

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री ओ.पी.कांत, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI O.P. KANT, AM

आयकर अपील सं./ITA No.133/JP/2020
निर्धारण वर्ष/Assessment Year : 2005-06

Shri Manoj Kumar Gupta B-23, Govind Marg, Adarsh Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-5(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ADFPG 5504 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकी ओर से / Assessee by : Shri M.L. Borad (Adv.)
राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 19/11/2020
घोषणा की तारीख / Date of Pronouncement: 23/11/2020

आदेश / ORDER

PER SHRI O.P. KANT, A.M.

This appeal by the assessee is directed against order dated 13/12/2019 passed by the Ld. Commissioner of Income-tax (Appeals)-2, Jaipur [in short the Ld. CIT(A)] for assessment year 2005-06.

2. The grounds raised in the appeal are reproduced as under:-

"1. That the learned Authorities below have grossly erred in law and facts in passing the order which is bad in law and facts. Hence liable to be quashed.

2. That the learned CIT(A) have grossly erred in law and facts in confirming the 50% of disallowance made by the Ld. AO made on estimation basis:

a. Telephone Exp.	Rs. 8190/-
b. Tough Exp.	Rs. 28751/-
c. Diesel Exp.	Rs. 4103/-
d. Diwali Exp.	Rs. 1500/-
e. Office and office maintenance Exp.	Rs. 5000/-
F. Staff Welfare Exp.	Rs. 2500/-
g. Vehicle Exp.	Rs. 2741/-
Total	Rs. 52785/-

Hence the above addition of Rs. 52785/- is liable to be deleted.

3. That the learned Authorities below have grossly erred in law and facts in making addition of Rs. 3,00,000/- on account of undisclosed investment in house furniture U/s 69. Hence the addition of Rs. 3,00,000/- is liable to be deleted.

4. That the learned Authorities below have grossly erred in law and facts in making addition of Rs. 99,000/- on account of undisclosed income u/s 69. Hence, the addition of Rs. 99,000/- is liable to be deleted.

5. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.”

3. Briefly stated facts of the case are that the assessee is engaged in the business of trading of computers and hardware and also in providing computer education besides providing annual maintenance

contract (AMC) for repair and maintenance of computers, through his proprietary concern namely M/s Gupta Computers. For the year under consideration, the assessee filed return of income on 31/10/2005 declaring total income of Rs.1,27,671/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices were issued, which were duly complied with. In the scrutiny assessment completed under section 143(3) of the Income Tax Act, 1961 (in short the 'Act') on 17/12/2007, the Assessing Officer made certain additions/disallowances and assessed the total income at Rs. 6,42,850/-. On further appeal by the assessee, the Ld. CIT(A) allowed part relief. Aggrieved with the additions/disallowances partly sustained by the Ld. CIT(A), the assessee is in appeal before the Income-tax Appellate Tribunal (in short the 'Tribunal') raising the grounds as reproduced above.

4. Before us, the assessee filed a paper book containing pages 1-38 on 28/10/2020, which is placed on record. The ld. Authorised Representative of the assessee also filed written submissions before us through e-mail. Both the parties appeared through videoconferencing facility. The Ld. Departmental Representative also filed case laws relied upon by her through e-mail.

5. The ground No. 1 of the appeal is general in nature. In support of the ground the Ld. Consul of the assessee submitted that impugned

assessment order was vitiated and bad in law and not maintainable in law because it was passed by the Assessing Officer without making any inquiries. The ld. Consul did not specifically point out any illegality in the impugned assessment order and could not advance arguments except contention that no inquiries were made by the Assessing Officer. This contention is not supported by any evidence and therefore the ground No. 1 of the appeal is dismissed.

6. The ground No. 2 of the appeal relates to sustenance of 50% amount by the Ld. CIT(A) out of total disallowance of various expenses made by the Assessing Officer. The facts in brief qua the issue in dispute are that the Assessing Officer examined trading results and expenses claimed in the profit and loss account. The trading results declared by the assessee have been accepted by the Assessing Officer inter alia in view of the observations that the assessee maintains day-to-day stock register, purchase and sales are fully vouched and better sales turnover and profit during the year under consideration. However, in respect of various expenses debited in profit and loss account viz. telephone, foreign tour expenses, vehicle related expenses (fuel, maintenance and depreciation), Diwali expenses, office maintenance expenses, staff welfare expenses etc, he made disallowances in percentage terms mainly on adhoc basis. On further appeal, the Ld. CIT(A) deleted the disallowance of depreciation on vehicles and balance disallowance was restricted to 50% of the

disallowance made by the Assessing Officer. The disallowance made by the Assessing Officer and relief allowed by the Ld. CIT(A) in respect of the various expenses is summarised in table below:-

S. No.	Nature of expenses	Total amount of expenditure	Disallowance made by the A.O.	Disallowance sustained by the CIT(A)
1	Telephone Exp.	81,903/-	16,381/-	8,190/-
2	Foreign tour Exp.	57,502/-	57,502/-	28,751/-
3	Diesel & Petrol Exp.	41,037/-	8,207/-	4,103/-
4	Diwali Expenses	11,017/-	3,000/-	1,500/-
5	Depreciation on vehicle	53,013/-	10,603/-	Nil
	Office & Office maintenance Exp.	60,080/-	10,000/-	5,000/-
6	Staff welfare Expenses	36,031/-	5,000/-	2,500/-
7	Vehicle Expenses repair & maintenance Exp.	2,741/-	5,482/-	2,741/-

7. Before us the Id. Consul of the assessee submitted that the expenses have been incurred wholly and exclusively for the purpose of

the business and vouchers of the expenses are maintained properly. He submitted that disallowance has been made on adhoc basis without pointing out any specific instance of non-maintenance of vouchers by the assessee. Further, he relied on the submission made before the Ld. CIT(A).

8. The Ld. DR on the other hand relied on the finding of the lower authorities.

9. We have heard rival submission of the parties and perused the relevant material on record. The various disallowances out of the expenses claimed in profit and loss account, which have been sustained by the Ld. CIT(A) have been summarised in the table above.

10. As far as disallowance out of telephone expenses is concerned, according to the assessing officer, the assessee did not maintain any call register and payments were made in cash, therefore, expenses were not open to verification. The contention of the assessee, however, is that out of the telephone expenses debited in the profit and loss account, expenses of Rs. 12,926 and Rs. 8,190/- were related to mobile expenses of the assessee and his wife, who is also working as business manager of the proprietary concern. According, to the assessee the said expenses on mobile were primarily related to the business. The balance expenses under the head telephone expenses were related to phones and mobiles used in the office premises by the

staff for following of enquiries, dealing with customers and service calls etc.

11. Regarding disallowance out of diesel expenses and vehicle expenses, the Assessing Officer was of the view that payments are made in cash and no logbook for earning of the vehicle was maintained and therefore expenses were not open to verification. Regarding Diwali expenses, the Assessing Officer observed that proper vouchers were not maintained and payments were made in cash and therefore, expenses are not complete and verifiable. According, to the assessee expenses were towards sweets and gifts given to customers and staff members and cost of “Puja items” for performing “Lakshmi Puja” and also payment to “Pandit” for performing Puja. Regarding offices, office maintenance and staff welfare expenses also the Assessing Officer made disallowance mainly on the ground that the assessee did not maintained proper vouchers and said expenses were not complete and correct, therefore not verifiable. The contention of the assessee, however is that the office expenses mainly related to common building guard, office cleaning charges, stamp papers purchased during the year and general office expenses. Similarly in the office maintenance account the expenses are related to normal wear and tear in the office expenses and all those expenses are supported by bills and vouchers and no personal element was involved.

12. On perusal of the order of the lower authorities and submission of the assessee, we find that the Assessing Officer has categorically mentioned the fact of examination of books of accounts maintained by the assessee in the impugned assessment order and no adverse observations have been made in respect of the books of accounts. We notice that no specific instance of non-maintenance of the voucher or personal use has been pointed out by the lower authorities for sustainment of the disallowance out of profit and loss account. It is well settled law that no disallowance of such expenses can be made on adhoc basis without pointing out any specific defect or instance of non-maintenance of vouchers. The disallowance also cannot be made merely on the ground that payment have been made in cash unless the parties to whom payment is made are not genuine. No doubt regarding genuineness of the parties has been raised by the lower authorities.

13. Similarly in respect of foreign tour expenses, the Assessing Officer observed that expenses have been incurred on travel of the assessee and his wife to Malaysia and thus not related to business activity of the assessee. On the contrary, the assessee submitted that his proprietary concern is a prominent dealer of M/s Zenith Computers Ltd., who organises annual meet every year at different places. During those annual meets technical presentation are given to dealers, their common problems are discussed, annual rewards to

dealers are distributed and business policies for the ensuing year are also discussed. For attending the dealer meet, the assessee was required to make his own travel arrangement and rest of the expenses like lodging, boarding, local transport etc. were sponsored by M/s Zenith computers Ltd. The ld. AR argued that had this been a pleasure trip, the assessee would have taken his children also along with him, but in view of the business trip, he along with his wife who is business manager, only attended the meet. In view of the submissions, the Ld. CIT(A) has already allowed 50% of the expenses. In our opinion, the sustainance of the balance 50% expenses on ad hoc basis is not justified, when the assessee has explained business purpose of the expenses.

14. In view of the facts and circumstances and the discussion above, we are of the opinion that action of the Ld. CIT(A) in sustaining 50% of the disallowances made by the Assessing Officer that too on adhoc basis is not justified, and accordingly, we delete the same. The ground No. 2 of the appeal is allowed.

15. The ground No. 3 relates to sustainance by ld. CIT(A) of addition of Rs. 3 lakh made by the Assessing Officer under section 69 of the Act for unexplained investment in furniture and fixture .

16. Briefly stated facts qua the issue in dispute are that during the year under consideration the assessee sold his residential house at

'Raja Park' and made investment in construction of house at 'Vaishali Nagar'. During the assessment proceeding, the assessee submitted a separate balance-sheet as on 31.03.2005 for personal state of t affairs. A copy of the said balance-sheet is placed on page 15 of the paper book. In the said balance-sheet the assessee has shown house furniture amounting to Rs. 3 lakh on asset aside. According to the Assessing Officer, this investment of house furniture was not appearing in the balance sheets of earlier years and therefore, he asked the assessee to explain source of investment in said furniture. The assessee, however submitted that during the year he has sold his old house at Raja park and the furniture lying in that house, which was purchased in earlier years, has been transferred to the new house, which was under construction and therefore no new investment has been made in the year under consideration. The assessee also attempted to explain the investment in furniture as has been made in earlier years by way of insurance certificates of household goods made in earlier years. The contention of the assessee was not accepted by the lower authorities.

17. Before us, the ld. Consul of the assessee referred to list of the items of furniture and fixture amounting to Rs. 3,00,050/- placed on the page 23 of the paper book. He also referred to copy of balance-sheet of proprietary concern as on 31/03/2004 and 31/03/2005, which are placed on page 1 and page 7 of the paper book respectively.

He Submitted that in the fixed asst schedule of the balance-sheet as on 31/03/2004, the house at 'Raja park' has been valued at Rs. 17,82,117/-. He also referred to the breakup of value of Rs.17,82,117/- available on page 16 of the paper book. He submitted that the house was initially purchased for Rs. 8 lakhs and thereafter addition of Rs. 2,65,000/- was made in the year 1999-2000, and addition of Rs. 5,69,817 and Rs. 1,47,300/- was made in the year 2002-03 and 2003-04 respectively. According, to him this addition include investment in furniture and fixture in the said house. He submitted that no depreciation on the said house has been claimed by the assessee. The Ld. Consul also referred to the copy of insurance certificates placed on page 19 to 23 of the paper book. He also referred to copy of warranty certificates placed on page 24 to 34 of the paper book and submitted that those warranty certificates of household items have been signed in earlier years. In view of the documents referred, he submitted that the items in dispute are old items which have been transferred from Raja park house to Vaishali Nagar house (under construction), and separately specified in the personal balance-sheet as on 31/03/2005, which was made for the first time. According, to him the lower authorities are not justified in making the addition under section 69 of the Act.

18. The Ld. DR on the other hand relied on the order of the lower authorities. In support , she also relied on the decision of the Hon'ble

Punjab and Haryana High Court in the case of Ishwar Chand Bansal versus CIT reported in 294 ITR 95 and decision of Hon'ble Patna High Court in the case of Chandmul Rajgarhia Vs CIT reported in 164 ITR 486.

19. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the assessee has sold his house at 'Raja park' for a sale consideration of Rs. 15 lakh in previous year ended on 31/03/2005. This house was valued at Rs. 17,82,117/- in the combined balance-sheet as on 31/03/2004 of the proprietary concern and personal affairs. This house was purchased for Rs. 8 lakh and thereafter addition of Rs. 2,65,000/- has been made in the financial year 1999-2000, Rs. 5,69,817/- & Rs. 1,47,300/- have been made in financial year 2002-03 & 2003-04. Before the Assessing Officer the assessee explained that additions made in the building were on account of renovation and registry charges. Now the claim of the is that certain furniture and fixture out of the house at Raja Park was transferred to his under construction house and which is appearing in the balance-sheet as on 31/03/2005. The list of the items under furniture and fixture of Rs. 3 lakh, is reproduced as under:-

<i>Item</i>	<i>Model</i>	<i>Serial No.</i>	<i>Price</i>
1. Fridge	LG GR 362 M		Rs.20,000/-
2. A.C.	Videocon 1.5 Ton	9428	Rs.15,000/-

3. Music System	Sony CBT	A.290KCN	Rs.15,000/-
4. Microwave	IFB20PG1S	2306/03/1440	Rs.13,000/-
5. Kitchen Chimany	Mobel	6099	Rs.19,000/-
6. Juicer & Mixer	Jaipan		Rs.5,500/-
7.24 Duct Fan & Pump	GE		Rs.6,800/-
8. TV Optronika	Optronika	S677092	Rs.15,000/-
9. TV Samsung	Samsung 21K5	02823ZAW800433	Rs.12,250/-
10. Vacume Cleaner	Eureka Forbes Tornado	3/62699	Rs.4,000/-
11. Gyser 3 Nos	Racold Pronto	P305110845,46,47	Rs.4,200/-
12. Handy Vacume Cleaner		SR 811171	Rs.2,000/-
13. Ceiling Fan 7 Nos	Bajaj Euro	As per warranty card	Rs.9,800/-
14. Tube Lights	Bajaj Slim Line power saver	14 Nos	Rs.9,200/-
15. Sofa Set (8 seater)			Rs.48,000/-
16. Dining Table (with 6 seats)			Rs.17,000/-
17. Centre Table			Rs.45,00/-
18. Beds (3 Nos.)			Rs.48,000/-
19. Mattress (3Nos.)			Rs.27,000/-
20. Godrez Almira			Rs.4,800/-
Grand Total			Rs.3,00,050/-

19.1 The assessee has attempted to explain that no new investment in house furniture has been made while constructing the new house and only old furniture and house hold appliances have been shifted from old house, which have been shown in the balance sheet on 31.03.2005 for personal affairs.

19.2 In our opinion the assessee was required to explain source of investment of these items of Rs. 3,00,500/- either in the year under consideration or in earlier years with documentary evince in the form of bills or payment vouchers. But neither the assessee has filed any documentary evidence in support of addition made in earlier years to

the house at 'Raja Park' nor explained purchase of these items through household withdrawals. The insurance certificate and warranty certificate also does not specify the items under dispute and thus argument of the ld. counsel are not accepted. The assessee has failed to discharge his onus of explaining source of investment in furniture of Rs. 3,00,000/- appearing in balance sheet and thus the action of the lower authorities is treating the same as unexplained is upheld. The ground no. 3 of the appeal is dismissed.

20. Ground no. 4 relates to sustainance of the addition of Rs. 99,000/- which was made by the Assessing Officer U/s 69 of the Act by treating the sale consideration of Rs. 99,000/- received as income from undisclosed source.

21. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that during the year assessee has shown receipt of Rs. 10,99000/- in bank account. This receipt is by way of two cheques i.e. one of Rs. 8,49,000/- being cheque No. 496055 and other of Rs. 2,50,000/- bearing cheque No. 456163. The assessee explained that Rs. 10,00,000/- was received on sale of his house located at Manorover, Jaipur and Rs. 99,000/- was against sale of furniture and other electronic items installed in said house. The assessee submitted that the remaining Rs. 99,000/- are in respect of old furniture electrical

and electronic appliances etc. brought by his father from Shri Ganganager in the year 2003. The Assessing Officer was not satisfied according to him the fact of sale of furniture of Rs. 99,000/- with the explanation of the assessee is not supported by the sale deeds. Thus he treated the receipt of Rs. 99,000/- as income from undisclosed sources. The ld. CIT(A) also did not allow relief to the assessee on this account. The finding of ld. CIT(A) is reproduced as under:-

“4.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. On perusal of overall facts, it is seen that there is no dispute as to the fact that the assessee received Rs. 99,000/- on account of sale of furniture. Authorized Representative argued that this is sale proceeds of old furniture of father and represents sale of personal asset, therefore not taxable. I find that even if the contention of the Authorized Representative that this represent sale of personal assets of father is accepted, even then same is taxable as assessee has not shown any cost incurred on the same. Therefore, addition of Rs. 99,000/- made by the Assessing Officer on account of capital addition during the year is upheld. This ground of appeal is dismissed.”

22. The ld. CIT(A) has though agreed with the possibility of amount being sale proceeds of the old furniture of father and representative sale of the personal asset therefore, it was not taxable, however, he has observed that assessee has not shown any cost incurred on the same and therefore, addition was sustained. In our opinion, the onus was on the assessee to explain that Rs.99,000/- received was against sale of old furniture and electronic appliances. The assessee has neither produced any agreement with buyer for sale of furniture and electronics appliances nor produced any confirmation from buyer of

the house that he has paid Rs.99,000/- against purchase of furniture installed in said house. The claim of the assessee that he received those items of furniture & electronics appliances from his father cannot be accepted without any documentary evidences in support. In absence of any documentary evidence the claim of the assessee is rejected and the addition made by the Assessing Officer is upheld. The ground no.4 of the appeal is accordingly dismissed.

23. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 23/11/2020.

Sd/-

(कुल भारत)
(Kul Bharat)

न्यायिक सदस्य / Judicial Member

Sd/-

(ओ.पी.कांत)
(O.P. Kant)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 23/11/2020

Santosh* /Dragon Software

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

1. अपीलार्थी / The Appellant- Shri Manoj Kumar Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT,
6. गार्ड फाईल / Guard File (ITA No. 133/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar