

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 545/Ind/2014  
Assessment Year 2009-10

ITO 2(3) Indore (Appellant )	Vs.	Arvind Kumar Jain Indore (Respondent)
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Appellant by Shri S.S. Deshpande  
Respondent by Shri Lalchand

Date of hearing	28.6.2018
Date of pronouncement	29.6.2018

**आदेश / O R D E R**

**PER SHRI MANISH BORAD, AM**

The instant appeal of the revenue pertaining to the assessment year 2009-10 is directed against the order of the Commissioner of Income Tax (Appeals)-I, Indore, arising out of order dated 28.3.2013 passed u/s 143(3)/148 of Income Tax Act (in short referred as 'Act') Act framed by the ITO 2(3), Indore.

2. In this appeal, the assessee has taken the following grounds of appeal :-

*“On the facts and in the circumstances of the case, ld. CIT(A)*

- 1. erred in deleting the additions made of Rs. 5,64,912/- on the basis of peak credit in bank a/c of M/s Jain Construction and of Rs. 2,99,892/- as profit on turnover through said bank a/c. The learned CIT(A) held that this bank a/c has been considered/assessed in the case of Shri Pushpendra Jain, brother of the assessee. Whereas it is apparent from the assessment order in the case of Shri Pushpendra Jain that this bank account has neither been mentioned nor been considered.*
- 2. Erred in deleting the additions made of Rs.18,86,799/- on the basis of peak credit in bank account of M/s Sunshine Enterprises and of Rs. 8,97,321/- as profit on turnover through said bank a/c. The learned CIT(A) held that this bank a/c has been considered/assessed in the case of Shri Purhpendra Jain, brother of the assessee. Whereas it is apparent from the Assessing Officer in the case of Shri Pushpendra Jain that this bank account has not been assessed properly.*

3. *Erred in deleting the aforesaid additions without appreciating the fact that as per page 3 of the ADIT(Inv.)-II Indore's confidential report F. No. ADIT(Inv.) II/Ind/FIU/10-11/2149 dated 15.9.2010, there was no evidence that Shri Pushpendra Jain was carrying out any trade/business activity. Hence, there was no basis to conclude that the business was being run by Shri Pushpendra Jain and that he could own the business income of the assessee*

4. *Erred in deleting the aforesaid additions without appreciating the fact that as per the assessee's d-mat a/c no. IN300450 with the IDBI Bank Ltd., he was holding scripts valuing Rs. 11,98,206/- as on 31.03.2009 and had purchased during the relevant year 2000 shares of Hindalco Industries valuing Rs. 2,38,000/- No person without substantial means could have purchased/held this heavy a portfolio and on this ground alone, additions should not have been deleted."*

3. Briefly stated, the facts of the case, as culled out from record, are that the assessee is engaged in the business of plying of soil complector. He declared income of Rs. 1,47,630/- in the return of

income. As per the information possessed by the Assessing Officer the assessee was involved in the business named M/s Jain Construction and M/s Sunshine Enterprises with his brother Shri Pushpendra Jain. The Assessing Officer issued notice u/s 148 followed by notice u/s 43(2) of the Act which was served upon the assessee. It was contended by the assessee that these two business concerns M/s Jain Construction and M/s Sunshine Enterprises are owned by Pushpendra Jain and income from these businesses is declared in the return of income filed by Shri Pushpendra Jain. However, the Assessing Officer brushed aside the submissions made by the assessee and went ahead with completing the assessment after making additions u/s 68 of the Act at Rs.24,51,711/- and estimated the profits u/s 44AF of the two business concerns at Rs. 11,97,213/-. The income assessed at Rs. 31,96,550/-. Aggrieved, the assessee preferred appeal before the learned Commissioner of Income Tax (Appeals) and succeeded in full. The learned Commissioner of Income Tax (Appeals) deleted the additions observing as under :-

*“5. As explained by appellant before the ADIT (Inv.)-II, Indore, that both the bank accounts one in name of M/s Jain Construction and other in name of M/s Sunshine Enterprise were held by his brother Shri Pushpendra Jain. The total deposits in these accounts were of Rs. 2,02,69,512/- on which a profit of Rs.10,13,476/- was disclosed by Shri Pushpendra Jain and duly accepted by his A.O. ITO 4(4), Indore in order passed u/s 144/147 dated 21.12.2013. In view of the same there is no basis to differ from statement recorded by ADIT (Inv.)-II, Indore and view taken by ITO 4(4), Indore and there is no locus standi to add any amount in hands of appellant on account of those bank accounts which are pertaining to appellant’s brother. As a result all the grounds of appeal are allowed.”*

Against the above findings of the learned Commissioner of Income Tax (Appeals), the revenue is in appeal before the Tribunal.

4. Before us the learned DR supported the orders of the authorities below. On the other hand, the learned counsel for the assessee submitted that the learned Commissioner of Income Tax (Appeals) has given specific finding that both the business

concerns were not owned by the assessee and the alleged transactions in the bank accounts were also belonging to two business concerns and, therefore, the learned Commissioner of Income Tax (Appeals) deleted the additions.

5. We have heard both the parties and perused the material available on record. The revenue is aggrieved with the additions deleted by the learned Commissioner of Income Tax (Appeals) which were made by the Assessing Officer on the premise that two business concerns M/s JainConstruction and M/s Sunshine Enterprises are owned by the assessee and the income therefrom were not declared in the return of income. Certain additions were also made on the basis of alleged bank accounts in the name of the above two concerns. On going through the findings of the learned Commissioner of Income Tax (Appeals) we find that the brother of the assessee Shri Pushpendra Jain duly disclosed the business income from M/s JainConstruction and M/s Sunshine Enterprises in his return of income showing net profit of Rs.10,13,476/- which has been duly accepted by the Assessing Officer ITO Ward 4(4), Indore, in the order passed u/s 144/147 of the Act dated

21.12.2013. The learned DR failed to controvert the findings of the learned Commissioner of Income Tax (Appeals) as also to bring any new material on record. We, therefore, on the totality of the facts and the given circumstances, find no reason to interfere with the findings of the learned Commissioner of Income Tax (Appeals) and accordingly dismiss the grounds of appeal of the revenue.

6. In the result, the appeal of the revenue stands dismissed.

Pronounced in open Court on 29<sup>th</sup> June, 2018.

Sd/-

sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

(MANISH BORAD)  
ACCOUNTANT MEMBER

29 June, 2018  
Dn/-

Copy to – Appellant/Respodent/Pr.CIT/CIT(A)/DR/Guard File

By order  
Private Secretary