Counsel for the assessee supported the order of the Ld. CIT(A).

8.3 We have heard the rival contentions, the Ld. CIT(A) decided this issue in para 9.5 to 9.7 of his order, which is reproduced as under:-

"9.5 I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations and cross reply of the appellant and find that an addition of Rs. 14,85,000/- has been made by the AO on account of unexplained cash deposits made by the appellant in the bank account. The AO has made the addition on the ground that no explanation could be given to substantiate the sources of deposits made in the bank account.

9.6 The appellant has stated that cash in hand as per the cash book was used for depositing cash in the OD account. It is stated that cash in hand on 01.04.2010 was not Rs. 2,87,338 but was Rs. 22,28,530 and OD account balance was Rs. 55,47,732. Due to pressure from the bank, cash in hand balance was reduced by debiting the capital account of the proprietor Smt. Kamla Lamba and crediting the sundry creditor account of K.C. Industries. These entries were however, reversed on the very next day. The appellant has filed copy of ledger account of all the parties to substantiate its contentions. The evidence filed in the course of present proceedings was examined by the AO and has reiterated the contentions as stated in the assessment order.

9.7 I have carefully considered the submissions made and find that entries have been made in the capital account of Smt. Kamla Lamba of Rs. 19,41,192 and also the corresponding entries were made in the cash account and of M/s K.C. Industries, a sundry creditor. Therefore, the availability of cash in hand was increased on 01.04.2010 after reversing these entries in the books of accounts. In view of these facts, I hold that cash deposits were made out of

the balance available in the books of accounts. Thus, I find no justification in the action of the AO and delete the addition of Rs. 14,85,000/- made on this account."

8.4 We find that the Revenue has not rebutted the finding on fact as arrived at, by the Ld. CIT(A), on the basis of material placed before him. We therefore, do not see any merit into the ground of revenue's appeal, same is hereby dismissed.

9. In the result, appeal of the Revenue in ITA No. 395/JP/2016 is partly allowed.

Order is pronounced in the open court on Friday, the 15th day of September 2017.

Sd/-
(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 15/09/2017.

Pooja/

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

1. The Appellant- The ACIT, Circle-2, Alwar.
2. The Respondent – Smt. Kamla Lamba Prop. M/s Kamal Wires, Alwar.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 395/JP/2016)

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

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar