

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. 958/JP/2016
निर्धारण वर्ष / Assessment Year : 2010-11

The DCIT, Circle-2, Jaipur.	बनाम Vs.	Shri Uttam Prakash 20/108, Bhriugu Marg, kaveri Path, Mansarovar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADUPP 9269 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No. 03/JP/2017
(Arising out of ITA No. 958/JP/2016)
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Uttam Prakash 20/108, Bhriugu Marg, kaveri Path, Mansarovar, Jaipur.	बनाम Vs.	The DCIT, Circle-2, Jaipur.
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राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)
निर्धारिती की ओर से / Assessee by : Shri S.L. Jain(Adv.) &
Shri Premlata (Adv.)

सुनवाई की तारीख / Date of Hearing : 14/06/2018
उदघोषणा की तारीख / Date of Pronouncement: 18/06/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue and cross objection by the assessee are directed against the order dated 31.08.2016 of CIT (A), Jaipur for the A.Y. 2010-12. The Revenue has raised the following grounds as under:-

"(i) Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) had erred in deleting the entire addition of Rs. 1,79,47,866/- made by the AO without appreciating the fact the substantive addition has been deleted by the Ld. CIT(A) vide order dated 12.07.2016 for the AY 2010-11 in ITA No. 686/2012-13 in the interest of revenue.

(ii) On the facts and in the circumstances of the case the Id. CIT(A) has erred in ignoring the fact that even though balance of both the parties are tallied, reconciliation was done without any logic.

(iii) On the facts and in the circumstances of the case the Id. CIT(A) has erred in ignoring the fact that statements that cheques were issued by Shri Ranjeet Singh were got realized only after 31.03.2010 are not tenable. If cheques were issued by Shri Ranjeet Singh, the debit balance of Shri Uttam Prakash would have increased by cheques amount. The debit balance is not reflecting as such, hence addition was made as undisclosed investment in the hands of Shri Ranjeet Singh. On the other hand, protective addition was made in the hands of Shri Uttam Prakash.

(iv) The appellant craves the right to amend alter or add to any of the grounds of appeal given above."

2. We have heard the Id. DR as well as the Id. AR and considered the relevant material on record. The AO made an addition on protective basis on account of discrepancy in the credit balance appearing in the books of the assessee and in the books of Shri Ranjeet Singh Choudhary who had undertaken the works contract from the assessee. At the outset we note that the Id. CIT(A) has deleted protective assessment made by the AO on the ground that the substantive addition in case of Shri Ranjeet Singh Choudhary itself was deleted. We note that in the case of Shri Ranjeet Singh Choudhary the sub contractor of assessee this Tribunal in ITA No. 780 & 880/JP2016 has confirmed the order of the Id. CIT(A) in deleting the addition made by the AO and held in para 4 as under:-

"4. Having considered the rival submissions as well as the relevant material on record, we note that the entire confusion on the issue is the amount of Rs. 1,51,71,836/- appearing in the ledger accounts in the books of the assessee as well as of Shri Uttam Prakash but the said amount was not appearing in the balance sheet of the assessee due to the method of accounting adopted by the assessee. This receipt is on account of sub-contract executed by the assessee on behalf of Shri Uttam Prakash for construction of CRPF wall and therefore as far as the amount received on account of the said execution and corresponding payment by the assessee to Shri Uttam Prakash is concerned, the same is not in dispute. Further, the AO has not considered the various expenses on account of supply of material,

wages and other expenditures which is shown in the work account to make this addition of not showing the entire amount in the Balance Sheet. In the remand report, the AO has not disputed the correctness of the amount of receipt and payment but the addition was made only on the ground that an equal amount was not appearing in the balance sheet of the assessee. The Id. CIT (A) after considering the remand report and balance sheet of the assessee as well as of Shri Uttam Prakash has finally given the finding as under :-

" From the various accounting statements reproduced above, it can be appreciated that as per the books of accounts of Shri Uttam Prakash, sum of Rs. 1,51,71,836/- was payable to the appellant as on 31.03.2010. The balance of Rs. 1,51,71,836/- (debit) is also appearing in the account of Uttam Prakash (Works) as appearing in the books of accounts of the appellant. Thus, as far as the closing balance of Shri Uttam Prakash in the books of the appellant (as appearing in Uttam Prakash Works account) and closing balance of the appellant in the books of accounts of Shri Uttam Prakash are concerned, both are same and there is no difference in the balances appearing in the books of accounts of both the parties. However, in the balance sheet dated 31.3.10 of the appellant, no debit balance of Rs. 1,51,71,836/- in the name of Shri Uttam Prakash was appearing. Hence, the AO made the addition of Rs. 1,51,71,836/- treating the amount as unreconciled balance of Shri Uttam Prakash. If the balance sheet of the appellant along with annexure C of the balance sheet is seen then it can be appreciated that the assessee has shown credit balance of Rs. 9,04,570/- which includes the amount of Rs. 27,76,030/- under the head 'Advances for Uttam Prakash Works'. In other words, the appellant instead of showing debit balance of Rs. 1,51,71,836/- in the name of Shri Uttam Prakash, has shown credit balance

of Rs. 27,76,030/- under the head 'Advances for Uttam Prakash Works'. If the detailed submission furnished by the appellant is perused, it can be comprehended that there was unpaid liability of Rs. 1,79,47,866/- in respect of the works executed by the appellant on behalf of Shri Uttam Prakash on sub contract basis. The assessee instead of showing this unpaid liability of Rs. 1,79,47,866/- in the liabilities side of the balance sheet and Rs. 1,51,71,836/- in the asset side of the balance sheet has netted both the balances and has shown the net credit balance of Rs. 27,76,030/- (debit balance of Rs. 1,51,71,836/- of Shri Uttam Prakash – unpaid liabilities of Rs. 1,79,47,866) in respect of works executed by the appellant on behalf of Shri Uttam Prakash on sub contract basis. Thus, as far as balance in the account of the appellant in the books of Shri Uttam Prakash and balance of Shri Uttam Prakash in the books of the appellant are concerned, there is no difference. The different figures appearing in the balance sheet of the appellant and in the balance sheet of Shri Uttam Prakash are only because of the manner in which these figures have been presented in the balance sheet. If the assessee had not reduced the unpaid liability of Rs. 1,79,47,866/- from the debit balance of Rs.1,51,71,836/- of Shri Uttam Prakash, the debit balance of Rs. 1,51,71,836/- would have been shown in the asset side and unpaid liabilities of Rs. 1,79,47,866/- would have been shown under the liability side of the balance sheet and there would not have been any credit balance of Rs. 27,76,030/- under the head 'advances for Uttam Prakash Works'. In view of these facts, I am of the considered view that as far as balance of Shri Uttam Prakash in the books of appellant and the balance of the appellant in the books of Shri Uttam Prakash are concerned same are tallied and no addition on account of any

unreconciled difference of Rs. 1,51,71,836/- or Rs.27,76,030/- is called for."

Thus all the relevant facts and figures were considered by the Id. CIT (A) to reconcile the differences appearing in the Balance Sheet of the assessee as well as in the balance sheet of Shri Uttam Prakash. Accordingly, in view of the facts and circumstances of the case, we do not find any error or illegality in the impugned order of Id. CIT (A) qua this issue."

Thus, it is clear that when the substantive addition itself was deleted on the merits then the protective addition made by the AO would not survive. Accordingly, in view of the decision of the Coordinate Bench of this Tribunal in case of Shri Ranjeet Singh Choudhary wherein the income assessed on substantive basis was deleted, we do not find any error or illegality in the order of the impugned order qua this issue.

3. The assessee in the cross objection has raised the following grounds:-

"1. On the facts and in the circumstances of the case the Ld. CIT(A)-II was fully justified in deleting the addition of Rs. 1,79,47,866/- made by the Id. AO on protective basis.

2. That the appellant reserves his right to add, amend or alter the grounds of CO on or before the date of hearing."

4. The assessee has not raised any independent ground in the cross objection but has supported the order of the Id. CIT(A). Therefore, when the appeal of the Revenue is dismissed, the cross objection of the assessee becomes infructuous.

In the result, the appeal of the Revenue and cross objection of the assessee are dismissed.

Order pronounced in the open court on 18/06/2018.

Sd/-
(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/06/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- The DCIT, Circle-2, Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Uttam Prakash, 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. 958/JP/2016 & CO No. 03/JP/2017}

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar