

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. 91/JP/2020
निर्धारण वर्ष/Assessment Years : 2008-09

Shri Rajesh Chunara 183-C, Yash Apartment, Mahadev Nagar, Sirsi Road, Jaipur.	बनाम Vs.	The ITO, Ward-2(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACZPC 4565 D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shafi Mohammand (Adv.)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 08/09/2021
उदघोषणा की तारीख/Date of Pronouncement :06/10/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-I, Jaipur dated 29.3.11.2019 for the assessment year 2008-09 wherein the assessee has taken the following grounds of appeal:-

- "1. That proceeding initiated u/s 147/148 is illegal and against the law and the Id. CIT (Appeals) grossly erred in sustaining the proceedings u/s 147/148.*
- 2. That the Id. CIT (Appeals) erred in sustaining the proceedings u/s 147/148 as the proceedings are ab-initio void because the*

assessing officer not provided the reasons as well as the other evidences used against the assessee.

3. That the Id. CIT (Appeals) is erred in sustaining the additions made by the Assessing Officer for Rs. 3,82,079/-.

4. That the Id. CIT (Appeals) is erred in sustaining the addition of Rs. 4,74,040/-.

5. That the levy of interest u/s 234A, 234B and 234C is unjustified and hence liable to be deleted.”

2. Briefly the facts of the case are that the assessment in this case was completed U/s 148 r.w.s. 143(3) of the Act dated 31.10.2015 wherein the addition of Rs. 3,82,079/- was made on account of unexplained source of cash transactions on account of credit card usage and another addition of Rs. 4,74,040/- was made on account of unexplained source of share transactions and assessment was completed at total assessed income of Rs. 9,64,820/- as against the returned income of Rs. 1,08,700/-. On appeal the Id. CIT(A) has confirmed the said additions and against the said findings, the assessee is in appeal before us.

3. In respect of ground Nos. 1 and 2, the Id. AR submitted that these grounds of appeal are related to the proceedings under section 147/148. It was submitted that the assessment was illegal and against the law because the Assessing Officer has not supplied the copy of reasons recorded for issue of notice u/s 148. The Assessing Officer is under legal obligation to supply the reasons for filing of suitable reply and/ or objections to the notice U/s 148 but the Assessing Officer did not provide the reasons. The notice without copy of reasons recorded for issue of notice U/s 148 is an incomplete notice and resultantly, the

assessment completed on the basis of incomplete notice does not have any force in the eye of law.

4. It was submitted that as per the judicial pronouncements, the Assessing Officer was under legal obligation to supply the copies of the reasons for issue of notice u/s 148 hand in hand. Apart from this, the Hon'ble Supreme Court has also held that the copies of the reasons have to be supplied to the assessee within reasonable time. What is reasonable time has been discussed by the Hon'ble Delhi High Court in the judgment of Haryana acrylic manufacturing company v/s CIT reported in 308 ITR 38 by considering the Judgment of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Further, reference was drawn to the order of the Delhi Benches of Tribunal in case of Shri Balwant Rai Wadhwa V/s ITO (*ITA No. 4806/Del/10 dated 14.01.2011*). It was submitted that the reasons have to be supplied along with the notice or within the time period allowed under section 149 of the Income Tax Act i.e. 4 or 6 years, as the case may be.

5. It was submitted that the Assessing Officer issued the notice under section 148 within the time frame allowed by the statute u/s 149 but without copies of reasons recorded for issue of notice. The copies of reasons were not provided even after completion of assessment on his own. There is a settled law, as mentioned above, that the copies of reasons have to be provided to the assessee within reasonable time or within the time frame allowed under section 149 i.e. 4 years or 6 year, as the case may be, from the end of assessment year for which it was issued. Here in this case, the assessee requested for provide the copies

of reasons recorded for issue of notice under section 148 on 05.08.2019. The certified copy of the same was provided to the assessee after few days i.e. in on about 17 August 2019, which is too late against the time provided under the statute. According to the judgment of the Hon'ble Delhi High Court and Delhi Tribunal, the reasons should be supplied to the assessee along with the notice or the same should be provided to the assessee within the time frame, i.e. of 6 years from the end of the assessment year for which the notice is issued, otherwise the entire assessment proceeding shall be treated as invalid and without issue of any notice.

6. It was submitted that the Assessing Officer in his remand report submitted on the objection to the assessee about supply of the reasons recorded for issue of notice u/s 148. He submitted that the reasons were appraised to A.R. as per order sheet entry dated 12.10.2015 and 15.10.2015 but he didn't utter a single word about supply of reasons. The law requires supply of reasons not about the appraisal of reasons.

7. Per contra, the Id. D/R submitted that similar contentions were raised by the assessee before the Id. CIT(A) and the Id. CIT(A), after calling for the remand report from the Assessing Officer, has held that the said contention is not factually correct as the reasons for reopening the case of the assessee was duly brought to the notice of the assessee through the order sheet entry. In this regard, our reference was drawn to the findings of the Id CIT(A) which read as under:

"3.1.2(ii) During the appellate proceedings, the appellant challenged the reopening u/s 147 of the Act. The

submission of the appellant was forwarded to the AO to offer its comments. The AO submitted the remand report vide letter No. 1172 dated 03.10.2019. Regarding the objections on account of reopening of the case, the AO submitted as under:-

"3. Validity of assessment order challenged on the reasons of non supply of reasons recorded for initiating proceedings u/s 147 of IT Act:

3.1 The submission of the assessee that the assessment order is illegal and against the law because the Assessing Officer had not supplied the copy of reasons recorded for issue of notice u/s 148 of the Income-tax Act, 1961 (Hereinafter referred as "the IT Act" is totally incorrect and the same is deserve to be rejected. Reasons were apprised to the AR of the assessee within the reasonable time vide note sheet entry dated 12.10.2015 and 15.10.2015. This fact has been duly incorporated by the AO in assessment order. The A/R of the assessee duly acknowledged the same on the note sheet. As the reason were provided to the assessee therefore, the case laws relied upon by him are not applicable in this case.

3.2 Further, the claim of the assessee that the reasons must be supplied with the time frame allowed under section 149 i.e. 4 years or 6 years, as the case may be, from the end of the assessment year for which notice u/s 148 was issued is not acceptable. There are no such provisions which make it mandatory to provide the reasons recorded for issuance of notice u/s 148 of the IT Act within the time limit specified u/s 149 of the IT Act. Section 149 of the IT Act speaks about issue of notice u/s 148 within the time limit. It does not speak about service of reasons recorded for issuance of proceedings u/s 147 of the IT Act.

3.3. As discussed above, reasons were supplied to the AR of the assessee during re-assessment proceedings itself thus, the claim of the assessee that the reasons were supplied to him after passing the assessment order is totally baseless. It is also true that the certified copy of the reasons recorded for initiating proceedings U/s 147 of the IT Act were again provided to the assessee on 05.08.2019 on the request of the assessee.

3.4 The claim of the assessee that the information available on AIR cannot be basis for issue of notice u/s 148 of the IT Act has been examined and on perusal of material available on records, it has been gathered that before recording reasons that income has escaped assessment, the AO has issued notice u/s 133(6) of the IT Act but the assessee did not comply with the same. It is evident that the information was available on ITD database regarding financial transactions made by the assessee during the year under reference. The assessee did not file his return of income for the year under reference. The assessee was specifically asked to explain the transactions reflected in ITS data and a specific query was raised by the AO but the same was remained unanswered by the assessee. Therefore, the contention of the assessee that the notice u/s 148 of the IT Act was issued only on the basis of AIR information without any concrete evidences is totally incorrect.

3.5 Approval for issuing notice u/s 148 of the IT Act was accorded by the Additional Commissioner of Income-tax, Range-2, Jaipur after considering the material available on records and duly satisfying with the reasons recorded by the AO. Thus, this claim of the assessee that the approval was granted by the Additional Commissioner of Income-tax without application of mind in mechanical manner is totally baseless and the same is deserves to be rejected at the outset."

(iii) Thus, the AO submitted that reasons regarding reopening the case were brought to the notice of the appellant and same has also been noted vide order sheet entry dated 12.10.2015 and 15.10.2015. In the rejoinder, the appellant has again reiterated that reasons were not supplied, however, the facts of communication of the reasons through an order sheet entry was not denied. Thus, the contention of the appellant regarding non communication of the reasons does not appear to be correct"

8. We have heard the rival contentions and perused the material available on record. In the instant case, it is noted that notice u/s 148 was issued to the assessee on 25.03.2015 and in response, the return of income was filed by the assessee on 12.10.2015. Thereafter, notice u/s 143(2) and 142(1) were issued and queries were raised vide order sheet entry dated 12.10.2015, 15.10.2015 and 30.10.2015. In response, the assessee has filed his replies on 12.10.2015, 15.10.2015, 26.10.2015 and 30.10.2015 and finally, the assessment was completed u/s 143(3) r/w 147 vide order dated 31.10.2015.

9. In terms of requirement of supplying reasons for initiating the proceedings under section 147 as directed by the Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd vs ITO reported in 259 ITR 19, as also noted by the Hon'ble Delhi High Court in case of Haryana Acrylic Manufacturing Co. vs CIT(supra), the proper course of action is that the assessee is to file return of income and secondly, where the assessee seeks reasons for the issuance of notice, the Assessing officer is bound to supply the reasons within a reasonable time and in that context, we have to appreciate the findings of the Hon'ble Delhi High

Court where it says that "the expression 'within a reasonable period of time' as used by the Supreme Court in GKN Driveshaft (India) Ltd 's case (supra) cannot be stretched to such an extent that it extends even beyond the six years as stipulated in section 149." In the instant case, notice u/s 148 has been issued on 25.03.2015, thereafter, the return of income has been filed on 12.10.2015 and after filing the return of income, the assessee never sought reasons for initiating the proceedings u/s 147 during the course of assessment proceedings and participated in such proceedings and as such, no objections have been filed against such an action on part of the Assessing officer during the course of assessment proceedings. Therefore, where the reasons were never sought by the assessee at first place, the assessee cannot be allowed to take the plea that reasons were not supplied to him or the reasons have not been supplied within a reasonable period of time taking support from the directions of the Hon'ble Supreme Court in case of GKN Driveshafts (supra). The mandate of the directions and the course of action to be followed is that when the notice is issued u/s 148, the assessee on receipt of such notice is required to file the return of income, where he so desires, he can seek reasons for issue the notice u/s 148 and on such request of the assessee, the AO has to supply or communicate the reasons to the assessee and the assessee is at liberty to file objections and where such objections are filed, the AO is required to dispose off such objections by way of a speaking order. In the instant case, as we have held above, there is no requisition on part of the assessee seeking the reasons for issuance of notice u/s 148 and therefore, the mandate of the directions and course of action so

laid down by the Hon'ble Supreme Court cannot be said to be violated by the AO.

10. We further note that the Id CIT(A) has recorded a finding that "the AO submitted that reasons regarding reopening the case were brought to the notice of the appellant and same has also been noted vide order sheet entry dated 12.10.2015 and 15.10.2015. In the rejoinder, the appellant has again reiterated that reasons were not supplied, however, the facts of communication of the reasons through an order sheet entry was not denied. Thus, the contention of the appellant regarding non communication of the reasons does not appear to be correct." We therefore find that the reasons were duly communicated to the assessee during the course of assessment proceedings and the Id CIT(A) has recorded a specific finding to this effect after calling for the remand report from the AO where the AO has brought the fact of communication of reasons to the assessee which is duly acknowledged by the assessee on the note sheet. Therefore, even in terms of principal of natural justice where an adverse action is initiated by the AO, the AO has communicated the reasons to the assessee during the course of assessment proceedings and there is thus complete adherence on part of the AO in terms of principal of natural justice even when the assessee has not sought the reasons at first place. We are therefore of the considered view that there is no violation on part of the Assessing officer in terms of directions so laid down by the Hon'ble Supreme Court as well as in terms of principal of natural justice and the contentions so raised by the Id A/R cannot be accepted and the grounds of appeal are dismissed.

11. Regarding ground No. 3, the Id. AR submitted that the Ld. Assessing officer made addition of Rs. 382,079/- on account of unexplained source of cash transaction on account of credit card. In this connection, it was submitted that during the course of assessment proceedings, the assessee has submitted that being an old matter, he didn't remember making any cash payment and further, he was not having the requisite bank and credit card statements and the AO was requested time and again to provide such details in his possession which he has failed to provide. The assessee is entitled to get all the evidences and copies of the documents which are going to be used against the assessee behind his back. Here in this case, during the course of assessment proceedings, the assessee again and again requested to provide the copies of the documents because the matter is quite old one and he is not having any proper details as required by the Assessing Officer. In support of this, we are enclosing herewith some letters by which the assessee has continuously requested to provide the copies of the documents and information so that the proper submission can be made to the satisfaction of Assessing Officer but he didn't provide the same and completed the assessment.

12. It was further submitted that during the course of assessment proceedings, the assessee has tried to explain the source of this amount by way of an affidavit of acknowledgment of gift by the mother of the assessee who has gifted Rs. 5,00,000/- (Five Lacs) to him but the Ld. Assessing officer has not accepted the same without mentioning any cogent reasons and made the addition. It was submitted that during the

course of assessment proceedings, the Assessing Officer never cross examined the deponent. He simply refused to accept the contentions made in the affidavit. In absence of cross examination of the deponent, the contents made in the affidavit should be treated as correct as held in various decisions by the Tribunal.

13. It was further submitted that from the perusal of the assessment order, it may be noted that the credit card transactions are in two names i.e. Rajesh Chunara/Ashok K Chunara. This shows that the entire transactions are not of the assessee alone. The same are in two names and in case the Assessing Officer wants to make addition on this account, the same must be in two names on equal basis. The assessee came to know this fact on receipt of assessment order because the Assessing Officer didn't provide the copies of the reasons before completion of assessment. Therefore, the addition so made of Rs. 382,079/- is not correct in the hands of the assessee and the same may be directed to be deleted.

14. Regarding Assessing Officer's contention in the remand report submitted before the Id CIT(A), it was submitted that the assessee has submitted an affidavit of his mother from whom the amount of Rs. 5 lac was received. The affidavit is itself evidence in the eye of law. As far as the creditworthiness and genuineness of the gift is concerned, it is submitted that there is son and mother relationship and the son is in need of funds to settle his own liabilities, therefore the occasion is genuine. The assessee proved the source of amount received by submission of an affidavit of the mother. He is not supposed to prove

the source of source as such he is not liable to prove the source of source. By submission of an affidavit, the assessee has discharged his initial burden of proof.

15. Per contra, the Id. DR has relied on the findings of the lower authorities and our reference was drawn to the findings of the Id CIT(A) which read as under:-

"3.2.2 (i) It is seen that the AO made the addition of Rs. 3,82,079/- on account of cash payment against credit card bills. The relevant portion of the assessment order is reproduced as under:

"Addition on account of unexplained source of cash deposit/credit card transactions — Rs.3,82,079/-

5. On perusal & examination of the details/evidence and replies filed by the assessee, as discussed herein above, it is revealed that the assessee has made cash deposit/payment of Rs.3,82,079/- against credit card bills, It is also further revealed from the Income & Expenditure ending on 31/3/2008 that the assessee has shown net profit of Rs. 1,08,700/- on total gross total receipts of Rs.2,64,900/-from job work charges & brokerage on account of manufacturing of jewellery and the same income has been shown in the eITR filed in response to the notice u/s 148. The assessee has failed to furnish complete details of job work charges & brokerage and claims of different expenses debited to the I&E Account. The AR has admittedly submitted that the assessee has no record in possession to explain the source of cash payment made towards credit card bills although he has time and again taken repeatedly a plea to provide certified copy of AIR/CIB data instead of explaining the source of the cash credit even after the data were shown to him vide order sheet entry dated

12/10/2015 during the course of assessment proceedings. The A/R has admittedly further submitted that the assessee did not remind to make cash payment towards credit, card bills. Moreover, the A/R has failed to explain the genuineness, identity and creditworthiness of the cash gift in form of an affidavit of mother of the assessee, who is a house lady having no substantial source of income. The AYR has not furnish any evidence of giving cash or cheque gift to any of her other family members towards natural love & affection in the past. Moreover, an affidavit cannot become a Gift Deed on face value of Rs.10/- only whereas the alleged gift value exceeds Rs.100/- i.e. shown the value of Rs.5 lac which is not considered a proper gift deed as per the law. The A/R Has also failed to substantiate the usage of cash gift in any of the transactions held by the assessee during the year under consideration. The assessee has not furnished any copy of gift deed, if any, received by him and also the usage of the gift. The A/R of the assessee has submitted that the assessee has been filing of his ITR since long time but he has not furnished any evidence about the source of income, ITR and copy of bank account to support of his claim. The assessee has not disclosed the transactions in his eITR and the statement of accounts. The assessee has also not denied to the transactions held during the year under consideration. In view of the above, the reply of the assessee is not found satisfactory in justification of the source of transactions."

(ii) During the appellate proceedings, the appellant again reiterated the fact that he received gift in cash from his mother amounting to Rs. 5,00,000/-. However, no evidences regarding creditworthiness of the mother was submitted. She is not assessed to tax and no source of income was disclosed towards making such gift. Thus, there is no explained source for cash payment towards credit card bills. In view of the above facts, the AO was

justified in making such addition. These grounds of appeal are dismissed.”

16. Regarding ground No. 4, the Id. AR submitted that the Ld. Assessing officer made the addition of Rs. 474040/- on account of investment in shares. The assessee got the details of these transactions in the assessment order only. The Assessing Officer didn't provide the copies of the same during the course of assessment, despite of repetitive requests. It reveals from these transaction as shown in the assessment order that the Assessing Officer took only amount of investment or the amount paid to the share broker but he has not considered the entire statement of account of shares transaction. For making any addition all the debit and credit entries shall be considered.

17. It was further submitted that despite of several requests, the Assessing Officer not provided the copies of document or evidences he is having in his possession which was used against the assessee. This also shows the intention of the Assessing Officer against the assessee. The assessee is entitled to get all the evidences and copies of the documents which are going to be used against the assessee behind his back. Here in this case, during the course of assessment proceedings, the assessee again and again requested to provide the copies of the documents because the matter is quite old one and he is not having any proper details as required by the Assessing Officer. In support of this, we are enclosing herewith some letters by which the assessee has continuously requested to provide the copies of the documents and information so that the proper submission can be made to the

satisfaction of Assessing Officer but he didn't provide the same and completed the assessment.

18. It was submitted that the Assessing Officer is under legal obligation to supply the evidences which he wants to be used against the assessee but despite of request of the assessee the same were not provided till now. It was accordingly requested to delete the addition so made on this account in absence of supply of copies of the same to the assessee. In absence of supply of documents and evidences on which the Assessing Officer relied on for making additions even on the specific demand of the assessee, additions so made by using the evidence behind the back therefore same is not only unjustified and illegal, hence liable to be deleted. In this regard, it was submitted that as per the provisions of section 114 illustration (g) of Indian Evidence Act, the evidence withhold by the person who is having possession of that and relying on the same without supplying to the person affected with evidence then inference is drawn against the person who hold the evidence and not supplied to the affected party. For convenience, the relevant portion of section 114 of Indian Evidence Act is referred as under:-

"114- Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations - The Court may presume—

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

19. It was submitted that according to these provisions of the Indian Evidence Act, the addition made by the Assessing Officer is not to be sustained and liable to be deleted.

20. It was submitted that in the assessment order at page 4 para 3.1, it is mentioned that the copies of reasons recorded under section 147 provided to the assessee and information for data for transaction in shares of Rs. 474040/- and cash deposit of Rs. 382079/- shown to the A.R. of the assessee on 12th October 2015 but in fact the copies of the reasons were not provided and despite of repeated request the copies of the other documents on which he is relying for making addition were also not provided to the assessee before completion of assessment. It was submitted that despite of several requests, the Assessing Officer not provided the copies of document or evidences he is having in his possession which was used against the assessee for making addition of Rs. 382,079/- and 474,040/-.

21. Per contra, the Id. DR has drawn our reference to the findings of the Id CIT(A) which read as under:-

"3.3.2 (i) It is seen that the AO made the addition on account of undisclosed investment in share transaction. It was noted by the AO that the appellant has shown income from job work charges and brokerage on account of manufacturing of jewellery in its return of income. However, no investment/income was shown in the return of income. It was submitted by the appellant before the AO that he has no record in his

possession to explain the source in share transaction. In absence of any explanation/documentary evidences filed, the AO treated Rs. 4,74,040/- as income of the appellant from undisclosed sources.

(ii) During the appellate proceedings, the appellant again failed to bring any evidence on record to explain the source of investment in share transactions. Considering this, it is held that the AO was justified in treating Rs. 4,74,040/- as income from undisclosed sources. Hence, this ground of appeal is dismissed."

22. We have heard the rival contentions and perused the material available on record. Admittedly, the addition of Rs 382,079/- has been made basis reasons recorded before issuance of notice u/s 148. As per the reasons so recorded, the assessee has made payment against credit card bill amounting to Rs 3,82,079/- from his bank account with ICICI Bank during the financial year 2007-08 relevant to assessment year 2008-09. As per the reasons so recorded, the information which is in possession of the AO is in respect of payment towards the credit card bill made from the assessee's bank account. As against that, if we look at the assessment order passed by the Assessing officer, the addition has been made on account of the reason that the assessee has failed to explain the source of cash deposits/payments towards credit card bills. There is however nothing on record in terms of assessee's bank statement and credit card statement which shows that cash has been withdrawn from the assessee's bank account and thereafter, the payment has been made towards discharge of credit card liability. In absence of the same, it can be reasonably concluded that the payment has been made through banking channels towards discharge of credit

card liability and there is thus clearly a mismatch between the reasons so recorded and basis of the addition so made by the Assessing officer.

23. Having said that, it is noted that during the course of assessment proceedings, the assessee has submitted that the matter being very old, he didn't remember making cash payment towards credit card bills and he didn't even have any records in his possession to determine and explain whether any such cash payment was made and has requested the AO time and time to provide the details and evidence in his possession in order to examine and provide necessary explanation. In response, it is noted that the AO has shown him the AIR/CIB information vide order sheet entry dated 12/10/2015 and the particulars thereof are as under:-

"(a) Cash transactions/deposits against credit card bills (ICICI Bank Ltd.)

<i>Name & address with PAN</i>	<i>Credit card bank & AIR filer</i>	<i>Transaction amount</i>	<i>Transaction date</i>	<i>RRR date</i>
<i>PAN: ACZPC4565D Rajesh Chunara/ Ashok K. Chunara, Yesh Apartment, Plat -1, Plot No. 183, Panchawala, Jaipur.</i>	<i>ICICI Bank Ltd., TI Bandra (E), Mumbai-400051.</i>	<i>Rs. 3,82,079/-</i>	<i>31/3/2008</i>	<i>30/9/2008</i>

24. On perusal of the AIR information, it is noted that the information talks about the assessee and another person by name of Ashok K Chanara, name of the bank which has issued the credit card, the

transaction amount of Rs 3,82,079/- and date of transaction i.e, 31.03.2008. The question for consideration is whether this piece of information is sufficient enough to fasten the tax liability on the assessee. To our mind, the AIR information so received by the AO could be a starting point for further examination and verification and cannot by itself be held as conclusive and definite. Once the assessee has expressed his inability to provide the necessary explanation in view of the fact that the matter is pretty old and he doesn't remember making any cash payment and doesn't even have in his possession the necessary records in terms of bank and credit card statements and has requested the AO to share the relevant information in order to examine and submit necessary explanation, it was incumbent on part of the AO to carry out further enquiries directly with the bank and credit card company and sought details of the credit card number, in whose name the credit card has been issued, as to how two names are appearing in the AIR statement and also sought copies of detail of the transactions in form of transaction statement for the relevant period and the same would then have been shared with the assessee in order to enable the latter to provide necessary explanation. However, there is nothing on record that besides the AIR information, the AO has either these details in his possession or have sought these details by conducting further independent and direct enquiry during the course of assessment proceedings and which explains as to why the same were never shared with the assessee. Therefore, in such peculiar circumstances, where the assessee is disputing making any cash payments and in absence of any tangible material brought on record by the Revenue and shared with the assessee in order to enable the latter to put forward his

explanation, we donot see any justifiable basis to make the addition in the hands of the assessee and the addition so made is hereby directed to be deleted.

25. We find that similar situation persist in respect of other addition of Rs 474,040 made by the AO wherein the assessee has again requested to provide the requisite information/material in possession of the AO and we find that besides the AIR information, the AO has neither these details in his possession nor have sought these details by conducting further enquiry during the course of assessment proceedings and hence, the same were never shared with the assessee. Therefore, in such peculiar circumstances, in absence of any tangible material brought on record by the Revenue and shared with the assessee in order to enable the latter to put forward his explanation, we donot see any justifiable basis to make the addition in the hands of the assessee and the addition so made is hereby directed to be deleted.

In the result, the appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 06/10/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/10/2021.

*Santosh

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

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

1. अपीलार्थी / The Appellant- Shri Rajesh Chunara, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 2(1), 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. 91/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar