

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' 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 No. 924/JP/2019  
निर्धारण वर्ष/Assessment Year :2017-18

Chandra Prakash Agarwal HUF 1756, Telipara, SMS Highway, Jaipur	बनाम Vs.	DCIT, Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACHA9204J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Manish Agarwal (CA)  
राजस्व की ओर से/ Revenue by : Shri Amrish Baidi (CIT)

सुनवाई की तारीख/ Date of Hearing : 29/10/2020  
उदघोषणा की तारीख/ Date of Pronouncement: 27/01/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 10.05.2019 wherein the assessee has taken the following ground of appeal:-

"1. On facts and in the circumstances of the matter the Ld. CIT(A) has erred in upholding the addition of Rs. 25,00,000/- made by Id. AO by alleging the same to be undisclosed advances made by the appellant to M/s Columbus Overseas LLP, over and above the advances shown in the books of the appellant, arbitrarily without considering the explanations/ clarifications adduced by the appellant. Appellant prays such addition confirmed merely on basis of surmises deserves to be deleted.

*1.1 That the Ld.CIT(A) has further erred in upholding the said addition solely on the basis of Annexure 'A' of exhibit-4 at page no. 159 seized during search operation, which was a rough noting, without considering the documentary evidence filed by the appellant and without bringing any material on record against such documentary evidences filed. Appellant prays such addition confirmed being unjustified/unwarranted deserve to be deleted.*

*2. On facts and in the circumstances of the matter the Ld. CIT(A) has grossly erred in upholding the addition made by Id. AO by estimating interest @ 8% on the alleged advances of Rs. 25 lacs stated to have been earned by the appellant without any basis or material on record on assumptions and presumptions. Appellant prays such addition confirmed being imaginative and arbitrary deserves to be deleted.*

*3. On facts and in circumstance of the matter the Ld. CIT(A) has erred in confirming the action of Id. AO in invoking the provisions of sec 115BBE of the IT Act, 1961."*

2. Briefly stated, the facts of the case are that a search and seizure action u/s 132 of the Income Tax Act, 1961 was carried out on 28.7.2016 on the members of Chandra Prakash Agarwal Group of which the assessee HUF is also one of the members. Subsequent to the search, return of income for the year under appeal was filed by the assessee declaring total income of Rs.23,24,240/- on 29.07.2017. The Assessing officer referring to a hand written seized paper impounded from business premises of M/s Garg Jewellers held that cash advance of Rs 25 lacs was advanced by the assessee on 27.07.2016 and the assessee was asked to explain the source of such cash advance and to get the same verified from its books of accounts. In response, the assessee filed its

submission stating that the loan of Rs 25 lacs was given to M/s Columbus Overseas LLP on 14.08.2015 which was not received on 27.07.2016 which represents the tentative date of repayment of loan and in support, copy of ledger account of M/s Columbus Overseas LLP, the bank account reflecting the transaction as confirmation from the said party was furnished. The AO didn't agree to the contention advanced by the assessee and held that this transaction of cash loan is different from the earlier transaction made through the banking channel and made an addition towards the undisclosed cash loan of Rs 25 lacs and also worked out interest on such cash loan @ 12% and made a total addition of Rs 27 lacs which on appeal has been confirmed by the Id CIT(A). Against the said findings, the assessee is now in appeal before us.

3. During the course of hearing, the Id. AR submitted that in Ground No. 1 to 1.1, the appellant has challenged the action of Id. CIT(A) in upholding the addition of Rs.25,00,000/- made by Id. AO by alleging the same to be undisclosed cash loans advanced by the assessee, without bringing any evidence on record and by ignoring the submissions made by the assessee by solely relying on the unfounded observations of Id. AO.

4. It was submitted that the assessee had during both the assessment as well as appellate proceedings placed on record various documents/ evidences to prove that the impugned paper/document was a rough paper on which only memorandum notings were made for the sake of memory and to take control over the amount financed by various family members, apparently for administrative purposes. During the course of assessment proceedings, as explained above, it was submitted that this page contains the details of total amount advanced by various family members, reference of brokers, amount advanced, person to whom advanced and the person who has made the advance and in whose books the same was recorded, were noted. The dates

stated therein are the probable date of repayment / date of advance / due date of interest payment. As the same was prepared for memoranda purpose, thus the dates mentioned therein were based on the memory of the person who noted the same. In support of the contention that they are recorded in the regular books of accounts, assessee filed the copies of ledger accounts of the party, bank statements of the assessee showing advancing of loan via banking channel, receipt of interest on such loans after due deduction of TDS etc. Further, the assessee had placed on record various documents before Ld. AO and Ld. CIT(A) to counter the finding of the Id. AO alleging the impugned loan to be undisclosed cash loan advanced by the assessee.

5. It was submitted that the impounded paper consists of details of various loans advanced through banking channel by the assessee and the other members of the groups to various people through finance brokers. In the said paper first column is the amount advanced followed by the name of borrower. Thereafter against the names of borrowers certain dates have been noted that denote either the date of advancing the loan or the tentative date of repayment of such advances or the date of payment of periodic interest. The details of all loans which were advanced and the one's that were due for repayment during a particular period around the day on which such paper was made were noted on such paper in order to estimate the amount that was loaned in the market on a particular day (on which such details were noted). It is reiterated that the impugned paper was a rough paper meant only for the purpose of easy accounting and keeping the loan particulars in memory for proper administration. The Id. AO on his presumptions that are without any logical basis or material evidence has assumed such dates mentioned against the names of various persons are the dates on which the loans are advanced to such persons.

6. It was submitted that such assumption of the Id. AO suffers from both factual and logical deficiency in so much as to the fact that some of the dates mentioned on this page are in fact future dates i.e. dates falling after the date on which search operation was carried out by the department during which the said paper was found and seized. For instance, the date mentioned against a loan advanced by Jitendra Kuamr Agarwal (HUF) to Shri Ram Enterprises is "25.08.2016" which is presumed as the date of advance by Id. AO whereas the "DATE OF SEARCH is 28.07.2016". The other future dates mentioned on the impugned page are 13/08/16 and 10/08/16. Now presuming these future dates mentioned on the paper as the date on which particular advanced was made in cash, is beyond any comprehension. It only shows that Ld. AO was bent upon in treating such advance to be given in cash out of unaccounted sources and making addition, despite the fact that these advances are from regular banking channel and duly recorded in the returns filed. The irony of arbitrariness of the department could also be seen from the action of AO who not only alleged the said transaction as unrecorded cash advance but had gone one step further and made the additions of the amount stated against such future dates in the hands of respective lenders who are the members of the appellant HUF.

7. It was further submitted that the date 27/07/16 is mentioned against as many as 8 parties and if the hypothesis of the Id. AO is applied to the impugned paper it would lead to conclusion that crores of rupees was advanced by the group to which the assessee belongs on a single day. Advancing such huge amount of loan by different members of the same family/group in a single day that too in cash is practically impossible. Moreover, in normal course whenever any advance is made in cash by some group only the name of borrower is noted and no sane person would record the different names of the family members as lender. This clearly shows that the amount were duly recorded in the books of respective family members whose name is

appearing as lender. A sheet is enclosed with this written submission at page 11 wherein all entries appearing on the said paper are verbatim copied and at the last one column is added titled as 'Remarks' wherein the date of repayment of loan / periodic interest is mentioned. From the perusal of the same your honors would appreciate the fact that all the dates are very near to the date mentioned on the paper impounded (not more than 8 days) and since the search was commenced on 28.7.2016, the brokers could not contact the assessee to deliver the cheques towards payment of interest / repayment of principal amount and when search was concluded they have visited the assessee and handed over the cheques of interest/ repayment. This also supports the contention of the assessee that the dates stated in the impounded document are the dates of repayment/ periodic interest.

8. It was further submitted that the Id. AO based on certain entries pertaining to group members namely Smt. Pooja Agarwal and Sh. Chandra Prakash Agarwal (Individual) (whose names were also found noted on such paper) concluded that the dates mentioned are date of advancing the loan. In this regard, it was explained to the Id. AO that in Jaipur where private finance is made through finance brokers, it is general practice that initial term of loan is for 2 months and at the expiry of the same either the loan is repaid or after payment of interest the same is rolled over for further period. In such case the date mentioned was matching with the date of advancing of the loan. Further Id.AO observed that paper should be read as a whole but he himself has ignored that part which is not favouring to him. In this regard, kind attention of the hon'ble bench is invited to third to fifth entry from the top of the said paper where before the date, the word "DUE DATE' is clearly mentioned. Under the circumstances the contention of the assessee is fortified that the dates noted are the dates on which tentative repayment of the loans already advanced was expected or when the rollover of advance or interest is payable. It is further

emphasized, that the dates of repayment were only probable dates on which the loans may be repaid by the parties as per prevailing market system of advancing the money. However, generally the repayment of such unsecured loans so advanced is extended on the request of the parties and the interest cycle keeps rolling.

9. It was submitted that application of Id. AO's theory would result in vague interpretation of a page that was nothing but a rough paper prepared for memoranda purpose and all the entries found noted were duly recorded in the books of accounts of respective person. Further, it is nearly impossible by any stretch of imagination to imply that a person might have noted down future dates on which it might advance loan that too in cash through a particular broker and also noted the specific name of the family member as a lender despite the well known fact if any unaccounted cash advances are given then they would be given by the group / family as a whole and on such case specific name of family member would never be written.

10. Further, the Id. AO has also assumed that these loans have been advanced by the assessee in cash and are different and distinct from the one's reflected in the books of accounts of the assessee even though the same amount of advance is duly reflected in books of accounts. In this regard, it was submitted that such observations of the Id. AO are merely his assumptions and presumptions made purely on suspicion that again lack factual and logical support with any material found as a result of search. On the contrary, the claim of the assessee is clearly backed by both documentary and circumstantial evidences.

11. It was submitted that the loan of Rs. 25,00,000/- advanced by the assessee to Columbus Overseas LLP has been given via banking channel

(RTGS) through the regular bank account of the assessee. Further, the interest of such loan have been recorded in the books of accounts on accrual basis and offered for taxation in the return of income year on year. Such interest income has also been received by the assessee via banking channel and after due deduction of TDS on the same. Further, there is no evidence of any other cash loan being advanced by the assessee over and above the impugned loan of Rs. 25 lacs as reflected in the books of accounts that has been brought on record or been relied upon by the Id. AO. The conclusions drawn by the Id. AO are merely based on suspicion and surmises and without any cogent material to show that the assessee has in fact advanced an equivalent amount of loan in cash to Columbus Overseas LLP. Further, it is an established fact that in judicial proceedings, suspicion howsoever strong cannot take the place of material/evidence available on record. Moreover no effort whatsoever was ever made to verify the same with the opposite party nor any action is taken in those case.

12. Reliance was placed on decision of the Special bench of Mumbai ITAT in the case of ITO Vs. M/s. GTC Industries Limited Tobacco House reported in 164 ITD 1 where the Hon'ble Special Bench of ITAT after considering all the aspects of "preponderance of human probabilities" and other issues has held that :

*"46. .... It is quite a trite law that suspicion how so ever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of 'preponderance of probability' is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts that might go against assessee. Once nothing has been proved against the assessee with aid of any direct*

*material especially when various rounds of investigation have been carried out, then nothing can be implicated against the assessee."*

13. Reliance was also placed on the decision of the Delhi Bench of the Tribunal in the case of Nestle India Ltd. vs Deputy Commissioner Of Income Tax (2007) 111 TTJ Delhi 498 wherein the Hon'ble bench deleted the disallowance made by the AO on the basis of assumptions/ suspicions.

14. It was submitted that it is settled position of law that assessment proceedings under the Act, being quasi-judicial proceedings, the assessment of any particular year must be based not on mere suspicion, bare guess and probabilities but on legitimate material from which reasonable inference of income having been earned/investment made during the accounting year could be drawn and that the initial burden of finding such material, however, slight, is on the income tax authorities and not on the assessee (Bansidhar Onkarmall v. CIT, (1953) 23 ITR 353. 361 (Orissa).

15. It was accordingly submitted that loan of Rs. 25.00 lacs made to Columbus Overseas LLP was advanced by the assessee on 14/08/2015 through regular banking channel. The assessee has duly recorded interest receivable on such loan in the books of accounts and offered the same for taxation. The interest income was received in the regular bank account of the assessee after due TDS. The date mentioned in the paper also contained certain dates which are subsequent to date of search for which also the Id. AO alleged that on these dates cash advance might have been made by the respective individual, which is an impossible proposition made by Ld. AO. On the paper itself the word 'DUE date' is mentioned which is deliberately ignored by the Id. AO. No evidence / material was found as a result of search or brought on record to support the allegation that these entries are cash advanced by the members of

the appellant HUF. With the above, it was submitted that the impugned paper found during the course of search was merely a rough paper having rough or memorandum record of entries of advances given by various entities of the group duly reflected in their respective books of accounts and these were loosely mentioned here by memory for the purpose of administrative control and planning. Further, coming to the specific entry in respect of which addition of Rs.25,00,000/- has been made by the Id. AO, it is very much evident from the submissions made alongwith evidence furnished before Ld. AO that same is duly recorded in the regular books of accounts of the assessee and therefore no separate addition in this regards is warranted in circumstances. Under the circumstances, it was submitted that the orders of the Id. AO and Id. CIT(A) are formed with a pre-determined conclusion drawn without controverting or bringing anything on record to show that the documentary evidences submitted by the assessee were non-genuine.

16. Regarding Ground No. 2, during the course of hearing, the Id. AR submitted that under this ground of appeal, the appellant has challenged the action of the Id. AO of arbitrarily assuming that the assessee has received interest @ Re.1 per hundred per month on the loans alleged as being advanced in cash and further not recorded such interest in the books of accounts.

17. In this regard, it was submitted that the AO further on his own assumptions alleged that the assessee has also earned interest on the same which has not been recorded in the books of account. Since the assessee has charge interest rate @ Rs. 1.25 per hundred per month in respect of the loan advanced through cheque. Hence the interest rate for cash loan would be reasonable at @ Rs. 1.00 per hundred per month considering the fact that cash loan are being advanced at lower rate compare to the rate applied on loan through cheque. Accordingly, the interest for 8 month from 27-07-2016 to 31-

03-2017 is computed at Rs. 2,00,000/- which is added back to the total income of the assessee as undisclosed interest income which has resulted into total addition of Rs. 27,00,000/- (25,00,000/- plus Rs. 2,00,000/-). It was submitted that this ground is consequential in nature as the same is dependent on the addition being made in respect of cash loan of Rs.25,00,000/- alleged to having being advanced in cash.

18. On merits, it was submitted that the interest income received from the loan advanced by the assessee to Columbus Overseas LLP has duly been recorded in the books of accounts of the assessee and has been offered for taxation. The same is clearly evident from Form 26AS for AY 2017-18 which reflects the amount of interest paid by Columbus Overseas LLP to the assessee after due deduction of TDS on the same. During the year under consideration, the assessee had received an interest of Rs.379,062/-from Columbus Overseas LLP which is forming part of the total interest of Rs.23,24,276/- declared under the head Income from Other sources. Therefore, the assumption of the Id. AO that the assessee has earned and received interest @ Re.1 per hundred per month over and above it is without any basis and solely based on assumptions and presumption.

19. It was further submitted that no cross inquiry or action has been initiated by the Id. AO against Columbus Overseas LLP. The assessee submits that the Id. AO had on record the details of tax deducted by Columbus Overseas LLP in case of the assessee which clearly mentions the TAN of the party. The Id. AO from the TAN of the party could have initiated proceedings against it in respect of receipt of alleged cash loans and alleged payment of interest in cash. However, where no such action or inquiry has been conducted by the Id. AO, addition in case of the present assessee solely on the basis of assumption cannot be upheld.

20. Regarding Ground No. 3, the Id. AR submitted that in this ground, the assessee has challenged the action of Id. AO in invoking the provisions of section 115BBE. In this regard, it was submitted that since the said amount of Rs. 25.00 lacs was duly recorded in the books of accounts of the assessee and detailed submission on the same is made in Ground No. 1, therefore, it was submitted that the action of Id. AO in invoking the provisions of section 115BBE is totally misplaced and deserves to be held as bad in law.

21. Per contra, the Id DR submitted that the assessee has made two different type of transaction with M/s Columbus Overseas LLP. The first transaction of Rs. 25,00,000/- was made through banking channel on 14.08.2015 and second transaction was made in cash which was not recorded in books of accounts. Hence, the loan of Rs. 25,00,000/- mentioned in aforesaid paper is different from the loan of Rs. 25,00,000/- which was advance to M/s Columbus Overseas LLP on 14.08.2015. This fact also verified from the perusal of ledger account of the Columbus Overseas LLP wherein the loan of Rs. 25,00,000/- is still outstanding as on 01-12-2017 which is again contrary to the claim of the assessee that date mentioned on impounded paper i.e. 27-07-2016 is tentative date of repayment. It was submitted that the claim of the assessee that the transaction of Rs. 25,00,000/- dated 27-07-2016 is pertains to the tentative date of repayment of loan by M/s Columbus Overseas LLP is contrary to the finding in case of Smt. Pooja Agarwal whose name also mentioned in the aforesaid paper. In the case of Smt. Pooja Agarwal/Garg the date on the aforesaid paper has been mentioned as 25-07-2016 and in the regular books of accounts it is found that the loan was given on 25-07-2016 itself. Further in another case of Shri Chandra Prakash Agarwal the date of loan of Rs. 5,00,000/- and 30,00,000/- advance to Kanha Devi and Prateek Kothari respectively has been mentioned 03-11-2015 and 29-06-2016 respectively and

in the regular books of accounts it is found that the loan was given on these dates itself. Hence the date mentioned on the paper are not the dates of repayment of loan but it represent the date on which the loan was advanced. Since, in case of Smt. Pooja Agarwal and Shri Chandra Prakash Agarwal it has been established that the date mentioned against the loan amount in the impounded paper is the date of loan advanced to the person whose name has been mentioned in the paper itself with loan amount. Hence the date in other case including assessee itself, it cannot be presumed to be date of repayment of loan. It was accordingly submitted that from the above modus operandi by the assessee, it is revealed that the assessee advances the loan in cheque as well as in cash in same amount to a same person so that the cash amount advanced can be hide by similar loan made through cheque to dupe the department. It was accordingly submitted that amount of Rs 25 lacs was brought to tax as undisclosed income of the assessee as the same is different from the loan recorded in the books of accounts. Further, on such cash loan advanced by the assessee, the AO has determined interest for 8 month from 27-07-2016 to 31-03-2017 computed @ 12 % per annum at Rs. 2,00,000/-. He accordingly supported the findings of the AO and that of the Id CIT(A) who has confirmed the same.

22. We have heard the rival submissions and purused the material available on record. The case of the Revenue is that the assessee has made two different type of transactions with M/s Columbus Overseas LLP. The first transaction of Rs. 25,00,000/- was made through banking channel on 14.08.2015 and second transaction was made in cash which was not recorded in books of accounts. Hence, the cash loan of Rs. 25,00,000/- mentioned in the paper seized during the course of search is different from the loan of Rs. 25,00,000/- which was advance to M/s Columbus Overseas LLP through banking channel on 14.08.2015 and recorded in its books of account. The case

of the assessee however is that it is the same loan transaction duly reflected in its books of accounts on 14.08.2015 and the date of 27.07.2016 is mentioned as the tentative date of repayment of the said loan and the same has subsequently been rolled over for further period on receipt of interest which has been duly accounted for and TDS reflected thereon. The Revenue has based its conclusion on analyzing two other entries in the same seized paper relating to Pooja Agarwal and Chandra Prakash Agarwal and found that the dates mentioned in the seized paper reflects the date of advancement of loan and which also matches with the respective assessee's books of accounts and thus, other entries in the said seized paper also relates to advancement of loan and not the date of repayment or tentative date of repayment of loan. The assessee has however submitted that the seized papers contains in total 18 entries and where other entries are also analyzed, it would be clear that a general analogy cannot be drawn that all such entries relates to date of advancement of loan rather each entries need to be look into given its peculiarity and specifics of the transaction. Our reference was drawn to entry dated 13.08.2016 relating to Rajendra Kumar Bardiya, entry dated 25.08.2016 relating to Shri Ram Enterprises and entry dated 10.08.2016 relating to Leading Infrastructure and it was submitted that search was conducted on 28.07.2016 and therefore, date of these entries cannot by any stretch of imagination be taken as date of advancement of loan. Similarly, our reference was drawn to eight other entries relating to various persons all dated 27.07.2016 and it was submitted that given the amount so stated in these entries, all these transactions cannot be stated to be undertaken on a single day. We find force in the contentions so advanced by the Id AR that each of the entries reflect individual transactions with either date of advancement or repayment or tentative date of repayment and therefore, a generalized conclusion cannot be drawn basis review of just two entries where other entries applying same hypothesis will give a very incomprehensible conclusion. Given that there is no

other corroborative evidence on record that the assessee has advanced such amount during the year under consideration, merely basis the reading and analysis of the seized document as a whole, it cannot be held that the assessee has entered into a fresh and different transaction with M/s Columbus Overseas LLP, other than the one which is duly recorded in its books of accounts. Thus, the addition of Rs 25 lacs and consequent addition of interest of Rs 2 lacs is hereby directed to be deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 27/01/2021.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/01/2021

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Chandra Prakash Agarwal HUF, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-02, 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 No. 924/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

