

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

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 368/JP/2018
निर्धारण वर्ष / Assessment Year: 2013-14

Shiv Prakash Bajaj, 8L-36-37, R.C. Vyas Colony, Bhilwara.	बनाम Vs.	D.C.I.T Central Circle, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADLPB 1794 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Siddarth Ranka (Adv)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 19/09/2019
उदघोषणा की तारीख / Date of Pronouncement : 24/09/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 12/01/2018 of Id. CIT(A)-2, Udaipur for the A.Y. 2013-14. The assessee has raised following grounds of appeal:

- "1. That on the facts and in the circumstances of the case, the Id. Lower authorities grossly erred in making addition of Rs. 20,00,000/- on account of unexplained advance on the basis of page No. 13 and 14 of seized Annexure-A (Exhibit-5).*
- 2. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing."*

2. The assessee is an individual and engaged in the business of finance broker and property broker. The assessee has not filed his return of income for the year under consideration U/s 139(1) of the Income Tax Act, 1961 (in short, the Act). There was a search and seizure action U/s 132 of the Act on 26/09/2012 at the residential premises of the assessee and survey U/s 133A of the Act at the business premises of the assessee. During the course of search and seizure action, cash of Rs. 6.00 lacs as well as other incriminating material were found. Incriminating material found during the search was marked as Annexure-A (Exhibit-1 to 8). In the statement recorded during the post search investigation on 17/10/2012, the assessee surrendered income of Rs. 30.00 lacs for six years from the A.Y. 2007-08 to 2013-14 as under:

A.Y.	Undisclosed Income
A.Y. 2007-08	Rs. 5,00,000/-
A.Y. 2009-10	Rs. 3,50,000/-
A.Y. 2010-11	Rs. 3,00,000/-
A.Y. 2011-12	Rs. 4,00,000/-
A.Y. 2012-13	Rs. 6,00,000/-
A.Y. 2013-14	Rs. 8,50,000/-

The assessee filed his return of income on 15/5/2013 declaring total income of Rs. 9,67,236/- including surrendered income of Rs. 8,50,000/- for the year under consideration. During the assessment proceedings, the A.O. asked the assessee to explain the seized document Exhibit-5, page

13 to 14 of Annexure-A. The assessee replied that these are photo copies left by some clients for refinancing purpose and therefore, he is not aware about the contents and the parties of the said documents. The A.O. did not accept the reply of the assessee and made the addition of Rs. 20.00 lacs in the hands of the assessee on the ground that it would be a revenue loss if it is not taxed in the hands of the assessee. The A.O. also made addition of Rs. 20,000/- being brokerage/commission charges @ 1% of the said transaction. The assessee challenged the action of the A.O. before the Id. CIT(A) but could not succeed as the Id. CIT(A) has confirmed the addition made by the A.O. of Rs. 20.00 lacs. However, the Id. CIT(A) has deleted the addition made by the A.O. on account of brokerage/commission charges of Rs. 20,000/-.

3. Before the Tribunal, the Id counsel for the assessee has referred the statements of the assessee and submitted that the assessee explained the nature of his business being broker in finance and property dealings. The A.O. has also not disputed the business of the assessee. He has also explained the documents found as Exhibit-5 page 13-14 of Annexure-A during his statement recorded. Thus, the Id counsel has submitted that part from question No. 18, no further query was raised by the department at the time of search or post search inquiries. The

assessee made surrender of Rs. 30.00 lacs covering all the transactions recorded in the seized material including the transaction in question and therefore, the said disclosure made by the assessee also covers the brokerage/commission income on the alleged transaction. He has referred to page No. 13 and 14 of Exhibit-5 and submitted that these are loose paper and only photo copy of an unnamed cheque of Rs. 20.00 lacs issued by one Shri Roshan Lal Sancheti alongwith a letter/acknowledgement of loan of Rs. 20.00 lacs from Shri Naresh Kumar Maheshwari. These facts are also not disputed by the A.O. that the seized documents are in respect of transactions between two independent parties and the assessee is not a party to the said transaction. Once the loan is given by Shri Naresh Kumar Maheshwari to Shri Roshan Lal Sancheti then the same cannot be taxed as income of the assessee. Even otherwise, the assessee is only a broker and the income if any, would be the brokerage/commission income which was already offered to tax by the assessee being surrender income. The Id AR has further contended that the A.O. has misstated the facts while making the addition but accepted that the said letter was on the letter head of Bheru Lal Roshan Lal Sancheti on which complete address and contact details etc. of the person are duly printed and therefore the presumption U/s 292C of the Act is not applicable. The Id counsel has thus contended that when the

document is clearly identifiable and there is no ambiguity about the transaction between the parties then the provisions of Section 292C of the Act cannot be invoked. The A.O. has, on one hand, accepted that the document is written on 29/6/2012 by Shri Roshan Lal Sancheti to Shri Naresh Kumar Maheshwari and gives the details of both the parties. On the other hand, the A.O. has invoked the provisions of Section 292C of the Act and presumed the document of the assessee. Thus, the Id counsel has submitted that once the parties to the transactions are not in dispute then the income, if any, on account of the said transaction cannot be assessed in the hands of the assessee except the commission/brokerage income. The assessee is neither lender nor the borrower and engaged in the capacity of finance broker on commission basis, therefore, the addition made by the A.O. by invoking the provisions of Section 292C of the Act is not sustainable in law and liable to be deleted. The Id. Counsel has further contended that even the presumption U/s 292C of the Act is rebuttable and once the assessee has given his explanation with regard to specific seized document, it is for the A.O. to prove otherwise if he wants to use the seized document against the assessee. Thus, the addition is not sustainable in law and liable to be deleted.

4. On the other hand, the Id. CIT-DR has submitted that the onus is on the assessee to explain the document found and seized from the possession of the assessee. Presumption U/s 292C of the Act casts onus on the assessee to explain the books of account/document seized from his premises. He has relied upon the orders of the authorities below and submitted that the A.O. as well as the Id. CIT(A) has discussed the issue elaborately and given a finding that the assessee has suppressed the correct facts of the transaction and therefore, the addition was rightly made in the hands of the assessee.

5. I have considered the rival submissions as well as relevant material on record. The A.O. has made the addition in the hands of the assessee on the basis of the seized document which are photo copy of one cheque without any name of the payee and a letter dated 29/06/2012 written by one Shri Roshan Lal Sancheti and addressed to one Shri Naresh Kumar Maheshwari. The said letter is written on the letter head of firm of Shri Sancheti and contains all the details and address of Shri Roshan Lal Sancheti. The details of the documents at page 13 and 14 of Exhibit-5 of Annexure-A are as under:

यूनियन बैंक Union Bank of India

भिलावा 311 001 (राजस्थान)
BHEWARA - 311 001 (RAJASTHAN)
IFSC : UBIN0537365

Valid for 3 months from the date of issue

दिनांक Date

D	D	M	M	Y	Y	Y	Y		

Pay या धारक को Or Bearer

रुपये Rupees बीस लाख २०. मात्र — — — — — अदा करें। ₹ 20,00,000/=

चक्र नं. A/c No.	373604050070005	चेक नं. Cheque No.	51229818
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For ROSHAN LAL SANCHETI AND ASHA DEVI SANCHETI



भारत की हमारी सभी शाखाओं में सममूल्य पर देय
PAYABLE AT PAR AT ALL OUR BRANCHES IN INDIA

Roshal

Please sign above this line

⑈ 229818⑈ 311026002⑈ 373651⑈ 29

॥ श्री देवनारायण नमः ॥

श्रीमान रोशनलाल संचेती

सन्त
टीकज रोड
वा मार्ग, भीलवाड़ा
फोन : 01482-238383

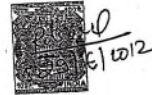
निवास : 2-एफ-11
आर.सी.व्यास कॉलोनी
भीलवाड़ा - 311 001
फोन : 01482-238386
मोबाईल : 94141-15986

श्रीमान नरेश कुमार जी महेश्वरी
भीलवाड़ा

दिनांक 29/6/2012

रोशन लाल और लाल संचेती का जमा निम्न
अपरिवर्तनीय आपका रूपमा 20,00,000/= अर्द्ध बीस
लाख रुपये रोकड़ी लिखे हैं। यह रूपमा आप
कैसे लंबे वार्षिक जमा करवा देंगे। इसके धैरे
बैंक नं 229818 यूनियन बैंक का सलबन है।

लगात दिनांक 29/6/2012 तक Roshal
29/6/2012



From perusal of these documents, it is manifest that these are prepared in respect of loan transaction of Rs. 20.00 lacs by one Shri Roshal Lal Sancheti from Shri Naresh Kumar Maheshwari. This fact is also accepted

by the A.O. in the assessment order. Even the assessee explained these documents and nature of transaction in his statement recorded by the department in the post search enquiries and the relevant part of the statement is in question No. 18 is as under:

प्रश्न 18 दिनांक 26.09.2012 को आपके निवास स्थान 8 एल-36-37, आर.सी.व्यास कॉलोनी, भीलवाड़ा पर आयकर अधिनियम की धारा 132 के तहत सर्च की कार्यवाही की गई, इस दौरान एनेक्सर-ए के तहत Exhibit-5 (पृष्ठ संख्या 1 से 14) में आपको दिखा रहा हूँ, कृपया इसका अवलोकन करें एवं विस्तार पूर्वक विवरण दें?

उत्तर: जी हाँ, मैंने उपरोक्त एनेक्सर-ए Exhibit-5 (पृष्ठ संख्या 1 से 14) को अच्छी तरह से देख लिया है इनमें दर्ज विवरण निम्न प्रकार से है:-

पृष्ठ संख्या 1 एवं 4 :- इन पृष्ठों पर मेरे द्वारा ही लिखा गया विवरण है। यह विवरण मेरे ब्रोकरेज एवं दलाली के व्यवसाय से सम्बन्धित रफ नोटिंग है।

पृष्ठ संख्या 5 एवं 6 :- ये पृष्ठ मेरे द्वारा नहीं लिखे गये। अतः मैं बताने में असमर्थ हूँ कि इसमें क्या लिखा हुआ है।

पृष्ठ संख्या 7 एवं 9 :- इन पृष्ठों पर मेरे द्वारा ही लिखा गया विवरण है। यह विवरण मेरे ब्रोकरेज एवं दलाली के व्यवसाय से सम्बन्धित रफ नोटिंग है।

पृष्ठ संख्या 10 एवं 11 :- इन पृष्ठों पर मेरे पुत्र की सगाइ के दौरान दिनांक 17.01.2012 को खरीदी गई ज्वैलरी रुपये 39,439/- का विवरण है।

पृष्ठ संख्या 12 :- ये मेरे पुत्र श्री नीतेश बजाज की शादी के समय हुए खर्च से सम्बन्धित है।

पृष्ठ संख्या 13 से 14 :- इन पृष्ठों पर श्री रोशन लाल द्वारा श्री नरेश कुमार जी से लिये गये 20,00,000/- रुपये से सम्बन्धित विवरण है। चूँकि मेरा फाईनेन्स ब्रोकर का कार्य है इसलिए मझे तो केवल दलाली मिलती है बाकि मेरा इससे कोई लेना देना नहीं है।

It is not in dispute that the assessee surrendered a sum of Rs. 30.00 lacs on account of incriminating material found during the search, therefore, the transaction of loan between two independent parties even if through the service of the assessee being broker cannot be thrust upon the assessee for want of taxing the same in the hands of the actual parties to the transaction. The reasoning of the A.O. and the Id. CIT(A) for making the addition is that if it is not assessed in the hands of the assessee then it would be a revenue loss as the complete particulars of Shri Naresh Kumar Maheshwari were not furnished by the assessee and therefore, the assessee is responsible for the loss of the revenue and liable to pay tax. There is no provision in the Act to deem such income which is otherwise not an income of the assessee. The documents in question clearly manifest the nature of the transaction and the parties to the transaction. Particulars of one of the parties were already available on the seized material and the revenue has already attempted to tax the said income in the hands of Shri Roshal Lal Sancheti but the Id. CIT(A) has deleted the said addition on the ground that a loan cannot be assessed to tax except it is unexplained credit U/s 68 of the Act. Therefore, the assessee being a broker cannot be held liable to pay tax on an income which does not arise or belong to the assessee. At the most, the income for providing the service as a broker can be taxed in the

hands of the assessee for the transaction of loan which the assessee has already offered to tax as part of the surrendered income. Since the revenue failed to assess the said amount in the hands of the parties to the transaction, therefore, it was attempted to tax in the hands of the assessee on the basis of presumptive provisions of Section 292C of the Act. Once the seized documents are free from any ambiguity and the transaction is between the two independent parties then in such a situation, the said document reveals the transaction of loan cannot be presumed to be the document belongs to the assessee for the purpose of assessing the income being unexplained loan. Hence, in the facts and circumstances of the case, the addition made by the A.O. and sustained by the Id. CIT(A) is not justified and the same is deleted.

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

Order pronounced in the open court on 24th September, 2019

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

जयपुर / Jaipur

दिनांक / Dated:- 24th September, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Shiv Prakash Bajaj, Bhilwara.

2. प्रत्यर्थी / The Respondent- The DCIT (Central Circle), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 368/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar