

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 1298/JP/2018
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Manoj Kumar Jain 57, Badjatia Freight Carriers, Subhash Market, Ajmeri Gate, Beawar-305901.	बनाम Vs.	The ITO, Ward-2, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAWPJ 8620 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 1450/JP/2018
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Manoj Kumar Jain 57, Badjatia Freight Carriers, Subhash Market, Ajmeri Gate, Beawar-305901.	बनाम Vs.	The JCIT, Range-2, Ajmer.
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निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Shri K.C. Meena (ACIT)

सुनवाई की तारीख / Date of Hearing : 25/03/2019
उदघोषणा की तारीख / Date of Pronouncement: 04/04/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against two separate orders of the Id. CIT(A), Ajmer dated 17.09.2018 & 30.10.2018 arising from assessment order passed U/s 143(3) and penalty levied U/s 271D of the I.T. Act. respectively. First we taken up the quantum appeal in ITA No. 1298/JP/2018 wherein the assessee has raised following grounds:-

"1. The learned Commissioner of Income Tax (Appeals) grossly erred-in-law and on facts in confirming in addition of unexplained interest expenses amount of Rs. 90,000/-. While unsecured loan amount Rs. 10,00,000/- transaction is not related to assessee (Mr. Manoj Kumar Jain.

2. The order confirmed by the learned Commissioner of Income Tax (Appeals) is bad-in-law, based on surmises & conjectures, arbitrary & Capricious, injudicious, against the settled principles of law, as such the same deserved to be amended."

2. The assessee is an individual and derived income from transport contractor. The assessee filed e-return of income on 29.02.2015 declaring total income of Rs. 7,16,730/-. The Assessing Officer received information from ADIT(Investigation), Kota vide letter dated 15.03.2016 whereby it was informed that a search and seizure action U/s 132 of the Act was carried out on 02.07.2015 in case of Kota Dall Mill Group.

During the said search and seizure action some incriminating documents were found and seized in respect of M/s Badjatya Freight Carrier, Beawar relating to the assessment year 2015-16. Thus, the AO noted from the information that the assessee received loan of Rs. 10,00,000/- in cash from one Shri Ayush Agarwal as per the seized documents. The assessee has also paid unaccounted interest in cash of Rs. 90,000/- during the year. The AO accordingly observed that the transactions were made through cash and hence, the assessee has made violation of provisions of Section 269SS of the I. T. Act. The AO also examined the assessee by recording his statement U/s 131 of the Act on 06.11.2017. The AO accordingly held that the assessee could not give satisfactory reply regarding loan received from Shri Ayush Agarwal and consequently addition of Rs. 90,000/- was made on account of unaccounted/ unexplained interest expenses. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3. Before us, the Id. AR of the assessee has submitted that in his statement recorded U/s 131 of the Act the assessee has stated that he has not taken any loan from Shri Ayush Agarwal. Even he does not know Shri Ayush Agarwal of Kota Dal Mill group but the AO ignoring statement of the assessee has made the addition of Rs. 90,000/-. The

Id. AR of the assessee has further contended that when the assessee is not having any business relation or personal relation with the alleged Shri Ayush Agarwal then how he can lend such a huge amount to the assessee. The Id. AR has referred to the alleged two slips/hundies and submitted that these documents were not signed by the assessee but these are purported to be signed by one Mr. Saurabh Jain therefore, when the assessee has no connection with the alleged person named Shri Saurabh Jain who have signed these documents then, these documents does not relate to the assessee. Thus, the Id. AR has submitted that the alleged documents seized in the search and seizure action in the case of Kota Dal Mill group does not establish the fact that the assessee has taken loan. Once the documents are neither signed nor executed by the assessee but merely the name of the assessee concerned is appearing on these documents would not establish the fact of taking loan. The Id. AR has further contended that the assessee has not carried out any transaction either directly or through any broker as alleged by the AO. Further, the Assessing Officer has made the addition based on the document which do not relate to the assessee. The assessee has also explained the transaction with broker who is a different person and not Shri Shyamji as alleged by the AO. All the

transaction with Shyam Broker has been carried out through cheque and are reflected in the books of account of the assessee therefore, the transaction in question does not pertain to the assessee. The Assessing Officer has not carried out any further inquiry to establish the fact that the transaction in the seized documents belong to the assessee. Therefore, in the absence of any corroborative evidence to show that these documents are related to the assessee no addition can be made in the hands of the assessee. Hence, the Id. AR has submitted that the addition made by the AO on presumption and surmises is liable to be deleted.

4. On the other hand, the Id. DR has submitted that the seized documents clearly established the fact that the assessee has paid interest of Rs. 90,000/- on the loan of Rs. 10,00,000/- received in cash. The said seized documents were found in the search and seizure action carried out in case of Kota Dal Mill group. During the appellate proceedings, the Id. CIT(A) has called for remand report from the AO for giving one more opportunity to the assessee. The document is clearly signed on behalf of M/s Badjatya Freight Carrier by one Shri Saurabh Jain and it also mentioned the name of the broker as Shyan ji. The assessee was having transaction with the said broker though in his

statement he has explained that he had already expired and was a different person. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The Assessing Officer proposed to make the addition of unaccounted interest payment of Rs. 90,000/- based on the information received from ADIT(Investigation), Kota wherein it has been stated that these two slips/hundies were found and seized and were executed on behalf of M/s Badjatya Freight Carrier. These two hundies were issued in the name of Shri Ayush Agarwal of Rs. 5,00,000/- each on 20.10.2014 and 22.10.2014 respectively. In order to verify the transaction of taking loan against these two hundies, the AO examined the assessee and recorded his statement U/s 131 of the Act on 06.11.2017. The relevant part of the statement of the assessee has been reproduced by the AO at page 6 and 7 are as under:-

प्रश्न 6 कृपया बताये कि वर्ष 2014-15 में आप ने किन-किन व्यक्तियों/संस्थाओं से लोन लिया था?

उत्तर मुझे याद नहीं है जो भी लोन है वह वित्त वर्ष 2014-15 की बलेन्स शीट में लिखे है।

प्रश्न 7 कृपया बताये कि वित्त वर्ष 2014-15 में क्या आपने नकद में भी किसी पार्टी से लोन लिया था?

उत्तर नहीं, मैंने कोई नकद लोन नहीं लिया था।

- प्रश्न 8 कृपया बताये कि आप आयुष अग्रवाल को कब से और कैसे जानते हैं?
- उत्तर नहीं मैं किसी आयुष अग्रवाल को नहीं जानता हूँ।
- प्रश्न 9 क्या आप श्री श्याम जी दलाल को जानते हैं? यदि हाँ तो उनका पूरा पता बताये।
- उत्तर हाँ, मैं श्री श्यामजी को जानता हूँ मैं उन्हें बचपन से जानता हूँ क्योंकि वे मेरे पड़ोसी थे उनका स्वर्गवास करीबन साल डेढ़ साल पहले हो चुका है। वे डिग्गी मोहल्ला में रहते थे।
- प्रश्न 10 मैं आपको दो हूंडी रसीदें दिनांक 20.10.2014 एवं 22.10.2014 दिख रहा हूँ जो कि दोनों रूपये 500000/- व 500000/- की है, तथा जिससे आयुष अग्रवाल, ब्यावर ने मैं बड़जात्या फ्रेट केरियर के नाम लिखी हैं, एवं भुगतान दलाल श्री श्यामजी के मार्फत हुआ है तथा उस रसीद पर बड़जात्या फ्रेट केरियर की सील लगी हुई है, एवं प्रापराईट/मैनेजर के हस्ताक्षर है, तथा इसी पर्ची के अनुसार 12 महीने का ब्याज रूपये 90000/- लिखा हुआ है, दूसरी पर्ची भी उसी तरह लिखी गयी है जिसमें छः माह का ब्याज रूपये 45,000/- दर्शाया गया है। कृपया बताये उक्त दोनों रसीदें/हुडीयों/बदला पर्चीयों को आपने अपने बही खातों में किस तरह दिख रखा है?
- उत्तर उक्त दोनों पर्चीयां मैंने देख ली है, यह पर्चीया मरी नहीं है, यानि मेरे द्वारा किसी को जारी नहीं की गई है, ना ही मुझे पैसे प्राप्त हुये है, ना ही मेरे द्वारा कोई ब्याज का भुगतान किया गया है, उक्त दोनों रसीदों पर पाये गये हस्ताक्षर भी मेरे नहीं है।
- प्रश्न 11 इन दोनों पर्चीयों पर मैं, बड़जात्या फ्रेट केरियर की सील लगी हुई है, एवं प्रापराईट/मैनेजर के हस्ताक्षर किये हुये है कृपया बताये कि यह हस्ताक्षर किसके है? एवं आपकी फर्म की सील इन पर्चीयों पर क्यों लगी हुई है?
- उत्तर उक्त सील मेरे द्वारा नहीं लगायी गई है, मार्केट से सील कोई भी बनवा सकता है, हस्ताक्षर किसके हैं, मैं नहीं जानता हूँ।

- प्रश्न 12 मैं आपको आपके सीए द्वारा प्रस्तुत ऑडिट रिपोर्ट का लोन व एडवांसेज का अकाउन्ट (एसेस्ट) वि.वर्ष 2014-15 दिखा रहा हूँ जिसके अनुसार श्याम ब्रोकर के नाम से रुपये 900/- को डी.आर. बलेन्स हैं, कृपया इस एन्ट्री को समझाये?
- उत्तर श्री श्यामजी ब्रोकर से रुपये 900/- वापस लेने हैं, इसी की एन्ट्री करी कई है।
- प्रश्न 13 दोनो हुन्डी पर्चीयों पर जिस श्यामजी का दलाल के रूप में नाम लिखा हुआ है, कृपया स्पष्ट करें वह व्यक्ति और जिस व्यक्ति का नाम प्रश्न संख्या 12 में विवरण है, क्या ये एक ही आदमी है या अलग अलग हैं?
- उत्तर यह दोनों आदमी अलग-अलग है। श्याम ब्रोकर वाले का मकान देलवाड़ा रोड पर है, जबकि श्यामजी का मकान डिग्गी चौक पर है।
- प्रश्न 14 उक्त दोनों हुन्डी पर्चीयों दिनांक 20.10.2014 एवं 22.10.2014 के अनुसार आपने रुपये 10,00,000/- नकद में बिना बही खातों में इन्द्राज किये आपका लोन क्यों ना माना जाये?
- उत्तर मैं किसी कोटा दाल मील वाले को नहीं जानता हूँ, पूर्व में मैं बता चुका हूँ कि उक्त दोनों रसीदे/बदला रसीदें मेरे द्वारा जारी नहीं की गई है। तो मेरे द्वारा प्राप्त किया गया लोन नहीं है।
- प्रश्न 15 इन दोनो हुन्डी पर्चीयों को ध्यान से देखने पर ऐसा लगता है कि ये किसी सौरभचन्द्र जैन के हस्ताक्षर अंग्रेजी में प्रतित होते है, इनसे आपके क्या सम्बन्ध है?
- उत्तर मैं किसी सौरभ चन्द्र जैन नाम के व्यक्ति को नहीं जानता हूँ।
- प्रश्न 16 यह भी तो हो सकता है कि मैं बड़जात्या फ्रेट केरियर के बिहाफ पर हस्ताक्षरकर्ता ने हस्ताक्षर किये हो, और उसकी राशि बड़जात्या फ्रेट केरियर या आपको अप्रत्यक्ष रूप से प्राप्त हुई हो, इस बारे में आपका क्या कहना है? क्योंकि आपकी फर्म की सील रेवेन्यू स्टॉपर पर लगी हुई है।

उत्तर मैंने मेरे द्वारा किसी को भी मेरी फर्म की सील व साइन का उपयोग लोन लेने हेतु करने का अधिकार नहीं दिया गया है।

प्रश्न 17 क्या आप, आपके पड़ोसी श्यामजी को इस मामले में प्रस्तुत कर सकते हैं?

उत्तर श्यामजी, मेरे पड़ोसी का स्वर्गवास हो चुका है, अतः मैं उन्हें प्रस्तुत करना नहीं है।

The assessee has categorically denied taking of any loan in cash and also denied that he knows any of Shri Ayush Agarwal. As regards Shri Shyam ji broker the assessee explained that he knew him since, childhood as he was neighbor and had died one and half years ago. The assessee also explained that these slips/hundies were not issued by him nor he has signed but the signature on these slips are of some unknown person. The assessee has denied to have any relation with Shri Saurabh Jain appearing on these two slips/hundies. The AO apart from these two slip/hundies bearing signature of Shri Saurabh Jain issued in favour of Shri Ayush Agarwal has not brought any material on record to conclude that the assessee took cash loan of Rs. 10,00,000/- from Kota Dal Mill group and also paid interest of Rs. 90,000/- in cash. It is pertinent to note that once these two slip/hundies do not bear the signature of the assessee which is also not disputed by the AO then in the absence of proving the fact that Shri Saurabh Jain who was signed

these hundies has any relation or connection with the assessee so as to treat him as authorized person to execute two these slip/hundi on behalf of the assessee. The decision of the AO is not substantially by any tangible evidence. It is clear from the contents of the slip/hundi that Shri Saurabh Jain signed in the capacity of proprietor/manager whereas in this case the assessee is the proprietor of M/s Badjatya Freight Carrier. Further, once the assessee has denied the transaction as alleged in these two hundi/slip then the AO ought to have conducted a further inquiry from the other parties to the transaction. The assessee also denied having any relation with Shri Ayush Agarwal or with the Kota Dal Mill Group then it becomes necessary to examine Shri Ayush Agarwal to find out the correct facts as recorded in these two slips/hundies. The AO has proceeded on assumption that the assessee has taken loan because name of M/s Badjatya Freight Carrier appears on these two ships/hundies. In the statement the assessee has denied the transaction of any loan and further denied any relation with Shri Ayush Agarwal or any connection with Shri Saurabh Jain who has purportedly signed and executed these hundies. Therefore, in the absence of any further inquiry to establish the fact that the transaction was actually between the assessee and Shri Ayush Agarwal the seized

document do not establish the fact that the assessee has taken any loan and executed these two hundies. This is plain and simple fact emerging from the seized documents itself that these were not signed by the assessee. Further, once the assessee has denied any transaction and any relation with other parties as well as person who has signed these hundies then the burden is shifted to the AO to establish that the transactions recorded in the seized documents pertains to the assessee. Hence, in the absence of any fact brought on record by conducting any requisite inquiry these two sized documents do not establish the alleged fact of taking loan in cash by the assessee either from Shri Ayush Agarwal or any other person. The AO also not proved the fact that Shri Ayush Agarwal belongs to Kota Dal Mill Group whereas the documents were allegedly found and seized during the search and seizure action in case of Kota Dal Mill Group. Even the person from whose possession these documents were seized was not examined by the AO to prove the fact that the transaction is between him and the assessee. Further, the AO neither examined from Shri Ayush Agarwal nor tried to find out who is Shri Saurabh Jain or any connection with the assessee. Hence, in the facts and circumstances of the case, when the AO has not proved the transaction of alleged cash loan by the assessee and execution of these

two slips/hundies by the assessee then the addition on unaccounted interest in respect of such transaction is merely based on assumption and presumption without any tangible material. Accordingly, the addition made by the AO is deleted.

6. In the appeal in ITA No. 1450/JP/2018 wherein the assessee has also raised following grounds:-

"1. Under the facts and circumstances of the case the learned CIT(A) has erred in passing the ex-parte order without giving any sufficient opportunity to the assessee of being heard.

2. Under the facts and circumstances of the case the learned CIT(A) has erred in confirming the penalty of Rs. 10,00,000/- imposed by the learned AO U/s 271D of the Income Tax Act, 1961.

3. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

7. The AO has also initiated the penalty proceedings U/s 271D of the I.T. Act by considering the cash loan of Rs. 10,00,000/- taken by the assessee through these two slip/hundies. We have discussed all the facts and relevant aspects of the issue in the quantum appeal. Once, the assessee has denied the transaction and these two documents itself do not establish the fact of taking loan in cash by the assessee then in the absence of any further evidence or requisite inquiry to establish the transaction between the assessee and the other parties, the penalty

levied by the AO is based on the assumption and presumption of fact which are not proved by any tangible material. Accordingly, in view of our findings in the quantum appeal the penalty levied by the AO is not sustainable and the same is deleted.

In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 04/04/2019.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 04/04/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Manoj Kumar Jain, Beawar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2, Ajmer
JCIT, Range-2, Ajmer.
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. 1298 & 1450/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar