

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. Nos. 858/JP/2013 & 637/JP/2016
निर्धारण वर्ष/Assessment Years : 2004-05

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| M/s S. Singhal & Co. E-127, Industrial Area, Bhiwadi, Distt.- Alwar. | बनाम Vs. | The ACIT, Central Circle, Alwar. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFFS 2873 Q | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

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

सुनवाई की तारीख/ Date of Hearing : 29/09/2020
उदघोषणा की तारीख/ Date of Pronouncement : 09/12/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The present appeal has been filed by the assessee against the order of Id. CIT(A), Alwar dated 23.09.2013 pertaining to assessment year 2004-05 wherein the assessee has taken the following sole ground of appeal:-

"1. In the facts & circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in making addition of Rs.2,20,000/- on account of alleged unexplained investment. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs.2,20,000/-."

2. At the outset, it is noted that the matter was earlier disposed off by the Coordinate Bench vide its order dated 09.03.2016 which was subsequently recalled on misc. application filed by the assessee by the Coordinate Bench vide its order dated 11.07.2016 and hence, the matter has come up for hearing before us.

3. Briefly, the facts of the case are that a search was conducted on 17.09.2008 on Kamdhenu Group. The assessee is a firm of Chartered accountants engaged in providing professional services and is part of Singhal sub-group. During the course of search from E-127, Industrial Area, Biwadi, residence of Shri Surendra Kumar Singhal, one of the partners of the assessee firm, two bills issued by Ganpati Electronics towards purchase of electronic items were seized and during the course of assessment proceedings, the assessee firm was asked to explain the source of investment for purchase of the electronics items as so mentioned in the said bills. The submissions so filed by the assessee firm were considered but not found acceptable to the Assessing officer and addition of Rs 2,20,000/- was made in the hands of the assessee firm and the findings of the AO reads as under:

"1. Submission of the assessee that the name of M/s. S. Singhal & Co. was mentioned in the bill no.1198 for Rs.45,000/- just for the purpose of transportation is not acceptable for the reason that for the purpose of transportation address of the person to whom the goods are to be delivered is of far most importance which is mentioned as E-27, Industrial Area, Bhiwandi on the bill. Name of the assessee firm on the bill only indicates that the goods have been purchased by the assessee firm.

2. *The assessee has also claimed that the payment of the T. V. purchased as per the bill under consideration was made by Sh. W. R. Singhal G/f of Sh. Kunal Singhal is also not convincing because the assessee has failed to file any evidence for the same.*

3. *If Sh. W. R. Singhal has made payment for the same, what prevented the shopkeeper or Sh. W. R. Singhal to have his name on the bills.*

4. *For other bill i.e. bill no.1199 for Rs.1,75,000/- for purchase of Projection T.V. the assessee has claimed that the bill has inadvertently been annexed with the bill of Rs.45,000/- i.e. bill no.1198. And the bill no.1199 does not pertain to the assessee firm. On examining the bill it is found that at the top of the bill following remark is mentioned – (SUBSEQUENT TO BILL NO.1198). Here it is necessary to mention that the bill under consideration is bill no.1199 and the bill no.1198 pertains to purchase of another projection T. V. for Rs.45,000/- which has been discussed in above 3 paras. Therefore, it is very clear that the bill no.1199 for Rs.1,75,000/- has been issued subsequent to bill no.1198 and claim of the assessee that it is annexed with 1198 is true to the extent that it has not been annexed inadvertently but deliberately because the bill pertains to the assessee firm and has been issued subsequent to bill no.1198 for purchase of another Projection T.V. The bill amount of Rs.1,75,000 has been paid in cash. The assessee has disowned the bill therefore there was no question of verifying its payment*

from books of account. However, the circumstantial evidence as discussed above very much indicates that the bill pertains to the assessee firm for which payment has been made from undisclosed source.

After discussion as above, it is held that the assessee has failed to explain satisfactorily the source of investment for purchase of items i.e. Projection T. V. as mentioned in bill no.1198 for Rs.45,000/- and bill no.12199 for Rs.1,75,000/-. In view of the same an addition of Rs.2,20,000/- is made to the income of the assessee."

4. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) who has affirmed the action of the AO and his findings read as under:

"4.3 I have gone through the assessment order as well as the submissions made by the AR and find that the AO has made the addition on account of unexplained investments for purchase of electronic items on the ground that the assessee failed to offer any satisfactory explanation. During the course of search at the premises of the appellant, two papers - page 29 & 30 of Annexure A/2 were seized from E-127, Industrial Area, Bhiwandi. These papers were the bills of Ganpati Electronics, Sahara Mall, Gurgaon – (i) Bill No.1198 dated 10-11-2003 for the purchase of 60 inch LCD Projection TV for Rs.45,000 in the name of S. Singhal & Co., E-127, Industrial Area, Bhiwandi and (ii) Bill No.1199 dated 11-11-2003 for Cash, Projection TV 60 inch for Rs.1,75,000. It was submitted before the AO during the course of assessment proceedings that the purchase of TV against Invoice No.1198 of Rs.45,000 was made by Sh. Kunal Singhal and the payment was made by Sh. W. R. Singhal, the grandfather of Sh. Kunal Singhal. It was further submitted that

no purchase has been made against the Invoice No.1199 by the appellant and this invoice was received by mistake. It is further stated that the explanation given by the appellant was not supported by documentary evidence. The appellant thus, could not explain the said purchases as no entries were found recorded in its books of accounts.

4.4 During the course of present proceedings, the appellant has repeated the same facts and has failed to file any further documentary evidence to substantiate its contentions. The primary onus lies upon the appellant as regards the papers found and seized during the course of search from its premises are concerned. The appellant could not explain the said invoices with reference to the entries recorded in the books of accounts and the purchases made in cash are a clear reflection of the unaccounted expenditure / investment. A seller would normally issue a bill / invoice to the buyer against the goods sold on cash basis by writing 'cash' on the invoice, rather than the name of the person who is buying the goods. This is a normal business practice, which is being followed by everyone in day to day life. Thus, there is no logic in the argument that there is no name of the appellant written on the invoice number 1199 and only 'cash' has been written on the bill and hence there is no purchase made by the appellant.

4.5 The appellant has also failed to furnish any documentary evidence in the appellate proceedings in support of the claim that the said purchase against Invoice No.1198 was made by Sh. Kunal Singhal. I have also gone through the case laws cited by the appellant and find that they are not applicable to the facts of this case. These documents were found and seized during the course of search and seizure operation at the premises of the appellant and therefore it is the primary duty of the appellant to substantiate its claim with the best possible evidence. According to section 132(4A) of the IT Act, where any books of accounts or other documents is found in the possession of any person in the

course of a search, it has to be presumed that such document belongs to the person and the contents of such document are true. The presumption u/s 132(4A) of the IT Act is a rebuttable presumption and the onus lies on the assessee to produce the best possible evidence to disprove it. Hon'ble Madras High Court has upheld this, in the case of CIT vs. Ambika Appalam Depot – 340 ITR 0497. Further, in the case of Smt. Jyoti Kumari Vs. ACIT – 344 ITR 060, Hon'ble Karnataka High Court has held that unexplained investment or asset discovered during search can be treated as unexplained investment in the hands of the assessee on his failure to prove that the amount has been already disclosed. In this case, the appellant has failed to do so both at the assessment as well as at the appellate stage.

4.6 In view of the above discussion, I hold that the AO was justified in making the addition of Rs.2,20,000 on account of unexplained investments.”

5. Against the said findings of the Id CIT(A), the assessee is in appeal before us. During the course of hearing, the Id AR submitted that the bills were seized from the residence of one of the partners of the assessee's firm and nowhere it was established that the assessee firm had made the investments towards purchase of the electronics items. The Id AR has drawn our reference to the photocopies of the impugned bills bearing No.1198 and 1199 and submitted that one of the bills is dated 10-11-2009 and the other is dated 11-11-2009. According to him, the bill bearing No.1199 dated 11-11-2009 of Rs.1,75,000/- was mistakenly attached with the bill bearing No.1198 dated 10-11-2009. Otherwise, it was not possible to travel all the way in two consecutive dates. He has, therefore, argued that there was no logical basis to presume that the purchase of the electronic items have been made by the assessee firm. Further, he has reiterated the

contentions as contained in the written submissions which read as under:

"4.1 The items alleged to have been purchased by the appellant firm are entertainment electronic gadgets. In a CA firm, in normal course, such entertainment gadgets are not installed.

4.2 The bills were found at the residence and not at the office premises. Nor there is any finding that during the course of search these were found installed at the office premises.

4.3 It was submitted before the Id. AO as well as before the Id. CIT (A) that the Bill No.1198 for Rs.45,000/- pertained to the purchaser by Shri W. R. Singhal father of Shri S. K. Singhal under exchange offer. In respect of Bill No.1199 for Rs.1,75,000/-, it was submitted that it did not contain the name of the appellant firm and it in no way related to the firm.

4.4 A specific request was made during the course of assessment proceedings (AO Page 2) to verify the above fact from M/s. Ganpati Electronics who had issued the bills.

4.5 The lower authorities, for the reasons best known to them, have not acted upon the assessee's request. Electronic items do carry with them the warranty and therefore complete details of buyer are available with the vendors.

4.6 Bill No.1199 was erroneously attached with Bill No.1198. The vendor is located at S-11, Sahara Mall, M. G. Road, Gurgaon whereas the assessee firm is located at E-127, Industrial Area, Bhiwandi, Alwar. Bill No.1198 is dated 10/11/2003 where Bill No.1199 is 11/11/2003. Slight application of common sense will reveal that if a person of Bhiwandi has to buy two TVs he will not go on two different successive dates from Bhiwandi to Gurgaon to buy two TVs from the same vendor. It clearly shows that second Bill has nothing to do with the assessee firm or Shri S. K. Singhal."

6. Per contra, the Id DR vehemently argued the matter and relied on the order and the findings of the lower authorities which we have already taken note of and are not repeated for sake of brevity.

7. We have heard the rival contentions and perused the material available on record. From perusal of the assessment order, we note that two bills issued by Ganapati Electronics no. 1198 dated 10.11.2003 for Rs 45,000/- and another bill no. 1199 dated 11.11.2003 for Rs 175,000/- was seized during the course of search u/s 132 which was conducted on 17.09.2008 from the residence of one of the partners of the assessee firm, Shri S.K Singhal. It is an admitted position of the Revenue as apparent from the assessment order that the documents were seized from the residential premises of Shri S.K Singhal and not from the official premises of the assessee firm. Therefore, the presumption that such documents belong to Shri S.K Singhal and/or his family members will arise u/s 132(4A) and it needs to be seen whether any question were raised to Shri S.K Singhal during the course of search and whether any action has been taken in his individual hands or not. However, there is nothing on record to rebut such presumption except the fact that bill no. 1198 is issued in the name of the assessee firm and therefore, to that extent, it can be held that bill no. 1198 doesn't belong to Shri S.K Singhal in his individual capacity but belong to the assessee firm. During the course of assessment proceedings, the assessee firm has accepted the same and in its submission has stated that "we have inspected the seized records and only invoice of Rs 45,000/- has been issued in name of our firm and related to us". However, further submission of the assessee firm that the payment for such purchase was made by Shri W. R Singhal in

his individual capacity is contradictory and in any case, is not supported by any corroborative evidence which has been brought on record. Once the bill is issued in name of the assessee firm and the assessee firm accepts the same and consequent purchase of electronic item, the onus is clearly on the assessee firm to demonstrate through verifiable evidence that such purchases have been done from its disclosed sources of income. Therefore, in absence of any evidence on record that such purchases were made by the assessee firm from its own disclosed sources, the unexplained investment towards such purchase of Rs 45,000 is hereby upheld.

8. As far as the other bill no. 1199 of Rs 175,000/- is concerned, the presumption is not rebutted that the said document was found from the residential premises of Shri S.K Singhal and therefore, any action where so required as per law is to be taken in his individual hands and not in the hands of the assessee firm. Further, we find that there is no mention of the assessee firm's name on the said bill and thus, there is no basis to hold that the said document belongs to the assessee firm. The addition of Rs 175,000 is thus deleted.

9. In the result, appeal filed by the assessee is partly allowed.

ITA No. 637/JP/16

10. In this appeal, the assessee has challenged the levy of penalty u/s 271(1)(c) for A.Y. 2004-05. In this regard, no specific arguments have been taken by the Id AR. Considering the order passed by the AO, the levy of penalty is confirmed. However, in light of our directions in ITA No. 858/JP/13 where the additions have been partly

sustained, the matter is set-aside to the file of the AO for limited purposes of recomputation of quantum of penalty on the addition which has been sustained by us.

11. In the result, the appeal is disposed off with aforesaid directions.

Order pronounced in the open Court on 09/12/2020.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/12/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s S. Singhal & Co., Bhiwadi, Alwar.
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, 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. 858/JP/2013 & 637/JP/2016 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar