

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. 898/JP/2018
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Shrikant Gupta S/o Shri Niranjana Lal Gupta Maheshwari Mohalla, Deeg, District- Bharatpur.	बनाम Vs.	The ITO, Ward-2, Bharatpur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AHHPG 8767 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri K.C. Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27/09/2018
उदघोषणा की तारीख / Date of Pronouncement : 01/10/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Alwar dated 16.05.2018 for the Assessment Year 2011-12 wherein the assessee has taken the following ground of appeal:-

- "1. Under the facts and circumstance of the case, the notice issued u/s 148 and consequent order passed u/s 147 is illegal and bad in law.*
- 2. The Ld. CIT(A) has erred on facts and in law in sustaining the addition of Rs. 5,40,000/- by not accepting the source of capital*

introduced by the assessee in the firm M/s Suraj Mal Niranjana Lal Industries by holding that the assessee has not discharged the onus to prove the genuineness of creditors ignoring that the AO in the remand report has accepted the same as genuine and justified.”

2. During the course of hearing, the Id. AR has submitted that the assessee is a partner in M/s Suraj Mal Niranjana Lal Industries along with his father, Shri Niranjana Lal Gupta and uncle, Shri Naresh Chand Bansal. He filed his return of income on 28.03.2012 declaring income of Rs. 1,58,920/-. During the course of assessment proceedings in case of M/s Suraj Mal Niranjana Lal Industries, the AO observed that the assessee has introduced capital of Rs. 5,40,000/- in the firm. The assessee could not furnish the explanation in this regard. Thereafter, the AO completed the assessment of the firm u/s 143(3) vide order dated 26.03.2014 by accepting the capital of the partners but issued notice u/s 148 on 06.05.2014 to the assessee partner. As no one attended the hearing, the AO completed assessment proceedings u/s 144 of the Act by making addition of Rs. 5,40,000/- as unexplained cash deposits u/s 68 of the Act.

3. It was submitted by the Id AR that reopening of assessment in the hands of the assessee is bad in law in as much as if the AO was not satisfied about the explanation of the assessee as to the source of capital introduced in the firm, addition can be made only in the hands of the firm u/s 68 of the Act. Therefore, the reopening of the case of the assessee is illegal and bad in law.

4. It was further submitted that so far as merit of the addition is concerned, the assessee during the appellate proceedings explained that the amount so contributed as capital in his partnership firm was out of the surplus of cash balance available with him and loans taken from various persons. The details of persons from whom loan was taken along with the date of repayment and affidavits of these persons were submitted before the Id. CIT(A) as additional evidence.

5. It was submitted that the Id. CIT(A) called for a remand report. The AO in his remand report dated 13.03.2018 stated that he had issued notices u/s 131 of the Act on 15.01.2018 to nine persons out of which six persons had appeared on 08.02.2018 and their statements were recorded in oath. These persons affirmed that they had given loan to the assessee. He also stated that the assessee had cash balance of Rs. 1,57,012/- as on 31.03.2010 and had collected an amount of Rs. 5,40,000/- from various persons. The assessee repaid an amount of Rs. 3,40,000/- during the same year. All these facts are evidenced from the affidavits and the statements on oath taken during the remand proceedings. Thus, in light of the evidences, statements, affidavits and other circumstances, the AO held that the capital contributed by the assessee is genuine and justified.

6. It was further submitted that the Id. CIT(A) at Para 5.6 of his order stated that the AO has not been able to verify whether the creditors are income tax assesses or not and whether they have the means to advance the amount. He further stated that mere admission of having advanced the loan is not enough to discharge the onus and

relied on the decision of Hon'ble Supreme Court in case of CIT vs. Lovely Exports Pvt. Ltd. Accordingly, he held that the assessee has not discharged the onus and dismissed the appeal.

7. It was further submitted that the AO in his remand report after considering the affidavits and the statement of various persons has accepted that the loan raised by the assessee are genuine, the Ld. CIT(A) without bringing any adverse material on record cannot ignore the remand report and confirm the addition. The judgment of Hon'ble Supreme Court of Lovely Export Pvt. Ltd. relied by the Ld. CIT(A) is only on the issue that in case of a company where any share capital is introduced by a shareholder, the same cannot be considered in the hands of the company but only in the hands of the shareholder. Thus, this judgment is not on the issue of the satisfaction of the ingredients of Section 68 of the Act.

8. The Id. DR is heard who has relied on the findings of the Id. CIT(A).

9. We have heard the rival contentions and perused the material available on record. So far as the first ground of appeal is concerned, we are unable to accept the contention so advanced by the Id. AR. While completing the assessment in the hands of the partnership firm M/s Suraj Mal Niranjana Lal Industries, the AO found out that the assessee has deposited cash amounting to Rs. 5,40,000/- in his capital account and basis the said information, the assessment proceedings U/s 147 of the Act were initiated in the hands of the assessee being the partner in the firm and notice was issued U/s 148 of the Act.

Therefore, there was tangible material in possession of the Assessing Officer to reopen the assessment in the hands of the assessee and merely because there is no additions made in the hands of the firm, the same cannot be the basis for challenging the reassessment in the hands of the assessee. In the result, ground No. 1 of the assessee appeal is dismissed.

10. Regarding ground no. 2 on merits of the case, it is noted that during the course of appellate proceedings, the Id. CIT(A) has called for remand report from the Assessing Officer and in his remand report, the Assessing Officer after due examination has given a finding that the deposit of Rs. 5.40 lacs introduced as capital during the year under reference by the assessee has been found genuine and justified. The relevant findings of the AO in his remand report are reproduced as under:-

"For verification of the facts, notices U/s 131 of the Act were issued on 15.01.2018 to the following depositors from whom the assessee claimed to have collected the money and deposited in to the firm as capital:

(i) Sh. Prem Singh S/o Sh. Ram swaroop Saini Singhpole gate, deeg Distt. Bharatpur.

(ii) Sh. Samaliya S/o Sh. Megh Singh Village Kuchawati, Deeg

(iii) Sh. Virendra Singh S/o Sh. Sohan Lal Village Kuchawati, Deeg

(iv) Kavita Bansal D/o Niranjan Lal Maheshwari Mohalla, Deeg

(v) Indira Bansal W/o Sh. Naresh Chand Bansal Maheshwari Mohalla Deeg

(vi) Devendra S/o Sh. Lala ram Kaman Gate, Deeg (Bharatpur)

(vii) Prahlad Singh S/o Sh. Shyam Lal Rudhiya Mohalla, Near Fort, Bharatpur.

(viii) Nimmi D/o Niranjan Lal Maheshwari Mohalla, Deeg

(ix) Meena Bansal W/o Niranjan Lal Maheshwari Mohalla, Deeg

Out of these, six persons appeared on 08.02.2018 and their statement were recorded on oath, the detail of presented six persons is as follows:-

(i) Sh. Prem Singh S/o Sh. Ram Swaroop Saini Singhpole Gate, Deeg, Distt. Bharatpur

(ii) Sh. Samaliya S/o Sh. Megh Singh Village Kuchawati Deeg

(iii) Sh. Virendra Singh S/o Sh. Sohan Lal Village Kuchawati, Deeg

(iv) Kavita Bansal D/o Sh. Niranjan Lal Maheshwari Mohalla Deeg

(v) Indira Bansal W/o Sh. Naresh Chand Bansal Maheshwari Mohalla Deeg

(vi) Pralad Singh S/o Sh. Shyam Lal Rudhiya Mohalla, Near Fort, Bharatpur,

All these persons confirmed their deposits to the assessee and its returning also as was claimed by the assessee in his reply/submission, further as per Balance Sheet of the assessee dt.

*31/03/2010, he was having a cash Balance of Rs. 1,57,012/- and further he collected the amount from various depositors of Rs. 5.40 Lakh out of this total available balance he deposited the amount of Rs. 5.40 Lakh in to the firm on various dates out of this deposit of Rs. 5.40 Lakh from various person, the assessee returned/repaid the maximum portion i.e. Rs. 3.40 lakh to the concern persons, during the same year under reference, which fact is evidenced by the Affidavits and the statements of the concern persons. So **keeping in view the total facts, evidences, statements, affidavits and other circumstances, though the test check method was applied, the deposit of Rs. 5.40 Lakh introduced as capital during the year under reference by the assessee has been genuine and justified.**"*

11. In light of above, we are unable to appreciate the contentions raised by the Id. CIT(A) in terms of not accepting the finding of the Assessing Officer during the course of remand proceeding. Given that the Assessing Officer has carried out the necessary verification/examination and where the Id. CIT(A) is of the opinion that the said examination is not satisfactory, then it is incumbent on the part of the Id. CIT(A) to give a conclusive finding as to why he feel that the examination so conducted by the AO is not acceptable, however, in the instant case we do not find any such finding which has been recorded by the Id. CIT(A). Therefore, in light of the facts that the AO examined the source of deposit and has found the same as genuine and justified, the findings which remained uncontroverted before us, we set aside the order of the Id. CIT(A). In the result, the ground No. 2 of the assessee's appeal is allowed.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 01/10/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur

दिनांक / Dated:- 01/10/2018.

***Santosh**

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

1. अपीलार्थी / The Appellant- Shri Shrikant Gupta, Bharatpur.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 2, Bharatpur.
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. 898/JP/2018 }

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar