

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH "A", JAIPUR

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

आयकर अपील सं./ITA No. 1107/JP/2018
निर्धारण वर्ष/Assessment Year : 2014-15.

Shri Lalit Kumar Paryani, Prop. M/s. Suresh & Company 21, Anasagar Link Road, Ajmer.	बनाम Vs.	The ACIT Circle-2, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAWPP 1893 N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Sunil Porwal (CA)
राजस्व की ओर से/ Revenue by: Shri P.P. Meena (JCIT)

सुनवाई की तारीख/ Date of Hearing : 02.01.2019.
घोषणा की तारीख/ Date of Pronouncement : 11/01/2019.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 24th August, 2018 of Id. CIT (A), Ajmer for the assessment year 2014-15. The assessee has raised the following grounds :-

“ Under the facts & circumstances of case the Id. CIT (A) has erred in :-

- (1) Considering loans received of Rs. 725,000/- during the year as unexplained u/sec. 68.
- (2) Considering interest paid of Rs. 37,422/- on unsecured loans as unexplained u/s sec. 68. ”

Ground No. 1 is regarding addition made by the AO under section 68 of the IT Act on account of unsecured loan of Rs. 7,25,000/-.

2. The assessee is the proprietor of M/s. Suresh & Company doing wholesale business of Gur & Sugar. During the course of assessment proceedings, the AO noted that during the year under consideration the assessee has received loans from various parties total amounting to Rs. 7,25,000/-. The AO further noted that all the loan creditors are family members of the assessee and further cash amounts were deposited in their bank accounts just prior to the money advanced to the assessee. Accordingly, the AO made the addition of Rs. 7,25,000/- as unexplained cash credit under section 68 of the Act. The assessee challenged the action of the AO before the Id. CIT (A) and contended that all the loan creditors have confirmed the loans given to the assessee and also explained the source of the amount. Once the assessee has discharged the onus of identity, genuineness and creditworthiness of the depositors, then no addition under section 68 is called for. The Id. CIT (A) was not impressed with the explanation of the assessee and confirmed the addition made by the AO.

3. Before us, the Id. A/R of the assessee has submitted that the assessee filed the relevant details along with the confirmations, bank statements and income tax returns of respective loan creditors. The AO summoned the loan creditors only in the month of November when the family had to go out of City and, therefore, they could not appear before the AO in response to the summons issued under section 131 of the IT Act. The Id. A/R has further submitted that the loan creditors have sent the letters of confirmation and also requested the AO to defer the date as they were out of station at the time when the AO issued the summons. Once the loan

creditors have accepted the transaction of loan given to the assessee then no addition can be made in the hands of the assessee as the transaction was through banking channel and identity of the loan creditors are not in dispute. The Id. A/R has submitted the assessee also filed the copies of returns of income, computation and balance sheets of the loan creditors. He has further submitted that for the assessment year 2013-14 the loan creditors were subjected to the confirmation, verification and the AO accepted their credits as genuine. Therefore, in the subsequent year i.e. the assessment year under consideration the AO cannot treat the transaction of loan as unexplained cash credit. He has referred to the various documents filed before the AO pertaining to each of four loan creditors and also pointed out that when they have explained the sufficient funds in their accounts including the opening balance which is more than the amount of loan granted to the assessee then the deposit of cash in the bank account cannot be a reason for denying the creditworthiness of the loan creditors. In support of his contention he has relied upon the decision of Hon'ble Supreme Court in case of CIT vs. P. Mohamakala, 161 taxman 169 (SC) and the decision of Hon'ble Jurisdictional High Court in case of Aravali Trading Co. vs. ITO, 220 CTR 622 (Raj.). The Id. A/R has pointed out that the assessee produced the cash flow of each of the loan creditors along with the confirmation to prove that the sufficient amount was available to grant the loan to the assessee. Hence he has pleaded that the addition sustained by the Id. CIT (A) be deleted.

4. On the other hand, the Id. D/R has submitted that despite the fact that all the lenders are family members of the assessee, the assessee has failed to produce them before the AO for examination. The AO has brought specific facts on record

that just before giving the advance to the assessee there were cash deposits in the bank accounts of the loan creditors. Even the balance prior to the transaction and subsequent to the transaction in the bank account of loan creditors was very low. The assessee though produced the cash books which were prepared only to show the availability of cash in hand on the date on which the cash was deposited in the bank account of the persons, however, there is no withdrawal shown during the year in the cash book. Thus the cash books were prepared only to show that the cash in hand was available without showing any other entry of in-flow and out-flow of cash. The Id. D/R has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. The assessee has shown the loans from four family members as under :-

1) Bharat Pariyani	Rs. 3,00,000/-
2) Chandra Prakash Pariyani	Rs. 3,00,000/-
3) Smt. Hema Pariyani	Rs. 50,000/-
4) Smt. Neeta Pariyani	Rs. 75,000/-

All these loans were received through cheques issued in the month of October, 2013. In order to verify the genuineness and creditworthiness of the loan creditors, the AO issued summons under section 131 of the IT Act, however, none of the loan creditors appeared before the AO. The assessee has explained the reasons of non appearance as there was a family function due to which the entire family was out of station when the AO issued the summon under section 131. The AO disallowed the claim of the assessee and treated the same as unexplained cash credit by recording the reasons that cash was deposited in the bank accounts of the loan creditors prior to issuing of cheques to the assessee and further all the deposit slips were filled up

in the same handwriting and, therefore, the assessee himself has deposited the cash in the bank accounts of the assessee's family members from whom the loan was shown by the assessee. The Id. CIT (A) while passing the impugned order considered this issue in para 4.6 as under :-

" 4.6. It is surprising to note that on one hand the appellant contends that the lenders are his family members and on the other hand he is not able to produce the lenders before the AO for examination. In the so called cash book furnished by the appellant during the course of appellate proceedings, cash of less than Rs. 20,000/- has been introduced in the cash book on different dates without any explanation. No withdrawals have been shown in these cash books. Therefore, it is clear that the so called cash books were prepared only to show the availability of cash-in-hand on the date on which the cash was deposited in the bank accounts of these persons. The appellant has failed to furnish even the name and address of the person who had deposited the cash in the bank accounts of all these four persons before issue of cheques to the appellant. The appellant has not disputed the fact that the cash was deposited by the same person in the bank accounts of all the lenders before issue of cheques to the appellant. From the bank statements of all the four persons, it can be seen that there were meager balance in their bank account before or after issue of cheques to the appellant. The income declared by these persons in the return of income also does not justify the availability of such a huge amount of cash-in-hand with them. In view of these facts, I am of the considered view that the appellant has failed to prove the creditworthiness of Shri Bharat Pariyani, Shri Chandra Prakash Pariyani, Smt. Hema Pariyani and Smt. Neeta Pariyani, therefore it is held that the AO has rightly treated the credit of Rs. 7,25,000/- introduced in the name of Shri Bharat Pariyani, Shri Chandra Prakash Pariyani, Smt.

Hema Paryani and Smt. Neeta Paryani as unexplained credit. Accordingly, the addition of Rs. 7,25,000/- made by the AO is hereby confirmed."

Though there was cash deposit in the bank accounts of the creditors, however, once the assessee has produced the relevant documents which includes the return of income filed by the loan creditors and cash flow statement to show the availability of cash which was deposited in the bank account, then the AO was to conduct a further enquiry to prove that the documents produced by the assessee are not reflecting the correct state of affairs being availability of the cash with the loan creditors. It is also not disputed that in the earlier year similar transaction of loan taken from these family members were accepted by the AO. The assessee has also failed to discharge his onus in producing these loan creditors before the AO despite the opportunities were given by the AO during the assessment proceedings and summons were also issued under section 131 of the IT Act. Since the loan creditors are family members of the assessee, therefore, the assessee on his own ought to have produced them before the AO for examination but despite the summons issued under section 131, none of the loan creditors appeared before the AO. Hence in these facts and circumstances, we find that the matter has not been properly examined due to the reason that the assessee could not produce the loan creditors before the AO. Having regard to the facts and circumstances of the case and in the interest of justice, we set aside the matter to the AO with the direction to the assessee to produce all the loan creditors before the AO for examination. In case the assessee

fails to produce the loan creditors before the AO for examination, the addition made by the AO and confirmed by the Id. CIT (A) would stand sustained.

Ground No. 2 is regarding disallowance of interest of Rs. 37,422/- on unsecured loan claim.

6. This issue is consequential to the issue of loan creditors of ground no. 1. Since the issue of unsecured loan which was treated as unexplained cash credit has been set aside to the AO, therefore the addition of interest on such loan is also consequently set aside to the AO to be decided as per the out-come of the main issue.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 11/01/2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur
Dated:- 11/01/2019.
Das/

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

1. The Appellant- Shri Lalit Kumar Paryani, Ajmer.
2. The Respondent – The ACIT, Circle-2, Ajmer.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1107/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

