

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 10/JP/2017
निर्धारण वर्ष / Assessment Year : 2009-10

The ACIT, Central Circle-1, Jaipur.	बनाम Vs.	Shri Shiv Shankar Lal Gupta 4, Ganga Vihar, Sardar Patel Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADPG 3204 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)
निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv.)

सुनवाई की तारीख / Date of Hearing : 05/06/2018
उदघोषणा की तारीख / Date of Pronouncement: 12/06/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order dated 28.10.2016 of CIT (A), Jaipur for the assessment year 2009-10. The

Revenue has raised the following grounds:-

" (1) Whether on the facts and in the circumstances of the case the CIT(A) was right in entertaining additional evidence U/s 46A of the Income Tax Rules, where in the fact is that during the Assessment proceedings sufficient opportunity was given to assessee.

(2) Whether on the facts and in the circumstances of the case the CIT(A) was right in deleting the addition of Rs. 2,00,00,000/- on account of receipt of amount not disclosed as per page No. 5 and 6 of Annexure A-3.

(3) Whether on the facts and in the circumstances of the case the CIT(A) was right in deleting the addition of Rs. 3,35,00,000/- on account of amount receivable as per page No. 5 and 6 of Annexure A-3.

(4) Whether on the facts and in the circumstances of the case the CIT(A) was right in deleting the addition of Rs. 1,50,000/- estimated interest on undisclosed investments.

The appellant craves, leave or reserves the right to amend, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

2. Ground No. 1 is regarding entertaining additional evidence by the Id. CIT(A). There was a search and seizure operation U/s 132(1) of the Act on 20.05.2009 at the residential and business premises of the assessee group. During the course of search operation certain incriminating documents were found and seized. The dispute is regarding the documents at page No. 5 and 6 of Annexure A-3 of the seized material which is letter dated 01.09.2008 between the partners/family members of the assessee to settle their rights over a property. In reply to question No. 19 to 23 the assessee in the statement recorded U/s 132(4) stated that the copies of the agreement

dated 01.09.2006 and letter dated 06.02.2008 as referred in the seized material would be furnished later with explanation of the nature of transaction. During the assessment proceedings the AO observed that the assessee has not furnished any explanation regarding the documents referred in the seized material and consequently the AO has made an addition of Rs. 2 Crores and Rs. 3.35 Crores respectively based on the seized material. On appeal before the Id. CIT(A), the assessee has furnished the details of the bank accounts and explained that the amount of Rs. 2 Crores as mentioned in the seized material was received through cheque and it was also shown in the books of accounts of the assessee as advance received from M/s Tag Enterprises. It was further explained that the remaining amount of Rs. 3.35 Crores was to be received only at the time of final settlement arrived between the parties. Since, the alleged settlement could not arrive between the parties, therefore, the said amount which was receivable at the time of settlement cannot be treated as undisclosed income of the assessee. The Id. CIT(A) called for a remand report and after considering the remand report deleted addition made by the AO.

3. The Id. DR has submitted that the assessee despite sufficient opportunities given by the AO did not explain the details of the

documents as well as the copies of the agreement and letter as referred in the seized material. Therefore, the additional evidence cannot be accepted when the assessee has failed to comply with the conditions as provided Under Rule 46A of the Income Tax Rules. He has contended that the AO has observed that the assessee has avoided to furnish the details called for by the AO during the assessment proceeding and therefore, the assessee cannot be allowed to produce the additional evidence.

4. On the other hand, the Id. AR of the assessee has submitted that the assessee is an old person and has also explained during the statement recorded U/s 132(4) that the details in the seized documents were written by deceased employee and therefore, he was not able to recollect the nature of transaction without referring to the record. He has further submitted that the assessee has not produced any additional evidence which cannot be verified independently but the assessee produce the bank accounts statement and the explanation regarding the settlement between the partners/family members as per the seized material. Hence, the Id. AR has submitted that the alleged additional evidence is not assessee's own documents and further the copies of confirmation of accounts from M/s Tag Enterprises Kolaba,

Mumbai were furnished during the assessment proceedings along with his submissions dated 06.07.2011. Therefore, the said confirmation produced before the Id. CIT(A) is not an additional evidence. Thus, the Id. AR has submitted that once the additional evidence was referred to the AO for his comments and remand report then there is no violation of Rule 46A of the Income Tax Rules.

5. We have considered the rival submissions as well as the relevant materials on record. Though the Assessing Officer has observed in the assessment order that that assessee as failed to furnish the explanation and other documents has referred in the seized material however, as regards the confirmation of accounts from M/s Tag Enterprises the assessee has clearly brought on record this fact that the copies of the confirmation were furnished during the assessment proceedings and the Assessing Officer has not denied this fact rather this was part of the remand report of the AO. The Id. CIT(A) called for the comments of the AO as well as remand report when the assessee produced the confirmation of the accounts from M/s Tag Enterprises showing the transaction of payment of Rs. 2 Crores on 01.09.2008. Thus, it is evident from the record that what the Id. CIT(A) has referred to the AO is the same confirmation of accounts of M/s Tag Enterprises which was

produced before the AO during the assessment proceedings. Since, the AO did not consider the said confirmation in the assessment proceeding, therefore, the AO was asked to consider the same in the remand proceedings. Therefore, there is no violation of Rule 46A of the Income Tax Rules when the alleged documents were referred to the AO for his comments and report were already produced before the AO during the assessment proceeding and further the Bank statement as an evidence which can be verified from independent source. Hence, we do not find any substance or merit on ground No. 1 of the Revenue's appeal.

6. Ground No. 2 and 3 are regarding the addition made by the AO on the basis of seized material. As regards the addition of Rs. 2 Crores received by the assessee as per the seized material, we note that the said amount was received by the assessee at the time of letter dated 01.09.2008 which is found and seized during the remand proceedings.

The AO has reproduced letter dated 01.09.2008 at page 7 as under:-

From *1st September 2008*
Mr. Shive Shankar Lal Gupta Sunita Apartment,
7A, Malabar Hills, Mumbai- 400006
To,
Atul Gupta, Akshat Gupta, Vikarm Gupta
Mumbai
Dear All,

This is with reference to our agreement dated 1st September 2006 and letter dated 6th February 2008 thereafter (which refers the first 19% of the 38% transferred to you) wherein you had an option to decide whether to proceed with the transaction by 30th December 2008. In the event that you decided to proceed you were to pay me a balance amount of Rs. 3,35,00,000/- in three instalments by March 30th 2009. In the event that you decided not to proceed, I was to return to you Rs. 4,15,00,000 plus interest.

However, due to my immediate requirement of funds, I hereby confirm that as a settlement I have accepted Rs. 2,00,00,000/- (2 Crores) on 1st September, 2008 from you in full and final settlement of first 19%.

With love and regards

-Sd-

Mr. Shiv Shankar Lal Gupta."

Thus, assessee has received Rs. 2 crores as full and final settlement against the transfer of first 19% share in favour of the other partners/family members and the remaining 19% was to be transferred against the balance payment of Rs. 3.35 crores. As per the seized documents this amount of Rs. 2 crores was received only at the time of this letter and subject to the final settlement of the distribution of shares of the partners/family members. The Id CIT(A) has reproduced the remand report dated 17.10.2016 in para 2.1.6.1 as under:-

"2.1.6.1 In compliance, AO through JCIT Central Range, Jaipur submitted his remand report on 17/10/2016. For the

sake of clarity, relevant extract of which are reproduced here as under:

....Kindly refer to your office letter no. CIT(A)-4/JPR/2016-17/484 dated 22-08-2016 and no. Pr.CIT(C)/ITO(Tech.)/JPR/MISC./2016-17/1623 dated 24-08-2016 office of the Pr.CIT(Central), Jaipur on the above mentioned subject.

I have carefully gone through the contents of the letter of the A/R and also its enclosures. His contentions are not acceptable for the following reasons:-

(i) Inadmissibility of the evidence furnished during appellate proceedings u/r 46A

It may be submitted that the copy of confirmation of accounts from M/s Tag enterprises, Colaba, Mumbai had already been furnished by the assessee during the assessment proceedings, in his submission dated 06-07-2011. Therefore, the evidence furnished is not at all an additional evidence u/r 46A and may not be admitted.

However, the assessee did not claim during the assessment proceedings that the Rs. 2 crore received from M/s Tag Enterprises are the same as that mentioned on the page no. 5 & 6 of Annex. A-3. Therefore, this claim being made by the assessee at this stage is only an afterthought and has no basis.

(ii) Submission on merits of the alleged additional evidences

In the confirmations of the accounts from M/s Tag Enterprises submitted by the assessee he has claimed to have been received Rs. 2 crore in-two transactions of Rs. 1crore each on 03-09-2016. However, the page no. 5 & 6 of Annex. A-3 unambiguously state that a sum o Rs. 2 crores was received by the assessee on 01-09-2008. It has been

duly signed by the assessee. There is no mention of M/s Tag Enterprises appearing in any of the two letters, at page no. 5 & 6 of Annex. A-3.

On 20-09-2016 vide order sheet entry, the assessee was asked to furnish evidence in support of his claim that M/s Tag Enterprises constitutes of the same three persons, Shri Atul Gupta, Shri Akshat Gupta and Shri Vikram Gupta, as partners, whose names are appearing in the seized records. Also, he was asked to verify his contention through the copies of bank statements of the assessee and M/s Tag Enterprises.

On 06-10-2016, the assessee furnished his reply in which he furnished the copies of bank statements of the assessee and M/s Tag Enterprises. It was verified that both the transactions of Rs. 1 crore each on 03-09-2008 are appearing in the bank statements of the assessee and M/s Tag Enterprises and the reference nos. 414238 & 414237 are the same in both the bank statements on the same dates. Therefore, the transfer of funds of Rs. 2 crore from M/s Tag Enterprises to the assessee on 03-09-2008 is verified to have taken place. However, the assessee failed to furnish the partnership deed of M/s Tag Enterprises to support his claim about the constitution of M/s Tag Enterprises.

Remand report is hereby submitted for you kind perusal.....”

Thus, the AO has clearly accepted the fact that as per bank statement of the assessee and M/s Tag Enterprises of Rs. 2 Crores were received by the assessee through cheques of Rs. 1 Croes each from M/s Tag enterprises. The only objection of the AO is that the assessee has not furnished partnership deed of M/s Tag Enterprises. The said amount of Rs. 2 crores has been shown by the assessee in the balance sheet as a

liability in the list of creditors in the name of M/s Tag Enterprises. Therefore, till the dispute between the partners were settled the said amount was only as an advance received by the assessee subject to the final settlement between the partners. The AO has also not disputed that the assessee did not receive balance amount of Rs. 3.35 crores. The Id. CIT(A) after considering the remand report has decided this issue in para 2.1.7 and 3.2.2 as under:-

"2.1.7 I have duly considered AO's reports, and assessee's rejoinder submitted before CIT(A) Ajmer and also before me. On careful perusal of assessee's application, it is seen that additional evidences submitted by the assessee are having direct bearing on this case. It is also a fact that before arriving at a conclusion, AO has neither examined the persons named in the seized documents nor carried out any fruitful investigation to support his contention. I also find that there are sufficient reasons which prevented the assessee from furnishing those evidences before the AO, in absence of which additions were made by the AO. The reports submitted by Sh G.R. Pareek the then DCII, CC 1, Jaipur to the CIT(A) Ajmer and written submissions made by the assessee have been examined. On their careful perusal, it is seen that no examination of persons mentioned therein the seized documents identified as A-3 Pg 5 & 6 has been done by the AO either during the assessment proceeding or remand proceeding.

The transaction of Rs. 2 cores reflected in aforementioned seize documents namely A-3 Pg 5 & 6 have been examined

and with respect to bank statement, balance Sheet as on 31.03.2008 & 31.03.2009 and Confirmation of Accounts with M/s Tag Enterprises.

Further, in view of these facts and investigation carried out by the AO, I do not find any reason for invoking the provision of sec 251(1) of the Act for enhancement (i.e. further addition of Rs. 4.15 crores) as suggested by the AO(refer Pg, 13 Para 7) and CIT(A) Ajmer vide letter dt 04.03.2013 (refer Para 2.1.4). Further the notings of Pg 6 of A-3 referred kJto some proposal which did not materialized and infact this pertains to AY 2007-08 & 2008-09. Therefore, it cannot be a subject matter of additions in the current AY 2009-10. The earlier reports submitted by Sh G.R. Pareek have not commented on this issue.

Now, in the remand proceeding, AO has duly examined these additional evidences and found to be in support of assessee's contention, a detailed discussion on issues are given with respect to grounds of appeal in para below.

3.2.2 I have duly considered assessee's submission and also carefully gone through the assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. AO in the remand proceeding has examined the issue pertaining to taxability of Rs. 2 crores pertaining to transaction with M/s Tag Enterprises and found that the assessee had infact received payment of Rs. 2 Crores (Rs. 1 crores each by two cheques) and these transactions are duly recorded assessee's books. Therefore, addition made by the AO of Es. 2 crores cannot be sustained, hence deleted. Assessee succeeds in Gr No. 2.

Further on perusal of confirmation of accounts duly signed by both assessee and M/s Tag Enterprises and Balance Sheet as on 31.03.2008 & 31.03.2009, it is seen that the balance of Rs. 3.75

crores is being brought forward from the previous FY 2007-08. Accordingly, the same cannot be added in the current AY 2009-10. Accordingly, addition of Rs. 3.75 crores is hereby deleted. Therefore, assessee succeeds in Gr No. 3."

Thus, the seized material is nothing but was a proposal between the partners which was not materialized and therefore, there is no question of any addition. Further the assessee has duly recorded the transaction of payment of Rs. 2 crores from M/s Tag Enterprises as a liability and the balance amount of Rs. 3.35 crores is nothing but only a part of the proposal subject to the final settlement between the partners which could not materialize till date. Hence, we do not find any error or illegality in the impugned order of the Id. CIT(A) qua this issue.

7. Ground No. 4 is regarding the addition of Rs. 1,50,000/- as estimated interest on undisclosed investment deleted by the Id. CIT(A). This is a consequential addition made by the AO as an notional interest on the undisclosed investment.

8. We have heard the Id. DR as well as the Id. AR and considered the relevant materials on record. The addition of Rs. 1.5 lacs was made by the AO in respect of the said amount of Rs. 5.35 Crores being addition made by the AO. Since, the said addition is deleted by the Id.

CIT(A) and we have also concurred with the view of the Id. CIT(A) and further the amount of Rs. 2 crores was also reflected in the books of accounts of the assessee then the same cannot be considered as undisclosed investment. The remaining amount of Rs. 3.35 crores was never received by the assessee and the Assessing Officer has also not disputed this fact that this amount was only a proposal subject to the final settlement between the partners. Hence, when the assessee has not received any amount then, the question of undisclosed investment and the notional interest does not arise. The Id. CIT(A) has deleted the addition in para 3.3.2. as under:-

"3.3.2 I have duly considered assessee's submission and also carefully gone through the assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. Here in this case, AO has made additions of interest on estimated basis without basing on any seized documents/incriminating materials. AO has estimated this addition basing on seized documents identified as A-1 & A-2 which do not pertain to this FY. In view of these facts, AO's action cannot be justified. Accordingly addition made of Rs. 1.5 lakhs on estimated interest is hereby deleted. Assessee's appeal in Gr No. 4 is allowed."

In view of the facts and circumstances of the case as discussed above, we do not find any error or illegality in the impugned order qua this issue.

In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12/06/2018.

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

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/06/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- ACIT, Central Circle-1, Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Shiv Shankar Lal Gupta, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 10/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar