

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

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

आयकर अपील सं./ITA No. 503/JP/2014
 निर्धारण वर्ष / Assessment Year : 2008-09

Shri Surender Kumar Pancholi B-4, Vishnu Colony, Opp. ESI Hospital Ajmer Road, Jaipur	बनाम Vs.	The ITO (OSD) Circle - 2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACIPG 3453 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Rohan Sogani, CA
 राजस्व की ओर से / Revenue by : Smt. Poonam Rai, DCIT - DR

सुनवाई की तारीख / Date of Hearing : 06/10/2017
 घोषणा की तारीख / Date of Pronouncement : 9 /10/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id. CIT(A), Alwar dated 12-05-2014 for the assessment year 2008-09 raising the following grounds of appeal.

“1. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the AO in making following disallowances.

Particulars	Disallowed by AO	Relief by CIT(A)	Confirmed by CIT(A)
Labour welfare expenses	4,256		
Staff welfare expenses	9,080		
Computer expenses	4,182/-		
Diwali expenses	8,567/-		
Repair & Maintenance (Vehicle) expenses	3,755/-	37,927/-	60,000/-
Office expenses	5,572/-		
Telephone expenses	14,255/-		
Travelling expenses	23,933/-		
Total	97,927/-		

The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the above disallowance of Rs. 60,000/-

2. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the AO in making addition of Rs. 5,00,000/- as unexplained credit u/s 68 of the I.T. Act, 1961. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 5,00,000/-.”

2.1 Apropos Ground No. 1 of the assessee, the AO made the addition of Rs. 97,927/- on account of non-verifiable of above expenses as mentioned in the ground no. 1 of the assessee. The AO also noted that some of the expense are incurred in cash and certain expenses are supported by self made vouchers and not bearing the complete details and justification of use for the purpose of business. In first appeal, the Id. CIT(A) has granted relief of Rs. 37,927/- by observing as under:-

“5.5 Having considered the submissions made by the appellant, I find that no evidence has been produced in the course of appellate proceedings to controvert the findings of the AO and therefore, hold that it would be just and fair to restrict

the disallowance to Rs. 60,000/-. The appellant would get a relief of Rs. 37,927/- on this account.”

2.2 During the course of hearing, the Id.AR of the assessee submitted that the lower authorities have not pinpointed any specific defects in the books of account of the assessee. The books of account of the assessee are audited and no adverse comment has been made by the auditor. Thus the addition confirmed by the Id. CIT(A) may please be deleted.

2.3 On the other hand, the Id. DR supported the order of the Id. CIT(A).

2.4 I have heard the rival contentions and perused the materials available on record. It is noted that the AO has made the addition of Rs. 97,927/- i.e. 10% of total expenses of Rs. 9,79,265/- . In first appeal, the Id. CIT(A) has been sustained to the extent of Rs. 60,000/- giving relief of Rs.37,927/- to the assessee. It is noted from the available records that the books of account of the assessee are audited and no adverse comment has been made by the auditor in the case of the assessee. Looking to the above facts and circumstances of the case and in order to maintain equity and justice, the amount of Rs. 48,964/- is sustained i.e. 50% of total disallowance of Rs. 97,927/- made by the AO. Hence, the ground No. 1 of the assessee is partly allowed.

3.1 Apropos Ground No. 2 of the assessee, the facts as emerges from the order of the Id. CIT(A) is as under:-

“6.5 I have gone through the assessment order, remand report as well as submission made by the appellant and find that an addition of Rs. 5 lac was made by the AO on account of capital introduction made by the appellant in cash during the period under consideration. The addition was made as the appellant could not substantiate the sources of cash being introduced in the business as capital contribution. The appellant had explained that an advance of Rs. 5,51,000/- was received in cash against an agreement for sale of shop on 29-03-2007. AO did not accept the explanation as no supporting evidences were filed in the course of assessment proceedings.

6.6 In the course of appellate proceedings, the assessee has filed a copy of sale agreement as an evidential evidence to substantiate the explanation given earlier. This evidence was examined by the AO and the remand report has been reproduced above in the order.

6.7 It is seen from the evidence available on record that the so called agreement to sale has not been registered and has no evidentiary value. This document has only been notarized and why the same could not be produced at the time of assessment proceeding, has not been explained. Despite these shortcomings, the additional evidence filed by the appellant has been admitted in interest of natural justice. However, the explanation given by the appellant that the amount received in cash as advance against sale of property on 29-03-2007 has been introduced in small instalment throughout the year seems to be strange and against the normal business conduct. During the course of assessment proceeding, AO had found that substantial cash has been introduced in the books not on the same date but from the April 2007 to September 2007.

6.8 The appellant has further failed to produce the evidence with regard to the receipt of final consideration on sale of shop and copy of transfer documents for sale of shop etc. It is stated by the appellant that finally the shop could not be registered and how the amount has been returned back by the appellant has not been explained and also no evidence to substantiate the same could be furnished in the course of remand proceedings. Thus the explanation given by the appellant and the evidence produced in the remand proceedings is only self

serving and is meant only to meekly cover up the introduction of cash in the books of account by the appellant.

6.9 It would be relevant to note that Hon'ble Punjab & Haryana High Court in the case of CIT vs Deepak Iron & Steel Rolling Mills, 338itr 307 has upheld the addition made by the AO on account of unexplained credit entries found in the partner's capital accounts as maintained in the books of the firm. It was held by the Court that the unexplained credits could be taxed as unexplained income of the firm as no satisfactory explanation could be offered by the partner.

6.10 In view of the above discussion, I hold that the addition made by the AO on account of introduction of capital in cash by the appellant is justified and accordingly confirm the addition of Rs. 5,00,000/- made under this head.”

3.2 During the course of hearing, the ld.AR of the assessee prayed for deletion of addition of Rs. 5.00 lacs u/s 68 of the Act. The ld.AR of the assessee also submitted that due to dispute between the parties, the assessee could not demand the copy of sale agreement from the party and the same could not be produced before the AO during the assessment proceeding .

3.3 On the other hand, the ld. DR supported the order of the lower authorities.

3.4 I have heard the rival contentions and perused the materials available on record. In the present facts and circumstances of the case, it will be in the interest of equity and justice to restore the issue to the file of the AO to decide it afresh by providing reasonable opportunity of being heard to the assessee. The assessee is also directed to produce the relevant evidence /documents before the AO as to the

addition of Rs. 5.00 lacs u/s 68 of the Act on account of sale consideration of shop.

Thus the Ground No. 2 of the assessee is allowed for Statistical purposes.

4.0 In the result, the appeal of the assessee is partly allowed for Statistical purposes.

Order pronounced in the open court on 9/10/2017.

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 9/10/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Surender Kumar Pancholi, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT (OSD), Circle – 2, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 503/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar