

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 289/JP/2015  
निर्धारण वर्ष / Assessment Years : 2010-11

Shri Jai Prakash Meena A-172, Meena Bhawan, Nandpuri Colony, Malviya Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-6(1), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AJLPM 0596 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (C.A.)  
राजस्व की ओर से / Revenue by : Smt. Punam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 12/06/2018  
उदघोषणा की तारीख / Date of Pronouncement : 09/08/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 22.01.2015 for the Assessment Year 2010-11 wherein the assessee has challenged the addition of a sum of Rs. 25,03,000/- U/s 69 of the I. T. Act. This matter was earlier dismissed ex-parte by the Coordinate Bench vide its order dated 01.08.2016 for non-prosecution and thereafter, the Coordinate Bench vide its order dated 17.02.2017 has recalled the earlier ex-parte order and accordingly the matter has now come up for hearing before us.

2. Briefly, the facts of the case are that the Assessing Officer based on the AIR information observed that the assessee has made cash deposits of Rs. 25,03,000/- in his Savings Bank Account maintained with Union Bank of India, Bapu Nagar, Jaipur. During the course of assessment proceedings, the assessee was asked to furnish details with regard to the deposits in the bank account as well as immediate source thereof. In response, the assessee submitted that the source of the cash deposits is the advance received against sale of plot no. 38, Durga Vihar, Sector-3, Malviya Nagar, Jaipur. The AO observed that the assessee is a person of no means and he is having salary income of Rs. 48,000/- per year which is even not sufficient to meet out his day to day livelihood and the assessee has also submitted as on date that he has no immovable assets. Thereafter the statement of the assessee was recorded U/s 131 of the Act. In his statement, the assessee has submitted that the said plot was purchased by him from Shri Kunjilal S/o Lala Ram Meena through an agreement signed in the year 2002 for a sum of Rs. 80,000/- and out of which he has paid Rs. 10,000/- and the remaining Rs. 70,000/- was paid by Shri D.R. Meena 17, Durga Vihar, Malviya Nagar, Jaipur. It was further stated by the assessee that the said plot was sold through an agreement to Shri Gaidilal Meena S/o Shri Kalyan Meena for a consideration of Rs. 40,51,000/- and an advance of Rs. 25,00,000/- was received in cash on 10.04.2009 at the time of executing the agreement. It has further been stated by the assessee that the sale of plot is still not completed and neither he has received the remaining sale consideration nor the advance of Rs. 25,00,000/- has been forfeited. It has further stated that both the

seller and the buyer of the said plot have expired and he is not in touch with any of the persons. It has further stated that he has never seen the buyer of the plot and the advance of Rs. 25,00,000/- was received by Shri D. R. Meena and the transaction for purchase in the year 2002 and sale in the year 2009 both were materialized by Shri D. R. Meena. He has further stated that after deposit of the cash into his bank account, the funds were given as loan to Smt. Shyamlati Sharma, D-270 Sarwanand Marg, Malviya Nagar, Jaipur at the instance of Shri D.R. Meena as Smt. Shyamlati Sharma was known to Shri D. R. Meena. It was further submitted that when the funds were received back from Smt. Shyamlati Sharma, the same were again given as loan to an NGO which is controlled by Shri D. R. Meena and his relatives.

3. Subsequently, the assessee was asked to produce legal heir of the buyer of the plot as well as Shri D. R. Meena and any other persons who can justify or substantiate the assessee's contentions and notices were also issued in the name of Shri Gaidilal Meena, Shri D. R. Meena and Smt. Shyamlati Sharma. From the perusal of the assessment order, it appears that only Shri D. R. Meena appeared before the AO and has submitted that he knows the assessee due to some close relations and he has nothing to do with his financial transactions. Thereafter, the AO taking the submissions of Shri D R Meena on record concluded the assessment proceedings holding that the assessee could not furnish any satisfactory justification to the alleged sale transaction and thus the source of the cash deposit of Rs. 25,03,000/- remain unexplained cash which were brought to tax U/s 68 of the I. T. Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and reiterated the submissions and the explanations made during the assessment proceedings. During the course of appellate proceedings, the Id. CIT(A) asked the Assessing Officer to examine the son/legal heir of the purchaser of the land to ascertain whether the cash advance was given to the assessee and also the capacity of the purchaser to give such a large amount of cash. The Assessing Officer recorded the statement U/s 131 of Shri Ramnath Meena, son of the purchaser of the land on 28.12.2014 and submitted his report to the Id. CIT(A) wherein he has confirmed that his father has given the amount to the assessee on 10.4.2009 in cash.

5. The Id CIT(A) after considering the assessee's submission and remand report of the AO recorded his findings which are contained at para 2.6 which is reproduced as under:-

*"2.6 From the statement of the son/legal heir of the purchaser of the land, the following points emerge-*

*(i) The source of income of Shri Ramnath Meena is from driving tractor. He earns Rs. 8,000/- per month.*

*(ii) He states with his mother (wife of the purchaser), alongwith his wife and two children and his two younger brothers. One brother is working as a mechanic and earning Rs.3,000/- per month while the youngest brother studying.*

*(iii) His father had a savings bank account in State Bank of Bikaner & Jaipur.*

*(iv) He confirmed that a sum of Rs.25,00,000/- was given by his father to the assessee on 10.04.2009 in cash. The source of this case is stated to have been the sale of ancestral land measuring 4.4 bighas*

*on 27.11.2006. When the Assessing Officer began to ask him further questions about the above transactions, he abruptly left without signing the last page of the statement, so that the Assessing Officer could not ask him further questions on this issue.*

*Looking to the above facts viz-*

*(a) The legal heir/son of the purchaser earns only Rs.8,000/- per month while his brother earns Rs.3,000/- per month and they stay with their family (which includes the wife of the purchaser) in such a meager income. Yet they have not pressed for return of the advance amount.*

*(b) The source of the cash of Rs.25,00,000/- has been stated to be ancestral land yet when the Assessing Officer asked for details, Shri Ramnath Meena, abruptly left the office without signing the statement.*

*(c) While the purchaser had a bank account, he held a huge amount of Rs.25,00,000/- in cash for around 2 & 1/2 years without depositing it in his bank account.*

*(d) The land for which the assessee has ostensibly received an advance of Rs.25,00,000/- has been acquired by him by paying only a sum of Rs.10,000/-. The assessee earns a monthly salary of Rs.4,000/- per month, yet he has not made any effort to recover the balance amount of consideration and is also not in touch with the purchaser of the plot or his legal heir*

*(e) After the assessee deposited this cash in his bank account, he advanced this sum to one Smt. Shyam lata Sharma and thereafter to one NGO. It is difficult to fathom that a person earning Rs.4,000/- per month will advance a sum of Rs.25,00,000/- to a NGO.*

*In view of the above facts discussed above, it is held that the explanation furnished by the assessee regarding the nature and source of the cash deposit of Rs.25,03,000/- in the bank account is not satisfactory. Therefore, the source of this investment of*

*Rs.25,03,000/- is held to be unexplained U/s 69 of the I.T. Act. The addition of Rs. 25,03,000/- made by the Assessing Officer is upheld U/s 69 of the I.T. Act. This ground is dismissed."*

6. Being aggrieved, the assessee's is in appeal before us and submitted that the lower authorities have doubted the genuinity of the transactions in spite of duly substantiated facts on record in terms of agreement executed with Shri Gaidilal Meena for sale of the property for a consideration of Rs. 40,51,000/-, agreement with Mr. Kunji Lal for purchasing the land, and statement of Shri Ram Nath Meena S/o of Late Shri Gaindi Lal Meena wherein he has confirmed giving giving Rs. 25,00,000/- by his late father to Shri Jai Prakash Meena. It was submitted that the lower authorities have not at all made a case that the documents were fabricated or fraud in nature. It was accordingly submitted that the reasons given by the Id. CIT(A) for dismissing the appeal have no relevance.

7. It was further submitted that the amount received towards advance for transfer of capital asset cannot be taxed U/s 68 of the IT Act, 1961. It can be taxed U/s 56(2)(ix) of IT Act, 1961, which was brought to statute book by the Finance Act, 2014 w.e.f. 01.04.2015 i.e. A.Y. 2015-16 reads as under:-

"56: income from other sources

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "income from other sources", namely:-

.....

(ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if-

(a) such sum is forfeited; and

(b) the negotiations do not result in transfer of such capital asset;

Thus, prior to this amendment such amount could not be taxed u/s 68 of I.T. Act, 1961, but could not be dealt with in accordance with section 51 of IT Act, 1961 which reads as under:

*"51. Advance money received.*

*Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition :*

*Provided that where any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of [section 56](#), then, such sum shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition."*

In view of the above, the action of Id. CIT(A) in confirming the addition is bad in law and, therefore, relief may please be granted by deleting the addition of Rs. 25,03,000/-.

8. The Id. D/R is heard who has relied on the finding of the lower authorities.

9. We have heard the rival contentions and perused the material available on record. As we have noted above, it is a case where the assessee in his statement recorded u/s 131 has stated categorically that the transaction for purchase in the year 2002 and sale in the year 2009 both were materialized by Shri D. R. Meena, and after deposit of the cash so received as advance into his bank account, the funds were given as loan to Smt. Shyamlatata Sharma at the instance of Shri D.R. Meena and further when the funds were received back from Smt. Shyamlatata Sharma, the same were given as loan to an NGO which is controlled by Shri D. R. Meena and his relatives. It thus appears on reading of such statement of the assessee recorded on oath u/s 131 that the assessee has acted not on his own but on behalf of Shri D. R. Meena. Even if we take these purchase and sale agreements on face value, if we look at the initial investment in year 2002 on purchase of land, it is noted that out of total investment of Rs 80,000, Shri D. R. Meena had invested to the extent of Rs 70,000 and assessee's share of investment is only Rs 10,000. Subsequently, it is beyond any imagination that subsequent sale of the said property which was agreed to be sold for Rs 40,51,000, the assessee received Rs 25,00,000 which is clearly not in proportionate to his share of investment. Further, the AO has himself recorded a finding of fact that assessee is a person of no means and he is having salary income of Rs. 48,000/- per year which is even not sufficient to meet out his day to day livelihood. Similarly, the statement of son of the purchaser has

been recorded during the remand proceedings and the Id CIT(A) has recorded a finding of fact that even the purchaser and his family is of no means and earns meager income and in spite of that , they have not pressed for return of the advance amount.

10. In such a scenario, the right course of action would have been to investigate the involvement of Shri D. R Meena in this whole transaction rather than signaling out the assessee just because cash has been found deposited in his bank account. No doubt, once cash is found deposited in the assessee's bank account, the initial onus is on the assessee to explain the nature and source of such deposit. But where the assessee has submitted in his statement recorded on oath by the Assessing officer that the transaction has been done at the behest of Shri D. R Meena and even the documents prima facie establishes that there is involvement of Shri D. R Meena, the Revenue cannot brush aside these statements and documents and single out the assessee.

11. Further, if we peruse the assessment order, it appears that though the AO had issued notice to Shri D. R. Meena and he appeared before the AO, the AO has merely taken his submissions on face value and concluded the assessment proceedings and the cash deposit of Rs. 25,03,000/- were held to be unexplained and brought to tax in the hands of the assessee. What had stopped the AO to record his statement on oath u/s 131 and what has stopped the AO in carrying out further investigation in coordination with the jurisdictional AO of Shri D.R Meena. Even in the appellate proceedings, we find that there is no enquiry or investigation which has been directed by the Id CIT(A)

against Shri D. R Meena who the assessee has stated in his statement u/s 131 that the transaction of purchase and sale and even the handling of sale consideration and subsequent advancement of loan has been done at the behest of Shri D. R Meena.

12. In light of above discussions, we are of the considered view that the matter require further investigation and examination by the authorities below and we accordingly set-aside the matter to the file of the AO to examine the same afresh after providing reasonable opportunity to the assessee. In view of the same, the various contentions so advanced by the Id AR have not been dealt with separately for want of necessary facts and the Id AR is at liberty to raise the same before the AO.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 09/08/2018.

Sd/-

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member  
जयपुर / Jaipur

दिनांक / Dated:- 09/08/2018.

**\*Santosh**

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

1. अपीलार्थी / The Appellant- Shri Jai Prakash Meena, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 6(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 289/JP/2015 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar