

आयकर अपीलीय 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. 365/JP/2015
निर्धारण वर्ष/Assessment Year : 2011-12.

Shri Girdhari Singh Shekhawat, Jaipur.	बनाम Vs.	The Asstt. Commissioner of Income Tax, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AGMPS 6648 A		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma & R.K. Bhatra (CA)
राजस्व की ओर से / Revenue by: Shri P.R. Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 15.06.2017.
घोषणा की तारीख / Date of Pronouncement : 16/06/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This Appeal by the Assessee is directed against the order of Ld. CIT(A)-I, Jaipur, dated 02.02.2015 pertaining to A.Y. 2011-12.

The Assessee has raised the following grounds of appeal :-

- “1. That on the facts and in the circumstances of the case the Ld. CIT(A) is wrong, unjust and has erred in law in confirming addition of Rs. 22,50,284/- made to the income of the appellant by the Ld. Assessing Officer u/s 68 of the Income Tax Act, 1961 on account of alleged unexplained credit amount from Shri Ishwar Singh (R. 11,17,646) and Shri Izrail Khan (11,32,638).
2. That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdrawn any of them.”

2. Briefly stated the facts 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 30.03.2014. While framing the assessment, the AO observed that the assessee had

shown expense of excess sales tax paid over collections of Rs. 34,27,681/-. The assessee had collected Rs. 2,24,52,072/-, but had actually paid Rs. 2,58,79,753 to the Government Account. The AO noticed that this was in the form of penalty and hence disallowed this expenditure. Further, he observed that the assessee had paid Rs. 1,03,341/- as interest on sales tax installment. This was also treated as penalty of disallowance as expenditure. Further, the AO disallowed the interest expenses claim of Rs. 5,82,410/- and bank charges of Rs. 5,322/-, the AO also disallowed the interest paid on excess bank guarantee commission. The AO observed that the assessee had statutory and other liabilities from Shri Ishwar Singh of Rs. 11,17,646/- and from Izrail Khan of Rs. 11,32,638/-. However, the AO did not accept the contention of the assessee and made addition on these liabilities u/s 68 of the Act. Further, the AO made addition on account of excess Commission not disclosed by the assessee of Rs. 42,89,466/-.

3. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions partly allowed the appeal. While disposing of the appeal the Ld. CIT(A) deleted the addition made on account of Excess Commission and allowed the claim of the assessee in respect of Excess Commission paid and interest paid in respect of late payment of the commission. Further, the Ld. CIT(A) also deleted the expenses on interest of Rs. 5,82,410/- and bank charges of Rs. 5,322/-. However, he sustained the addition made u/s 68 in respect of liability toward Shri Ishwar Singh and Shri Izrail Khan.

4. Aggrieved, by this order, the assessee is in appeal.

5. The only effective ground is against sustaining the addition of Rs. 22,50,284/- made u/s 68 of the Act. The Ld. Counsel for the assessee reiterated the submissions

as made in the written submission. It is contended that the assessee had entered into an agreement on 10/11/2009 for collection of tax with Government of Rajasthan, Commercial Tax Department. In pursuance of the execution of the term of the agreement the assessee had provided security to the State Government in the form of bank guarantees, from bank of Baroda for Rs. 1,19,84,000/-, and pledge of FDR belonging to Shri Ishwar Singh of Punjab National Bank amounting to Rs. 11 lakhs and pledge of FDR belonging to Shir Izrail khan of Oriental Bank of Commerce amounting to Rs. 11 lakhs. He contended that the AO made addition on the basis and the assessee failed to furnish the supporting evidences and produce persons namely Shri Ishwar Singh and Shri Izrail khan. He submitted that those persons have not given confirmation but in that transaction is through bank challenge, the bank has given a certificate it is enclosed at page no. 38 of the Paper Book. He submitted that assessee had some dispute with those persons therefore they did not give confirmation. Further, he submitted that the addition is made u/s 68 of the Act. Admittedly, the FDR was made in the year, earlier to the year under consideration and same ought to have not been tax in the year under appeal. Further, he submitted that in the light of the evidences placed on record, matter may be restored to the file of the AO for verification. He submitted that, in respect of these liabilities the assessee cannot be made liable for tax, as the assessee discharged primary onus.

6. On the contrary, the Ld. Departmental Representative opposed the submission and supported the orders of the authorities below.

7. We have heard the rival contentions, and perused the material available on record and gone through the order of the authorities below. We find that the

assessee has placed on record evidences which demonstrate that the FDR belonging to Shri Ishwar Singh and Izrail Khan was pledged as security and when the assessee failed to fulfill the contractual obligation, Government of Rajasthan invoked the bank guaranteed and also the security in the form of FDR. There is no evidence suggesting that these FDR were made out of the funds of the assessee. Under these facts, we accept the prayer of the assessee that matter to be restored to the file of the AO to be decided in the light of the evidences placed on record.

8. Therefore, we set aside the orders of the Ld. CIT(A) on this issue and restore this issue to the file of the AO for decision afresh. Needless to say, that AO would provide sufficient opportunity to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on Friday, the 16th day of June 2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य/Accountant Member
Jaipur

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

Dated:- 16 /06/2017.

Pooja/

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

1. The Appellant- Shri Girdhari Singh Shekhawat, Jaipur.
2. The Respondent – The Asstt. Commissioner of Income Tax, Circle-2, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 365/JP/2015)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

