

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. 233/JP/2019
निर्धारण वर्ष / Assessment Year : 2010-11

Sh. Manish Kumar Mukim H. No. 907, Apna Ghar Shalimar, Tijara Road, Alwar.	बनाम Vs.	The ITO Ward-2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ASLPM 2549 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 24/07/2019
उदघोषणा की तारीख / Date of Pronouncement: 07/08/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 17.12.2018 of the Id. CIT(A), Alwar for the assessment year 2010-11.

The assessee has raised the following grounds of appeal:-

"1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 8,62,66,333/- made by the AO by treating the cash deposit in the bank account as unexplained income.

1.1. The Id. CIT(A) has erred on facts and in law in confirming the above addition by making various incorrect observations and by:-

(i) holding that assessee failed to prove the genuineness of cash credit in the bank account

(ii) ignoring that the amount deposited in the bank account is out of sale proceeds of Rs. 13,14,78,613/- which is duly reflected in trading and P&L A/c

(iii) ignoring that sale proceeds deposited in the bank account is used for making payment to the creditors from whom goods were purchased and there is no outstanding creditor at the year end

(iv) not considering the fact that assessee has furnished the confirmation of the parties and also the identity proof of some of these parties and therefore, only because these parties could not be produced is no ground for treating the cash deposit in the bank account as unexplained.

2. The appellant craves to alter, amend and modify any ground of appeal.

4. Necessary cost be allowed to the assessee."

2. The assessee is an individual and proprietor of M/s Sunmangal and M/s Mukta Arts. The assessee was engaged in the business of trading in fabrics during the year under consideration. The assessee filed his return of income on 04.10.2010 declaring total income of Rs. 1,39,500/-. Subsequently the Assessing Officer received information from Investigation Wing, Unit-3 Kolkata on 02.03.2015 that the assessee has deposited cash of Rs. 8,62,66,333/- in his saving bank account. In pursuant to the said information along with the bank account statement of the assessee the AO has conducted enquiry to verify the source of the deposit and finally the AO reopened the

assessment by issuing notice U/s 148 of the Act dated 30.03.2017. In the reassessment proceedings, the AO issued commission U/s 131(1)(d) of the I.T. Act to Addl./Joint DIT(Investigation), Kolkata vide letter dated 06.12.2017 for conducting enquiry about these parties with whom the assessee has claimed to have made purchase and sale of fabric. After receiving the report from the Investigation Wing, Kolkata the AO has held that the claim of the assessee that the deposit was made out of the sale proceeds of business of trading of fabrics is bogus as no such transactions have taken place. The AO further observed that there was not business activity done by the assessee. Consequently the AO has made addition of Rs. 8,62,66,333/- on account of cash deposit in the bank account treating the same as unexplained income of the assessee. 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 the cash deposit in different bank accounts was out of sale proceeds of goods to different parties for which cash book was submitted before the AO. The copy of sale and purchase bills, ledger account of all debtors and creditors were also submitted before the AO. The books of account of the assessee were duly audited and cash deposited in the bank account

is verifiable from the cash book accounts. The AO has not rejected the books of account of the assessee therefore, the addition made by the AO is not justified and liable to be deleted. The Id. AR has further submitted that the only reason given by the AO for making the addition is that the assessee could not produce the persons to whom notices U/s 133(6) of the Act and the report of the enquiry reveals that the parties were not found at the given address. All these parties are creditors of the assessee from whom he has purchased goods and the payments were made through cheques and they have filed the confirmation in response to the notice issued U/s 133(6) of the Act. Therefore, the assessee discharged its onus to prove the identity and genuineness of the transaction of purchase of goods from these persons the sales were made in cash therefore, the deposit made in the bank account was out of the sale proceeds. The Id. AR has submitted that the decisions relied upon by the Id. CIT(A) are in respect of share application money and therefore, cannot be applied to the case of the assessee where the deposit in the bank account has been made out of the sale proceeds. Alternatively, the Id. AR has submitted that when there are withdrawals from the bank account then the addition if any could have been restricted only to the pick cash deposit.

4. On the other hand, the Id. DR has submitted that the parties from whom the assessee has claimed to have purchased the fabrics were not found at the given address. Even the assessee has not produced any documents to substantiate the transaction of purchase and sale. The AO has conducted the due enquiry by issuing commission to Addl. Joint DIT(Investigation), Kolkata and after receiving the report it was found that the alleged persons were not in existence as not found at the given address. The Id. DR has further submitted that the assessee claimed that these persons have filed confirmation in response to notice U/s 133(6) of the Act however, the alleged confirmations are contradictory as the letter dated 08.02.2017 is signed by a different person claimed as director of the company whereas his ledger statement at page 13 and 14 of the paper book is signed by the another person in the capacity of proprietor. Thus, these letters were signed at the same time but show different signatures and in the different capacity which is not possible. Thus these documents are not genuine document. He has also referred to the confirmation issued by Amulya distributors dated 01.04.2009 however, ledger account page 20 have been signed by different person. There was no closing stock and opening stock in both proprietorship concerns as well as the assessee has not claimed any

direct expenditure. Therefore, the deposits made in the 7 different bank accounts which were not disclosed by the assessee in the return of income or in the balance sheet has been rightly considered as unexplained income of the assessee. He has relied upon the following decisions:-

1. Rajiv Jain vs. ITO 410 ITR 179 (Delhi)
2. CIT vs. Sarwankumar Sharma 227 taxman 34 (Gujarat)
3. Truptiben Bakulbhai Patel vs. ITO (Gujarat)
4. Champalal S. Shah vs. Ito 86 taxmann.com 258 (Mumbai Trib.)

Thus, the Id. DR has supported the orders of the authorities below. In rejoinder the Id. AR has submitted that the confirmations were signed by different persons because the proprietorship concerns might have been converted into private limited Companies.

5. We have considered the rival submissions as well as relevant material on record. In the return of income the assessee has shown profit of Rs. 79,170/- in the proprietorship concern M/s Sunmangal and loss of Rs. 90,251/- of M/s Mukta Arts therefore, net result from the business is declared at Rs. 11,081/-. It is also not in dispute that the cash deposit in the different bank account as many as 7 accounts were

not declared by the assessee in the return of income. The details of the cash deposit has been given by the AO at page 2 as under: _

<i>"1. ICICI Bank account 032101582093</i>	<i>Rs. 11,000/-</i>
<i>2. AXIS Bank account 00505010200070373</i>	<i>Rs. 64,45,280/-</i>
<i>3. AXIS Bank account 005010200070285</i>	<i>Rs. 65,38,280/-</i>
<i>4. ICICI Bank account 000605020401</i>	<i>Rs. 3,02,69,565/-</i>
<i>5. ICICI Bank account 054005000833</i>	<i>Rs. 3,33,00,408/-</i>
<i>6. HDFC Bank account 10158620000271</i>	<i>Rs. 59,80,600/-</i>
<i>7. HDFC Bank account 10158620000264</i>	<i>Rs. 37,21,200/-</i>
<i>Total</i>	<i>Rs. 8,62,66,333/-"</i>

It is pertinent to note that the assessee has claimed to have done business of trading of fabrics under the name and style of two proprietorship concerns M/s Sunmangal and M/s Mukta Arts only during the year under consideration. Neither any such business was done by the assessee in past nor any such activity is carried out in future. Thus only during the year consideration the assessee has claimed to have done the business of trading in fabric. The assessee claimed that this business was done at Kolkata under these two proprietorship concerns however, in the books of account there is nothing as fixed assets of the assessee and only the rent of Rs. 10,000/- in case of each proprietorship concerns has been claimed. The assessee claimed to

have achieved turnover of more than Rs. 13 crores during the year under consideration. It is pertinent to note that the assessee has commenced these business activities during the year itself and closed the same during the year itself. During this short period the assessee has achieved the turnover of more than Rs. 13 crores that too the entire of sale claimed in cash without having any details or particulars of the persons to whom the sale was made. The assessee has not produced a single document of sale having any detail or particulars of the purchaser. This magnitude of turnover is not possible while doing retail sale to individuals and therefore, if the sale is made in wholesale then the particulars of purchaser should have been produced by the assessee. Thus the assessee has failed to substantiate the claim that the deposit made in the bank account is out of sale proceeds. Further, The AO deducted the enquiry by issuing the commission to Addl./Joint DIT(Investigation) Wing, Kolkata vide letter dated 06.12.2017. In the report received vide letter dated 22.12.2017 it was stated that the enquiry conducted in respect of 10 parties from whom the assessee claimed to have purchased the materials were not found at the given address. The peculiarity of the facts and circumstances of the case as well as result of the enquiry conducted by the AO through Investigation

Wing, Kolkata clearly established that the claim of the assessee is not genuine. The Id. CIT(A) has adjudicated this issue in para 5.3 and 5.4 as under:-

" 5.3 I have perused the assessment order as well as submissions made by the appellant. Following facts have emerged;

- 1. That the appellant has claimed to have been engaged in the business of Fabric trading under the name of M/s Sumangal & M/s Mukta Arts during the year under consideration and declared income of Rs.1,39,500/-.*
- 2. That the A.O had found cash deposits to the tune of Rs. 8,62,66,333/- in various bank accounts during the year under consideration.*
- 3. That the appellant has claimed that such cash deposits were made out of cash sale proceeds to various clients.*
- 4. That in order to verify the source of such cash deposits, the A.O had issued notices under section 133(6) of the Act. However, notices were received back with the postal remarks "No such persons lives on the address given".*
- 5. That the department has further deputed the Inspector of Income Tax to verify the existence of such persons at the given addresses. No such persons or firms have been found at the given address.*
- 6. That the A.O had given opportunity to the assessee to produce such persons but assessee did not avail the opportunity.*
- 7. That the A.O had added the cash deposits of Rs. 8,62,66,333/- as income of the assessee as unexplained cash credits.*

8. *That during the appellate proceedings also the appellant failed to submit any cogent evidences in support of the claim.*

5.4 *I have considered the assessment order and the appellant's submission. So far as the issue of cash credit is concerned, various court judgments have settled the parameters and the scope of onus to be discharged by the assessee. In this regard, Supreme Court in CIT v. Lovely Exports Pvt. Ltd.(supra), has held that*

the initial burden is upon the assessee to explain the nature and source of the share application money and in order to discharge this onus, the assessee should prove (a) the identity of shareholder; (b) genuineness of the transaction; and (c) creditworthiness of shareholders. It was further observed that for discharging the above burden, the assessee must file some documents or produce the shareholder to prove his identity. In the case of subscriber being a company details in the form of registered address or PAN identity, etc. would suffice. The genuineness of the transaction may be demonstrated by showing that the assessee had, in fact, received money from the applicant shareholder and that it had come not from the coffers of the assessee but from that of the applicant shareholder. As to the creditworthiness or financial strength of the subscriber, the proof could include banks statements of the subscriber showing sufficient balance in its kitty to enable it to subscribe.

The Hon'ble Rajasthan High Court in the case of The Commissioner of Income Tax, Ajmer Vs Shri Jai Kumar Bakliwal, Date of Order: 06/02/2014 has held that

"In our view as well, three things are required to be proved by recipient of money i.e. (1) identity of the creditor (2) capacity of the creditor to advance money and (3) genuineness of the transaction. From the facts emerging on the face of record, we notice that it is an admitted fact that all the above cash creditors (12 in number) are assessed to income tax and they provided a confirmation as well as their permanent account number. They have their own respective bank accounts which they have been operating and it is not the claim of the AO that

the respondent-assessee was operating their bank accounts rather they have categorically stated that they issued cheque to the respondent-assessee., in our view, stood discharged as he was able to prove identity of the creditors. Once the amount was advanced by account payee cheque from their respective own bank accounts and were being assessed to income tax, then in our view, capacity of the creditor and genuineness of the transaction stood proved. In so far as the respondent-assessee is concerned, it is correct that he is not required to prove source of the source and if the AO had any doubt, then the AO, assessing the respondent-assessee, could have sent the information to the AO, assessing the cash creditors for appropriate action in their cases but in so far as the respondent-assessee is concerned, in our view, the respondent-ssessee has been able to discharge the burden which lay upon him.

Thus, the High Court has laid down following parameters to be discharged by the assessee on the applicability of section 68 of the Act on share application money;

The assessee has to prima facie prove;

- 1. the identity of the creditor/subscriber;*
- 2. the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels;*
- 3. the creditworthiness or financial strength of the creditor/subscriber.*
- 4. If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department it would constitute acceptable proof or acceptable Explanation by the assessed*
- 5. The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices;*
- 6. the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessed nor should the AO take such repudiation at face value and construe it, without more, against the assessed.*

7. *The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation. "*

In view of the above mentioned judgments and parameters, I found that the appellant has not been able to discharge even the basic onus to prove the genuineness of cash credits in his bank accounts. Therefore, in my considered view when the existence of the source of such cash deposits is not proven then the A.O is fully justified in treating such cash deposits as unexplained and liable to be taxed.

Accordingly, the addition of Rs. 8,62,66,333/- is sustained and the appellant's ground of appeal on the issue is dismissed."

We find that the finding of the AO as well as the Id. CIT(A) is based on the specific facts detected during the enquiry conducted by the AO whereas the assessee has failed to produce any evidence which can be independently verified in support of his claim. Accordingly, in view of the above facts and circumstances of the case as well as the decision relied upon the Id. DR, we do not find any error or illegality in the impugned order of the Id. CIT(A).

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

Order pronounced in the open court on 07/08/2019.

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 07/08/2019.

(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

***Santosh.**

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

1. अपीलार्थी / The Appellant- Sh. Manish Kumar Mukim, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(2), Alwar.
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. 233/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar