

आयकर अपीलिय 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. 619/JP/2019  
निर्धारण वर्ष/Assessment Year :2012-13

Income Tax Officer, Ward -7(2), Jaipur	बनाम Vs.	Sh. Prem Chand Tepan S/o Sh. Goma Ram Khatik Prop., M/s Neha Plastic Industries, RIICO Industrial Area, G-183, C/o Bhagaril Granites (P) Ltd. Mahala, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEQPT7605E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 620/JP/2019  
निर्धारण वर्ष/Assessment Year :2012-13

Sh. Prem Chand Tepan S/o Sh. Goma Ram Khatik Prop., M/s Neha Plastic Industries, RIICO Industrial Area, G-183, C/o Bhagaril Granites (P) Ltd. Mahala, Jaipur	बनाम Vs.	Income Tax Officer, Ward -7(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEQPT7605E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. R. N. Sharma (Adv.)  
राजस्व की ओर से/ Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 06/10/2020  
उदघोषणा की तारीख/Date of Pronouncement: 27/10/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are cross appeals filed by the Revenue and the assessee against the order of Id. CIT(A)-01, Jodhpur dated 16.01.2019 for A.Y. 2012-13 wherein the respective grounds of appeal read as under:-

**ITA No. 619/JP/2019 (Revenue's appeal)**

"1. On the facts and in the circumstances of the case, whether the Id. CIT(A) was justified in restricting the addition from Rs. 2,41,94,900/- to Rs. 34,50,000/- made u/s 69 of the Act by observing that the amount to the tune of Rs. 2,07,44,900/- was explained?

2. On the facts and in the circumstances of the case, whether the Id. CIT(A) was justified in restricting the addition from Rs. 2,41,94,900/- to Rs. 34,50,000/- made u/s 69 of the Act ignoring the fact that the AO, in his remand report has clearly mentioned that out of unsecured loan of Rs.1,15,64,000/-, loan to the tune of Rs. 69,75,000/- was not verifiable in addition to payment of Rs. 1,26,30,900/- (Rs.2,41,94,900 - Rs.1,15,64,000) which was made by the assessee in cash for making investment in purchase of properties."

**ITA No. 620/JP/2019 (Assessee's appeal)**

"1. The Ld. Commissioner (Appeals) has erred in conforming the addition made by the AO u/s 69 to the extent of Rs. 34,50,000/- ignoring the fact that addition u/s 69 can only be made when the investment is not recorded in the books of accounts.

2. The Ld. Commissioner (Appeals) has erred in enhancing the assessment by Rs. 14,48,700/- on account of expenses incurred on stamps duty simply on the basis of remand report of the AO, without providing the assessee an opportunity to rebut it.

2. Briefly the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that the assessee has purchased certain pieces of land situated at Village- Vatika, Tehsil- Sanganer, Jaipur bearing Khasra No. 1182 to 1221, 1223 to 1235, 1242 to 1248 from Sh. Lachhu, Sh. Sultan, Sh. Arjun and Sh. Prabhu Narayan. The assessee has invested an amount of Rs. 2,41,94,000/- in purchasing the said pieces of land. The assessee was asked to explain source of funds which were used in purchasing the said pieces of land vide show cause dated 02.03.2015. In compliance, the A/R of the assessee submitted copy of the purchase deeds and also filed confirmation of unsecured loan taken from four persons namely Sh. Mahendra Kumar Meena, M/s Shrishtianand Builders and Colonizers, Smt. Kanta Sharma & Sh. Ashish Nitharwal. In order to carry out further verification, the summons u/s 131 were issued through registered post and notice server. Sh. Ashish Nitharwal refused to take the summons issued to him as reported by the notice server and the address of Sh. Mahendra Kumar Meena was found incorrect. Thereafter, the assessee was asked to produce these persons and to submit copy of their bank account statements for verification of the land transactions but these people neither appeared nor copies of bank accounts were furnished. The Assessing Officer accordingly treated these loan transactions as bogus unsecured loan and accordingly held that the assessee failed to explain the source of fund of Rs. 2,41,94,000/- used in purchasing of land from the above sellers and the said amount was treated as unexplained investment u/s 69 of the Act and added to the total income of the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and after considering the addition evidence submitted by the assessee and the remand report submitted by the AO, the addition was restricted to Rs. 48,98,700/- by the Id. CIT(A) and against the said findings, both the Revenue as well as the assessee are in appeal before us.

4. During the course of hearing, the Id. DR submitted that the Id. CIT(A) has erred in restricting the additions from Rs. 2,41,94,000/- to Rs. 34,50,000/- and submitted that while restricting the said addition, the Id. CIT(A) has not specified as to how the source of the investment in purchase of species pieces of land has been found explained by him. It was submitted that there is no specific finding which has been recorded by the Id. CIT(A) and therefore, the order passed by the Id. CIT(A) is perverse and deserves to be set aside.

5. Per contra, the Id. AR however supported the finding of the Id. CIT(A) and submitted that the Id. CIT(A) has taken into consideration the remand report submitted by the Assessing Officer and has held that issue with respect to Rs. 69,75,000/- remains to be adjudicated upon as the same has not been found satisfactorily explained at the end of the Assessing Officer. Thereafter, out of Rs. 69,75,000/-, he has found the transactions to the extent of Rs. 35,25,000/- as duly explained by the assessee and remaining transactions of Rs. 34,50,000/- have been found as not satisfactorily explained and to that extent, the additions were sustained. It was submitted that the assessee is in appeal as far as the additions sustained by the Id. CIT(A) however as far as relief granted by the Id. CIT(A), there is no infirmity in the order of Id. CIT(A) and the assessee thus relies on the order of the Id. CIT(A) and the same should be confirmed.

6. Now coming to the grounds of appeal taken by the assessee vis-à-vis the addition of Rs 34,50,000/- sustained by the Id. CIT(A) and enhancement of income by Rs 14,48,700/- done by the Id. CIT(A).

7. In this regard, the Id. AR submitted that the appellant had purchased agricultural lands at Vatika village, Sanganer, from four different parties for Rs.2,41,94,900/-. Part consideration of Rs.49,09,800/- for these lands was paid during the year, and further expenses of Rs.14,48,700/- on Stamp duty and Registration charges were incurred, the funds for which were arranged by

obtaining unsecured loans aggregating Rs.82,14,000/- from four parties. Confirmations from all the four persons were filed duly indicating their PAN (wherever available) and complete address. The AO held the cost of land as unexplained, and proceeded to make addition of Rs. 2,41,94,900/- u/s 69. It was vehemently pleaded before the Ld. CIT(A) that addition u/s 69 cannot be made in these circumstances, as the investment stood duly recorded in the books. The Ld. CIT(A) failed to understand the case in the right perspective. Instead, he held that the unsecured loans taken from three cash creditors remain unverified and should be added to the income.

8. It was submitted that addition was made by the AO u/s 69 in respect of investment made for purchase of agricultural lands. Thus, the genuineness of the cash credits was never an issue for consideration. However during the appellate proceedings before the CIT(A), the confirmations along with explanations were called for and provided. But the Ld. CIT(A) failed to consider the same.

9. It was submitted that the appellant had obtained unsecured loans of Rs. 82,14,000/- during the year from the following persons-

S.No.	Name of the Party	Amount (Rs.)
1.	M/s Shristianand Builders & Colonizers	45,89,000/-
2.	Mahendra Kumar Meena	5,25,000/-
3.	Ashish Nitharwal	26,00,000/-
4.	Kanta Sharma	5,00,000/-
	TOTAL	82,14,000/-

The Ld.CIT(A) held that the loans from Ashish Nitharwal, Kanta Sharma and Ramavtar Hari Narayan (which was not taken during the year) as unexplained. The confirmations of Ashish Nitharwal and Kanta Sharma are once again being provided. Their addresses were also made known to the AO as well as CIT(A). But the AO, at the time of remand proceedings insisted for copy of bank account of these persons. It was made known that the parties have refused to

provide it to the appellant. The appellant produced copy of his bank account which clearly shows the impugned amounts having been received through cheques. Still, the CIT(A) simply relying on the remand report held these amounts to be unexplained.

10. It was submitted that undoubtedly, the assessee has a legal duty to identify the creditors in addition to his means and genuineness of the transaction. Also it is a matter of fact that where the identities of creditors are shown by the assessee, the department is at liberty to proceed against such creditor wherever required. This view has been upheld by the Tribunal in the case of Mrs. Ranjana Katyal Vs ACIT (2008) 1 DTR (Del)(Trib) 24 and Pankaj Sawhney Vs ITO (2004) 3 SOT 1 (Del). In this case, the identity and the address was shown by the appellant.

11. It was further submitted that it is presumed, subject to rebuttal, that transaction cannot be considered as bogus when the funds are routed through bank accounts as they cannot be considered as unaccounted monies being the purpose for which the provision was introduced and also the bank statements are very much subject to scrutiny of the department. In support, reliance was placed on decision in case of S.K.Jain Vs ITO (2004) 2 SOT 579 (Agra). Thus, it had become fairly settled law that assessee is not required to satisfy the Assessing Authority of the source of source. The appellant had duly discharged the onus cast on him in respect of cash credits. It was for the AO to prove that the cash credits were not genuine through further inquiries, which he failed to do.

12. As regards amount of Rs.3,50,000/- from Shri Ramavtar Hari Narayan held as unexplained by the Ld.CIT(A), it was submitted that the impugned amount was not obtained during the year. It was taken in FY 2012-13, as is evident from the balance sheets of the assessee. Therefore, no addition can be

made or sustained as the impugned amount does not stand credited in the books of the assessee of the relevant previous year.

13. Regarding Ground No. 2, it was submitted by the Id AR that the appellant had purchased certain agricultural lands during the relevant year. He had paid Stamp duty of Rs.14,48,700/- in cash on these purchases. The amount stood duly reflected in his Balance sheet of the year. The AO had taken note of it at the time of assessment. At the time of submitting the remand report, the AO out of nowhere, reached to the conclusion that Stamp duty of Rs.14,48,700/- should also be added and recommended to the CIT(A) to add the same. The Id.CIT(A) straight away held the impugned amount to be unexplained. He did not even bother to ask the AO as to how he formed this opinion. Even the appellant was not provided an opportunity to rebut the same. As stated supra, the amount formed part of agricultural land purchased and was duly shown in the Balance sheet. The cash book of the assessee vouches the fact that the payment has been made from disclosed sources. The assessee had sufficient availability of cash to make the above payment of Rs.14,78,700/-.

14. Per contra, the Id. DR submitted that the summons issued to these people from whom the assessee claims to have obtained unsecured loans remained un-complied with during the course of assessment proceedings, and even during the remand proceedings these loan transactions remained unverified and therefore, merely the fact that this have filed the confirmation, the same cannot be taken as due compliance of the initial onus cast on the assessee to satisfy the identity of the person, the genuineness of the transaction and creditworthiness of these persons to advance the loan to the assessee. Regarding enhancement of income by Rs. 14,48,700/- on account of stamp duty expenses, the Id. DR submitted that the remand report submitted by the Assessing Officer wherein he has highlighted the said fact has been shared with assessee and therefore, the assessee was put to the notice by the Id. CIT(A) and therefore, it is not correct to say that the assessee was not

provided an opportunity by the Id. CIT(A) before making such addition. The Id. DR accordingly supported the order and the findings of Id. CIT(A) in this regard.

15. We have heard the rival submissions and perused the material available on record. During the year under consideration, the assessee has purchased certain pieces of land situated at Village Vatika, Tehsil Sanganer, Jaipur bearing Khasra No. 1182 to 1221, 1223 to 1235, 1242 to 1248 from Sh. Lachhu, Sh. Sultan, Sh. Arjun and Sh. Prabhu Narayan for a total consideration of Rs 2,41,94,000/-. The conveyance deeds for the purchase of these pieces of land were registered with Sub-Registrar, Sanganer, Jaipur on 21.11.2011 and an amount of Rs 14,48,700/- was also paid towards the stamp duty. During the course of assessment proceedings, the assessee was asked to explain source of funds which were used in purchasing the said pieces of land vide show cause dated 02.03.2015. In compliance, the A/R of the assessee submitted copy of the purchase deeds and also filed confirmation of unsecured loans totaling Rs 82,14,000/- taken from four persons namely Sh. Mahendra Kumar Meena, M/s Shrishtianand Builders and Colonizers, Smt. Kanta Sharma & Sh. Ashish Nitharwal. In order to carry out further verification, the summons u/s 131 were issued through registered post and notice server. Sh. Ashish Nitharwal refused to take the summons issued to him and the address of Sh. Mahendra Kumar Meena was found incorrect. Thereafter, the assessee was asked to produce these persons and to submit copy of their bank account statements for verification of the land transactions but these people neither appeared nor copies of bank accounts were furnished. The Assessing Officer accordingly treated these loan transactions as bogus unsecured loan and accordingly held that the assessee failed to explain the source of funds of Rs. 2,41,94,000/- used in purchasing of land from the above sellers and the said amount was treated as unexplained investment u/s 69 of the Act and added to the total income of the assessee. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and submitted that an amount of Rs 49,08,900

was actually paid during the financial year 2011-12 as against the total value of land of Rs 2,41,94,900/- and remaining amount was outstanding at the end of the financial year 2011-12. It was further submitted that during the next financial year, the assessee took additional unsecured loans of Rs 33,50,000/- from M/s Grassfield Villa (P) Ltd and Ramotar Hari Narayan. Considering the addition evidences submitted by the assessee, the remand report was called from the AO. In his remand report, the AO stated that the assessee has taken unsecured loans of Rs 82,14,000/- during the financial year 2011-12 and Rs 33,50,000/- during the financial year 2012-13 totalling to Rs 1,15,64,000/-. It was further stated that in respect of unsecured loan of Rs 45,89,000/- taken from Shrishtianand Builders and Colonisers, copy of the bank statement was submitted which shows genuineness of the transaction and in respect of other unsecured loans amounting to Rs 69,75,000/-, no documents were submitted in terms of bank statements and income tax returns which proves the creditworthiness and genuineness of the unsecured loan transactions. The Id CIT(A) taking the remand report into consideration held that issue with respect of Rs 69,75,000/- remains to be adjudicated upon as the same has not been found satisfactorily explained at the end of the AO. Thereafter, after considering the submissions of the assessee, held that out of Rs 69,75,000/-, Rs 35,25,000/- has been found explained and remaining Rs 34,50,000/- remains unexplained and the additions were thus restricted to Rs. 34,50,000/-. Further, the Id CIT(A) made an addition of Rs 14,48,700/- towards the payment of stamp duty.

16. The undisputed facts which are thus emerging from the perusal of records are that there is an investment of Rs 2,41,94,000/- in purchase of the aforesaid pieces of land besides stamp duty of Rs 14,48,700/- totalling to Rs 2,56,42,700/-. During the course of assessment proceedings, the source of such investment was sought to be examined by the AO. The source of such investment has been claimed by the assessee by way of unsecured loans of Rs 82,14,000/- during the financial year 2011-12 and Rs 33,50,000/- during the

financial year 2012-13 totalling to Rs 1,15,64,000/- and remaining amount of Rs 1,40,78,700/- is thus claimed to be out of his own funds. Firstly, we find that there is no specific finding which has been recorded by the Id CIT(A) regarding the source of investment to the tune of Rs 45,89,000/-, being the unsecured loan taken from Shrishtianand Builders and Colonizers. The AO in the remand report has also merely gone by the bank statement of Shrishtianand Builders and Colonizers and confirmed the genuineness of the loan transaction. Where a loan transaction has been claimed to be entered into by the assessee, the necessary attributes of such loan transaction in terms of tenure, purpose, rate of interest, repayment and hypothecation/guarantee for availing such loan transaction needs to be substantiated by the assessee and which needs to be examined by the AO. Further, the disbursement of loan and its utilization for making the aforesaid investment needs to be verified. However, we find that there is no finding recorded by either of the two authorities and the matter has been summarily decided. Such a finding clearly deserve to be set-aside and the matter needs to be examined a fresh as per law.

17. Similarly, the Id CIT(A) has found the unsecured loan transaction with M/s Grass Field Villa Pvt Ltd to be satisfactorily explained which we again found to be unacceptable. He has referred to balance sheet, income tax return and bank statement of M/s Grass Field Villa Pvt Ltd and another firm by name of M/s Grass Field Farms and Resorts Pvt Ltd to hold the transaction to be duly explained however, he has again failed to consider the necessary attributes of such loan transaction in terms of tenure, purpose, rate of interest, repayment and hypothecation/guarantee for availing such loan transaction and no finding has been recorded by him in this regard. Similar finding has been recorded by the Id CIT(A) regarding loan transaction with Mahender Kumar Meena which deserve to be set-aside to be examined afresh. During the course of hearing, the Id AR has sought to submit additional evidence by way of bank statement

of Shri Ashish Choudhary in support of another unsecured loan transaction of Rs 26,00,000/- which again needs to be verified.

18. Secondly, we find that there is no finding recorded by either of the two authorities as to the claim of the assessee regarding investment to the tune of Rs 1,40,78,700/- being made out of assessee's own funds. Once the investment has been made during the year vide registered sale deed dated 21.11.2011 and the assessee claims the same to be made out of his own funds, then, it is incumbent on part of the assessee to corroborate the same with his books of accounts and the taxing authorities are required to verify the same and record a finding as to their satisfaction or otherwise of such claim being made by the assessee and whether the source of such investment has been found duly explained or not.

19. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we are of the considered view that the matter relating to source of investment through loan transaction as well as own funds in purchase of the aforesaid pieces of land through registered sale deeds dated 21.11.2011 including that of the stamp duty needs to be examined afresh. The matter is accordingly set-aside to the file of the AO to examine the same afresh as per law after providing reasonable opportunity to the assessee.

In the result, both the appeals of the Revenue and the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 27/10/2020.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/10/2020

**\*Ganesh Kr.**

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

1. अपीलार्थी / The Appellant- ITO, Ward 7(2), Jaipur
2. प्रत्यर्थी / The Respondent- Sh. Prem Chand Tepan, Jaipur
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 Nos. 619 & 620/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar