

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

श्री रमेश सी. शर्मा, लेखा सदस्य एवं श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 954/JP/2017
निर्धारण वर्ष/Assessment Year : 2014-15.

Shri Heer Singh, Dabri House, P-3, Tulsi Marg, Bani Park, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward-3(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AFEPS 6978 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri N.S. Vyas (CA)
राजस्व की ओर से / Revenue by: Shri A.S. Nehra (JCIT)

सुनवाई की तारीख / Date of Hearing : 04.04.2019.
घोषणा की तारीख / Date of Pronouncement : 30/05/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 27.10.2017 of
ld. CIT (A)-I, Jaipur for the assessment year 2014-15. The assessee has raised the
following grounds :-

1. That the authorities below have erred in treating a sum of Rs. 80,00,000/- as income from undisclosed sources and added to the declared total income of the petitioner u/s 68 of the IT Act, 1961 as tax is charged as per provision of section 115BBE of the IT Act, 1961.
2. That the order so passed by the Authorities below is bad in law as well as on facts.

3. Without prejudice to the above, the addition so made by the Authorities below amounting to Rs. 80,00,000/- is very much excessive.
4. That the petitioner craves to add, alter or amend all or any of the grounds of appeal on or before the date of hearing."

2. The assessee is an individual and filed return of income on 6th July, 2014 declaring total income of Rs. 1,82,410/-. During the scrutiny assessment, the AO noted that a large cash was deposited in the savings bank accounts of the assessee. The AO noted that there are cash deposits of Rs. 97,77,840/- and cash withdrawals of Rs. 22,75,000/- during the year under consideration in 4 bank accounts of the assessee. The assessee explained that he has executed two agreements for sale of agricultural lands and power of attorney-holder of his wife Smt. Prem Kumari and received a total sum of Rs. 90,00,000/- from two purchasers, namely, Shri Bhura Ram and Shri Bhanwar Lal Meghwal of Rs. 45,00,000/- each. The AO asked the assessee to produce the purchasers to confirm the sale of agricultural land and receipt of the consideration. The assessee showed his inability to produce the purchasers. The AO accordingly made the addition of Rs. 80,00,000/- under section 68 of the IT Act. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has reiterated the contention that the assessee has acted as a Power of Attorney holder and to execute two sale agreements for a consideration of Rs. 45,00,000/- each and received a total sum of Rs. 90,00,000/-. The Id. A/R has submitted that as per the Agreement it is clear that

the amount was received through cheques from the purchasers who are NRI and, therefore, the assessee has discharged his onus to prove the identity, creditworthiness and genuineness of the transaction. The Id. CIT (A) has treated the addition under section 69 whereas the AO has made the addition under section 68 of the Act. Therefore, there is a contradictory finding by the Id. CIT (A). In support of his contention, he has relied upon the decision of Hon'ble Andhra Pradesh High Court in case of CIT vs. M. Venkateshwara Rao & Co., 279 CTR 313 (AP) as well as the decision of Hon'ble Jurisdictional High Court in case of CIT vs. ACE India Abodes Ltd. dated 11th September, 2017 in IT Appeal No. 45 of 2012. He has also relied upon the decision of Coordinate Bench of this Tribunal in case of Gyan Chand Agarwal vs. Addl. CIT dated 10.07.2017 in ITA No. 266/JP/2017.

4. On the other hand, the Id. D/R has submitted that a huge cash was found deposited in the four bank accounts of the assessee for which the assessee has tendered the explanation that the assessee received a sum of Rs. 80,00,000/- from two purchasers, namely, Shri Bhura Ram and Shri Bhanwar Lal Meghwal on account of sale of agricultural land. It was also submitted that the assessee has executed two sale agreements in the capacity of Power of Attorney holder of his wife whereas the assessee has not even filed the confirmation of the purchasers or the purchasers themselves for verification of the AO. He has further submitted that the alleged agreements to sale are not registered and, therefore, in the absence of the confirmation or subsequent title deed for transfer of land, these documents are self serving after thought documents. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. It is not disputed that cash deposit of more than Rs. 97,00,000/- was found in the four bank accounts of the assessee. The AO after considering the withdrawals during the year, has made an addition of Rs. 80,00,000/- as income from undisclosed source. The details of the deposits in the bank accounts are given at page 3 of the assessment order as under :-

Name of the Bank	Account No.	Cash withdrawals during F.Y. 2013-14.	Cash deposits during F.Y. 2013-14.
ICICI Bank, St. Xavier School Campus, Jaipur.	678401010251	1805000/-	5874840/-
ICICI Bank Sidhmukh	672901001410	40000/-	2545000/-
ICICI Bank Sidhmukh	672901034059	50000/-	1240000/-
Indian Overseas Bank, Bani Park, Jaipur	056201000003950	380000/-	118000/-
Total cash withdrawals and cash deposits during F.Y. 2013-14.		22,75,000/-	97,77,840/-

The assessee has not disputed this fact of deposit of cash. However, the only explanation furnished by the assessee is that as per the two agreements to sale

dated 29.03.2014, the assessee in the capacity of Power of Attorney holder of his wife received Rs. 40,00,000/- under each agreement total amounting to Rs. 80,00,000/-. The assessee has further explained that since the balance of Rs. 5,00,000/- was not received by the assessee, therefore, the sale document was not registered. We note that the entire consideration of Rs. 80,00,000/- was stated to have been received by the assessee in cash and there was no amount received in cheque or through other banking system. Therefore, the explanation of the assessee that the purchasers are NRI and having sufficient funds in their accounts cannot be accepted when the entire consideration was claimed to have been received in cash. It is pertinent to note that till date the assessee has not executed any title document being sale deed for sale of the alleged agricultural land. Therefore, the veracity of the documents produced by the assessee cannot be accepted in the absence of subsequent sale deed through which the land in question can be transferred. Despite various opportunities by the AO, the assessee neither produced any confirmation from the alleged purchasers nor the purchasers were produced for examination of the AO. The Id. CIT (A) has considered this issue in para 3.1.2 as under :-

3.1.2 Determination:

(i) The brief facts of the case are that for the year under consideration, the appellant has filed its return of income declaring total income at Rs. 1,82,410/-. The case of the appellant was selected for scrutiny as large cash deposits were made in the saving bank accounts of the appellant. It could be seen from page No. 3 of the assessment order that there was cash deposit of Rs. 97,77,840/- and cash withdrawal of Rs. 22,75,000/- during the year under consideration in the four bank accounts of the appellant. During the assessment proceedings, while explaining the source of cash deposits in the saving bank accounts, it was submitted by the appellant that during the year under consideration, it has executed two 'Agreement to Sell' for sale of agriculture lands, as power of attorney holder of his wife Smt. Prem Kumari, to Shri Bhura Ram and Shri Bhanwar Lal for a consideration of Rs. 45 Lac each i.e. for a total sum of Rs. 90 Lac, out of which, each of the buyer has paid a sum of Rs. 40 Lac in cash. The AO required the appellant to produce Shri Bhura Ram and Shri Bhanwar Lal but they were not produced before the AO and it was stated that being agriculturists, they were out of Jaipur and it was not possible to produce them personally. The AO has given a number of opportunities to the appellant to produce Shri Bhura Ram and Shri Bhanwar Lal but no compliance was made and subsequently, it was stated that since, they are residing in Dubai, therefore, they cannot be produced before the AO. In view of these facts, since, the identity, creditworthiness of Shri Bhura Ram and Shri Bhanwar Lal and the genuineness of the transactions could not be proved by the appellant, the AO did not accept the two

'Agreement to Sell' produced by the appellant and has made an addition of Rs. 80 Lac to the income of the appellant u/s 68 of the Act.

(ii) During the appellate proceedings, it was submitted by the appellant that the AO was not justified in treating the sale price of agriculture land as income from undisclosed sources as the sale of land to Shri Bhura Ram and Shri Bhanwar Lal was genuine and the consideration of Rs. 80 Lac was received in cash. During the appellate proceedings, vide order sheet entry dated 04.09.2017, the AR was required to explain:

- **Whether these agreements to sell were registered subsequently and if yes, required to file a copy of registered sale deed.**
- **When the balance consideration was paid.**
- **Any evidence to prove the identity and creditworthiness of Shri Bhura Ram and Shri Bhanwar Lal, the alleged buyers of land.**

(iii) In response to the above, it was submitted by the appellant that the two 'Agreements to Sell' were not registered till date as the balance payment of Rs. 5 Lac each was not received by the appellant from Shri Bhura Ram and Shri Bhanwar Lal. In order to prove the creditworthiness of Shri Bhura Ram and Shri Bhanwar Lal, it was also stated that both of them are NRIs and had sufficient balance in their bank accounts to pay the value of land purchased. The appellant has also filed photos of two houses claimed to be owned by Shri Bhura Ram and Shri Bhanwar Lal to prove their creditworthiness. It was also stated that addition u/s 68 of the Act can be made when the entries are recorded in the books of

accounts during the course of business and since, the appellant was not maintaining the books of accounts, no addition can be made u/s 68 of the Act.

(iv) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is evident from the above discussion, that the alleged buyers of land Shri Bhura Ram and Shri Bhanwar Lal were not produced before the AO during the assessment proceedings and their creditworthiness was not proved. In fact, no evidence was filed to prove their identity and to prove the genuineness of the transaction. Further, even during the appellate proceedings, no documentary evidence was filed to prove their identity and creditworthiness and also to prove the genuineness of the transactions. It is an established principle that the filing of copies of 'Agreements to Sell' without any corroborative evidence is, of no use and these are nothing but self serving documents and thus the AO has rightly did not give any weightage to these two 'Agreements to Sell'. **It may be mentioned that till date these Agreements to Sell were not registered and the reason was given for nonpayment of balance consideration of Rs. 5 Lac each by Shri Bhura Ram and Shri Bhanwar Lal whereas on the other hand, it was claimed that they were having sufficient balance in their bank account.** It is pertinent to mention here that the appellant has failed to furnish copies of the bank accounts of Shri Bhura Ram and Shri Bhanwar Lal to substantiate its claim. The appellant has not stated either before the AO or before me, whether these two alleged buyers were having PAN or have filed their Income Tax Returns. It is also to be noted that initially, it was stated before the AO that these

two persons being agriculturists were not available at Jaipur and subsequently, it was stated that they are residing at Dubai and now during the appellate proceedings, it was stated that they are NRIs.

(v) It may be mentioned that in the case of **ITO Vs Lal Chand Yadav [2017] 82 taxmann.com 429 (Jaipur - Trib.) (TM)**, it was held by the Hon'ble Jaipur Tribunal (Third Member) that:

"In the instant case, none of the creditors in the present case have been maintaining any bank account and no evidence of source of income or creditworthiness of the creditor have been filed, therefore, there is no question of appreciation of any evidence in favour of the assessee. [Para 4]

It is clear that out of 9 creditors, though 7 creditors were produced before Assessing Officer and their statements have been recorded under section 131, but the creditors were having only meagre income and had failed to produce any cogent and reliable evidence of source of their income. Moreover, none of the creditors were maintaining any bank account, therefore, mere recording of the statement and filing acknowledgement of ITR was not sufficient to prove their creditworthiness and genuineness of the transaction in the matter. The evidences and material produced on record are not sufficient to discharge the onus upon assessee to prove creditworthiness of the creditors and genuineness of the transaction in the matter. The Accountant Member was, therefore, right in his approach in confirming all the additions made by the Assessing Officer. [Para 4(i)]"

(vi) It may be mentioned that in the case of Arunkumar J. Muchhala Vs CIT [2017] 85 taxmann.com 306 (Bombay), the addition

made by the AO u/s 68 of the Act was sustained by the Hon'ble High Court, where assessee failed to produce relevant documents and confirmation in respect of loan taken from various parties.

(vii) In the case of A. Godwin Maria Visuvasam Vs ITO [2017] 84 taxmann.com 197 (Chennai - Trib.), it was held by Hon'ble Tribunal that where assessee in support of outstanding credit balance furnished confirmation letter by creditors, same would at best only establish identity of creditors but could not establish genuineness and creditworthiness of creditors, thus, addition made under section 68 in respect of said balance was justified.

(viii) In the case of Sunil Thomas Vs ITO [2017] 80 taxmann.com 61 (Kerala), it was held by the Hon'ble High Court that where donor (creditor) who was assessee's brother, apart from furnishing his employment particulars and confirming gift, couldn't explain genuineness of transactions or his creditworthiness by proving his monetary ability to make such gifts of substantial amount, gift amount was to be treated as undisclosed income.

(ix) In the case of CIT vs. Oasis Hospitalities (P.) Ltd. [2011] 198 TAXMAN 247 (Delhi), it was held by the Hon'ble High Court of Delhi that:

*"Insofar as the statements of the five persons produced were concerned, they were gone into and analyzed by the three authorities below on the basis of which finding of fact was arrived at that **neither their identity was established nor their capacity to invest that kind of money was proved. They were all agriculturists and had not produced***

a single document to support their version. That was a finding of fact and there was no reason to interfere with the same. [Para 42]

The findings of the authorities below could not be treated as perverse as those were on the basis of proper analysis of the statements of those persons which were recorded by the Assessing Officer. **The initial onus is upon the assessee to establish three things necessary to obviate the mischief of section 68. Those are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise.** In the instant case, no such documents were filed and no steps were taken by the assessee which could establish the aforesaid three ingredients. [Para 43]"

(x) Therefore, in view of the above discussion and looking to the totality of facts and circumstances case, it is held that the AO was justified in making addition of Rs. 80 lakh as the unexplained income of the appellant as the appellant has failed to prove the genuineness of the transactions, identity and creditworthiness of the creditors. It may be mentioned that the onus is upon the appellant to prove the deposits in its bank accounts, which it failed miserably in the instant case under consideration. Hence, the addition of Rs. 80 lakh made by the AO is hereby sustained. The objection raised by the appellant that no addition u/s 68 of the Act can be made as it was not maintaining books of accounts is devoid of any merit. It is to be noted that mentioning of a wrong section does not make the addition bad. Further, since, I have the powers co-terminus with those of the AO, therefore, the above addition of Rs. 80 lakh made

by the AO is to be treated as made u/s 69 of the Act and the assessment order is modified accordingly.”

In view of the above facts and circumstances of the case, when the assessee has failed to produce any evidence which can be independently verified or to produce the confirmations of the alleged purchasers, the assessee has not discharged his onus of proving the genuineness of the transaction. Since the assessee took the objection regarding the addition made under section 68, therefore, the Id. CIT (A) has treated the same as addition under section 69 being unexplained deposits in the bank accounts. We have carefully gone through the decisions relied upon by the assessee and found that some of the decisions are not on the issue before us and others are also distinguishing when the assessee has completely failed to produce a satisfactory explanation along with the evidence. We do not find any error or illegality in the order of the Id. CIT (A). Accordingly, we do not find any merit or substance in the present appeal of the assessee.

6. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 30/05/2019.

Sd/-
(रमेश सी. शर्मा)
(RAMESH C. SHARMA)
लेखा सदस्य/Accountant Member

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

Jaipur

Dated:- 30/05/2019.

Das/

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

1. The Appellant- Shri Heer Singh, Jaipur.
2. The Respondent – The ITO, Ward 3(2), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 954/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar