

आयकर अपीलीय 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. 625/JP/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Arpit Mamodia Prop. M/s. Samridhi Enterprises E-26, Janpath Marg, Shastri Nagar, Jaipur	बनाम Vs.	The ITO Ward- 4(5) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BBIPM4555 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 26/04/2018
घोषणा की तारीख / Date of Pronouncement : 01/05/2018

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id.
CIT(A)-2, Jaipur dated 30-05-2017 for the assessment year 2012-13
raising therein following grounds of appeal.

“That on the facts and circumstances of the case and in law the Id.
CIT(A) grossly erred in sustaining an addition of Rs. 4,60,000/- u/s 68
of the I.T. Act, 1961 on account of alleged bogus/unexplained cash
credits from the following.

S.N.	Name	Relation	Loan Taken (Rs.)	Addition made by AO (Rs.)	Addition sustained by Id. CIT (A) (Rs.)

1.	Shri Ankit Mamodia	Brother	150000	120000	120000
2.	Dilip Mamodia	Uncle	200000	200000	150000
3.	Smt.Pushpa Mamodia	Aunt	100000	90000	90000
4.	Shri Dinesh Gupta	Late Father's friend	200000	20000	10000
	Total		1250000	610000	460000

2.1 Apropos solitary ground of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“3.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The appellant has taken loans from four people and the Assessing Officer after discussing the same has held an amount of Rs. 6,10,000/- out of Rs. 6,50,000/- as unexplained. Each case is discussed (i) Ankit Mamodia – total loan claimed is Rs. 1,50,000/- out of which Rs. 1,20,000/- has been treated as unexplained. It is seen that cash amounts of Rs. 45,000/- have been deposited on 4-10-2011 and 8-10-2011 and Rs. 30,000/- on 10-10-2011 and cheque of Rs. 1,50,000/- issued on 11-10-2011. The sources include salary of Rs. 1.50 lakhs from Dinesh & Company in Assessment Year 2010-11, Rs. 1.08 lakhs in Assessment Year 2009-10 and Rs. 96,000/- in the Assessment Year 2008-09. However, as per the sworn statement recorded by the Assessing Officer, it was claimed that the amount of Rs. 1.50 lakhs was forwarded from savings from this income. Further, as per income tax returns the salary was shown as Rs. 60,000/- and the difference between the salary as per confirmation of Dinesh & Company and that shown in the return could not be reconciled by the party. Further, it was seen that the confirmation filed by Ankit Mamodia referred to Rs. 1 lakh as loan while in the sworn statement the same was claimed at Rs. 1.5 lakhs. Since the person is getting a meager salary of Rs.8,000/- to Rs. 10,000/- per month, there is discrepancy in

amounts extended and confirmed, the amounts shown as salary in income tax returns are not tallying with confirmation filed and cash amounts were deposited in the bank before extending the loan, the addition made by the Assessing Officer is confirmed as the creditworthiness of the creditor could not be satisfactorily proved.

(ii) Dilip Mamodia –He is the uncle of the assessee and extended Rs. 2,00,000/- and the entire amount has been disallowed by the Assessing Officer. The amount was claimed to be from savings relating to salary received. His bank balance on 15-09-2009 was only Rs. 4,390/- and cash was deposited prior to issue of cheques to the assessee. The person is receiving a salary of Rs. 20,000/- to Rs. 25,000/- per month but could not give details of monthly expenditure and savings thereon. As evidence of salary audit report of Shri Shiv Prasad Shyam Sunder, showing a salary of Rs. 2,16,000/- and interest and bonus of Rs. 55,616/- and Rs. 18,000/- was filed. M/s. Shiv Prasad Sunder is the proprietary of Shri Shyam Sunder Mamodia. Further cash has been deposited on different dates before issue of cheque to the appellant. However, the person is assessee's uncle and could have helped assessee from his savings. Considering the totality of facts and limited salary, an amount of Rs. 50,000/- is taken as explained and the balance amount is disallowed.

(iii) Smt. Pushpa Mamodia – she is the aunt of the assessee and extended an amount of Rs. 1,00,000/- out of which Rs. 90,000/- has been held unexplained by the Assessing Officer. She is housewife and does not file the return of income. In the sworn statement she stated that her husband is aware of the transaction and she has no knowledge of the same. It is seen that amounts of Rs. 45,000/- are deposited on 4-10-2011 and 8-10-2011 before issuing the cheque on 11-10-2011. The sources were stated as relating to her savings from amounts received on religious and social occasions, no documentary evidence of the savings

was produced, further cash is deposited before issuance of cheque and the person is not an income tax assessee, the creditworthiness could not be proved, the addition is sustained.

(iv) Shri Dinesh Gupta – He is an LIC/GIC agent having commission income of around Rs. 5.50 lakhs and is an income tax assessee as well as maintains his books of accounts. The purpose of loan was stated by him as his closeness to the assessee's grandfather who had helped him in the past. As regards deposit of cheque of Rs. 50,000/- and Rs. 1.50 lakhs in cash he stated that the cash was deposited out of Rs. 50,000/- withdrawn by him on 25-04-2011 and further amounts withdrawn by him from other accounts from time to time. In view of the fact that Rs. 50,000/- relates to a amount deposited by cheque in the bank account of the party and withdrawal of Rs. 50,000/- is evidenced from the bank statement provided by him, an amount of Rs. 1,00,000/- is considered as explained and addition of Rs. 1,00,000/- balance made by the Assessing Officer is confirmed.

2.2 During the course of hearing, the Id.AR of the assessee prayed for deletion of addition sustained by the Id. CIT(A) for which the Id.AR of assessee pleaded and also filed the written submission.

‘A. Any Sum credited cannot be partly explained and partly unexplained:

The Id A.O out of sum credited as loan from certain relative person treated partly explained and partly unexplained as table given above and addition sustained for part of credit as unexplained credit u/s 68. However out of any deposit received and credited in books, how it could be partly unexplained for purpose of charge to income tax under this section.

The clear reading of section as under:

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing

Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

From the clear reading of section, the satisfaction of explanation required for sum so credited and not out of sum so credited and hence satisfaction of explanation can be complete for sum so credited can not be partly satisfied and partly unsatisfied.

Once the Id A.O/CIT Appeal is satisfied for any explanation offered by assessee, the satisfaction is to be treated for whole so sum credited and there is no question of partly unexplained out of such sum. The Id CIT Appeal grossly erred in sustaining addition u/s 68 by treating credit partly explained for purpose of charging tax u/s 68.

B. On merit we further submit as under:

1. The appellant submitted following document in support of verifying the transaction:

Ankit Mamodia(Credit Rs 150000, addition sustained Rs 120000)

Confirmation (PB24)

An affidavit (PB 25-26)

Copy of bank statement(PB 27)

Coy of salary certificate from M/S Dinesh &Co (Relative firm) alongwith copy of audit report u/s 44AB in form 3cd of that firm specifying salary paid by that firm.(PB 28-50)

Dilip Mamodia(Credit Rs200000-addition sustained Rs150000)

Confirmation (PB60)

An affidavit (PB 61-62)

Copy of bank statement (PB63)

Coy of audit report u/s 44AB in form 3cd of M/s Shiv Prashad Shyam Sunder for verification of salary received from that firm specifying salary paid by that firm.(PB64-94)

Copy of ITR(PB 95-98)

Puspa Mamodia(Credit Rs 100000, addition sustained Rs 90000)

Confirmation (PB106)

An affidavit (PB 107-1808)

Copy of bank statement (PB 109)

Shri Dinesh Gupta(Credit Rs 200000, addition sustained Rs 100000)

Confirmation (PB 113)

An affidavit (PB114-115)

Copy of bank statement (PB116)

Copy of ITR,computation and balance sheet (PB117-120)

2. That during course of hearing, all these creditors produced before the Id A.O and statement recorded by him. *The alleged bogus cash creditors have no where denied that loans have not been given to the appellant. The fact of giving loan by the creditors is established by*

the confirmations, affidavits, statements recorded by the A. O. and other evidences on record (supra). The Id. AO wrongly reproduced some part of the statements recorded in the assessment order. The entire statements are read as a whole in sequence establishes that the loans is genuine & the creditors are capable to advance such loans.

3. From the documents submitted and statement of creditor as above, it is amply evident that the loans received are genuine & the creditors had capacity to advance the loans. The Id A.O made addition merely because cash is deposited in the bank accounts of the creditors before issue of cheque, it does not necessarily imply either that the cash does not belong to the creditor or the creditor does not have capacity to deposit such amount in his bank account. During the period of demonetization all citizens are depositing their past savings in their respective bank accounts and the government itself has accepted the fact that no inquiry shall be conducted in case a person deposits his/her cash savings in his/her bank accounts upto a limit of Rs.2.5 lakhs in savings account. In this regard, CBDT issued notification No. 104/2016-IT on 15.11.2016 amending Rule 114B providing that no reporting shall be made upto Rs.2.5 lakhs cash deposit in saving account (copy of notification is enclosed). This clearly evident that past saving upto 2.50 lacs in cash is justified. In the appellant case, non of creditor deposited more than 1.50 lac for loan to him.

3. As regards to various allegation of A.O and Id CIT appeal, we submit party wise clarification as under:

- **Shri Ankit Mamodia** is elder brother given cheque amounting Rs 150000 for which he has deposited cash Rs 120000 out of accumulated past savings from salary income as stated by him in statement recorded by A.O. during course of hearing(PB 55). He was drawing salary from M/s Dinesh & Co. from 2008 to 2011 amounting Rs 8000 to 10000 and as stated in statement recorded his estimated expenditure upto 2012-13 was about Rs 2000 per month(pb53 q.7). As such his total saving upto 2011 was Rs 252000 out of which he has deposited Rs 120000/- is justified. All the documents of relating to verification of salary income i.e. certificate from employer and independent audit report in form 3cd where salary paid to him mentioned submitted. The loan Rs 150000/- is verified from ledger account, bank statement and statement recorded during course of hearing. The Id CIT appeal again created doubt on basis of clerical mistake in his return of income and confirmation. However when correct salary and loan has been verified from independent document as mentioned above and he has admitted his mistake in his statement recorded during course of hearing, there is no question of doubt. The Id CIT appeal erred in not considering facts as proved from documents.
- **Shri Dilip Mamodia** is uncle of the appellant given cheque amounting Rs 200000 for which he has deposited cash Rs 150000 out of accumulated past savings from salary income as stated by him in statement recorded by A.O. during course of hearing(PB 102). He was drawing salary from M/s SHIV PRASHAD SHYAM SUNDER amounting Rs 148000 in 2009-10 and 234000 in 2010-11 and as stated in statement recorded his estimated expenditure was about Rs 8000 per month(pb100 q.4). As such his total saving in last two years itself was Rs 190000 out of which he has deposited Rs 150000/- is justified and The salary income is verifiable from independent audit report in form 3cd of M/s SHIV PRASHAD SHYAM SUNDER where salary paid to him mentioned. The Id CIT appeal however considered explained only Rs 50000/- out of Rs 200000/- given arbitrarily.

- *Smt. Pushpa Mamodia is aunt of the appellant has given cheque amounting Rs 100000 for which he has deposited cash Rs 90000 out of accumulated past savings from sum received on religious and social occasions as stated in her statement recorded during course of hearing(PB 112 q10).The ld A.O treated it unexplained by saying that she is not filing ITR and no documentary evidence to prove her contention arbitrarily. It is humbly submitted that simply because a cash creditor does not file his/her return of income or simply because she is a housewife, it does not necessarily mean that the loan is bogus or not genuine. It is a well established fact that housewives in India generally do not have banking habits. Reliance is being placed on the following judgments in this regard :-*

Prabhajee kaur Vs. ITO (ITAT Jaipur Bench) XXXIV Tax World 101

- *Shri Dinesh Kumar Gupta is friend of appellant's late father has given Rs 200000/-. He LIC/GIC agent having commission income of around Rs.5.50 lakhs and prepares financial statements comprising of P&L Account, Capital Ale, Balance sheet etc. which was also submitted with his return of income filed. The loan given is correctly appearing in his balance sheet(PB 120).He has also explained source of cash deposited in bank in his statement recorded during course of hearing by A.O(PB 123 q.no 11). The ld A.O found cash deposit not satisfactory arbitrarily without considering the fact and with irrelevant ground.*

4. It is further submitted as under :-

4.1 IDENTITY, CAPACITY OF CREDITORS AND GENUINENESS OF TRANSACTION STANDS ESTABLISHED APPELLANT HAS DISCHARGED ITS ONUS.

It is humbly submitted that the appellant has established the identity and capacity of the loan creditors as well as the capacity & genuineness of the transactions. This is evident from the following :-

The identity of the loan creditors has been established by filing confirmations, bank pass books, affidavits, income tax returns and also they personally appeared before the AO. u/s 131 & their statements were also recorded.

The capacity of the loan creditors is proved through affidavits, income tax returns, salary certificates, audit reports of employers, bank pass books and also from the statements recorded by the Id. AO. during the assessment

Loans were advanced to help the appellant (who lost his father long ago) in establishing his new business started during the year under consideration by the joint family members who resided as joint family at the same address except Sh. Dinesh Gupta who was close friend of late father of the appellant. Hence the genuineness of the transactions is also established. The alleged loans were taken through banking channels as is evident from the bank statement of the appellant as well as the bank pass books of the cash creditors.

Statements of all the cash creditors were recorded by the Id. A.O wherein they confirmed to have advanced loan to the appellant out of their own savings. They nowhere denied not having advanced loan to the appellant.

The appellant had discharged its onus of establishing the identity, capacity and genuineness. The onus shifted on the Assessing Officer to prove that the alleged cash creditors were bogus, however, he grossly failed in discharging his onus.

Reliance is being placed on the following judgments in this regard:-

1. CIT vs Lovely Exports (P) Ltd. 216 CTR 194 (SC)
2. CIT vs Kamdhenu Steel & Aloys Ltd 2006 Taxman 254 (Del.)
3. CIT vs Arunananda Textiles (P) Ltd. 15 Taxman.com 226 (Karn)
4. CIT vs Dwarakdhish Investment (P) Ltd. v194 Taxman 43 (Del.)
5. CIT vs Value Capital Services (P) Ltd. 307 ITR 334 (Del.)

4.2 MATERIAL AVAILABLE ON RECORD REMAINED UNCONTROVERTED. AO FAILED TO DISCHARGE THEN ONUS ON HIS PART.

The Id. A.O. failed to point even a single defect in the evidences submitted by the appellant viz. confirmations, affidavits, bank statements, income tax returns, salary certificates, etc. Evidences which remained uncontroverted, should be accepted.

The contents of the affidavits remained uncontroverted. An affidavit cannot simply be brushed aside on the basis that it is a self serving document. Its contents have to be accepted as such unless otherwise proved. Reliance is being placed on the following judgment in this regard :-

Paras Cotton Co. Vs. CIT XXX Tax World 168 (ITAT, Jodhpur Bench)

4-3 AO FAILED TO BRING ANY MATERIAL EVIDENCES ON RECORD TO SUPPORT HIS BELIEF THAT THE CREDITORS WERE BOGUS. HE MERELY ACTED ON SURMISES AND CONJECTURES

The !d. A.O. merely acted on surmises and conjectures and failed to bring any material evidences on record to support his belief that the creditors were bogus. He wrongly concluded that the appellant routed its own money through cheques from the bank accounts of cash creditors without any basis and merely on surmises and conjectures.

4.5 SOURCE OF SOURCE NEED NOT BE PROVED.

The issue under consideration in this appeal is squarely covered by the judgment of the Hon'ble Rajasthan High in the case of M/s Aravali Trading Co. Vs. Income Tax Officer reported at (2008) 8 DTR 199,....

Hence, it is now a well established law that in case of loan transactions, source of source need not be proved. Once the identity, capacity and genuineness of a loan transaction is proved by the assessee, the primary onus which lay upon him is discharged and is shifted on the revenue. The assessee need not to prove the source of source of the loan transaction. Reliance is also being placed on the following judgments in this regard :-

1. Ld. CIT vs First Point Finance Ltd, 286 ITR 477 (Raj.)
2. ACIT vs sRajasthan Asbestos Cement Co. XLI TW 153 ITAT, Jaipur

As submitted above, it is humbly requested that the impugned addition sustained by the Id. CIT Appeal is, being illegal and unjustified, may kindly be deleted”

2.3 On the other hand, the Id. DR supported the orders of the authorities below.

2.4 The Bench has heard the rival submissions and perused the materials available on record. Brief facts of the case are that the AO made the addition of Rs. 6,10,000/- in respect of following cash creditors.

Name of Creditor	Total amount of loan claimed	Amount of loan found unexplained
Shri Ankit Mamodia	Rs. 1,50,000	Rs. 1,20,000
Shri Dilip Mamodia	Rs. 2,00,000	Rs. 2,00,000
Smt. Pushpa Mamodia	Rs. 1,00,000	Rs. 90,000
Shri Dinesh Gupta	Rs.2,00,000	Rs. 2,00,000
Total	Rs. 6,50,000	Rs. 6,10,000/-

The relevant observation as to making the addition by the AO is as under:-

“assessee has proved only identity of creditors but failed to prove that they were creditworthy. Further, the transactions were not

found genuine. The creditors are family members or relative of the assessee, the burden of proving creditworthiness of the parties and genuineness of the transactions was relatively heavier than in a normal case, and that the assessee had failed to discharge the burden

I am satisfied that the true nature and source of the amounts of cash credits entered in the books of accounts of the assessee, as per investigation or enquiry is not found satisfactory. In view of above discussion Rs. 6,10,000/- is treated deemed income of the assessee u/s 68 of the Act and the same is added to the total income of the assessee.”

In first appeal, the ld. CIT(A) has discussed the case of respective cash creditors explicitly and partly confirmed/sustained the addition by observing as under:-

1. Addition made by the AO in the case of Shri Ankit Mamodia is confirmed.
2. Addition made by the AO in the case of Shri Dilip Mamodia is partly confirmed.
3. Addition made by the AO in the case of Smt. Pushpa is confirmed.
4. Addition made by the AO in the case of Shri Dinesh Gupta is partly confirmed.

The Bench has taken into consideration the orders of the lower authorities and the written submissions of the assessee. It is noted that the ld. CIT(A) has elaborately discussed the issue of cash creditors and given the relief appropriately to the assessee as per the details available before

him. Taking into consideration the present facts and circumstances of the case, the Bench finds no reason to interfere with the order of the Id. CIT(A). Thus the appeal of the assessee is dismissed.

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

Order pronounced in the open court on 01/05/2018.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01 /05/ 2018

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Arpit Mamodia, Jaipur
2. प्रत्यर्थी / The Respondent-The ITO, Ward- 4(5), 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. 625/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar