

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

ITA No. 8/Jodh/2020
(ASSESSMENT YEAR- 2014-15)

Shri Dhanpat Raj Khatri Khatri Pada, Jaisalmer	Vs	The ITO Jaisalmer
(Appellant)		(Respondent)
PAN NO. AAGHD 6757 F		

Assessee By	Shri B.L. Khatri, Advocate
Revenue By	Shri Venkatesh V, JCIT
Date of hearing	01/11/2022
Date of Pronouncement	24 /01/2023

ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A)-2, Jodhpur dated 13-11-2019 for the assessment year 2014-15 wherein the assessee has raised the following grounds of appeal.

“1. The ITO, Jaisalmer has grossly erred in passing assessment order dated 13-12-2018 is bad in law and ld. CIT(A) has also partly confirmed the assessment order is not according to law.

2. The AO has charged tax u/s 68 on Rs.3,39,631/- (which is shown in revised return) without considering the facts of case and without any specific notice is income from undisclosed sources is not according to provisions of law and ld. CIT(A) has confirmed this addition in not according to provision of law.

3. The AO has charged tax u/s 68 on Rs.7,63,000/- as undisclosed source without any specific notice out of which assessee filed affidavit relating deposit of Khem Chand Khatri HUF Rs.5,60,000/- but considered Rs.1,00,000/- in name of Khem Chand Khatri (Ind.) and remaining not considered and ld. CIT(A) sustained addition Rs.6,63,000/- is against the cannon of justice.”

2.1 The Ground No. 1 of the assessee is general in nature which does not require any adjudication.

3.1 Apropos Ground No.2, the facts as emerges from the order of the ld. CIT(A) are as under:-

“4.2. I have considered the assessment order, facts of the case and submissions of the appellant the AO noted that the assessee was engaged in transaction in MCX & NCDEX and BSC and declared speculation loss in of Rs. (-)51,77,385/- and assessee HUF declared his income in his ITR from business and profession of Rs. 1,52,160/- during the year under consideration. The Assessing Officer received information from ITS during the financial years regarding share transactions through BSC & MCX. The Assessing Officer had reasons to believe that tax arising on speculative business and notice u/s 148 was issued on 26.03.2018 after recording reasons. In response to notice u/s 148 the assessee had declared revised return of income of Rs. 4,91,791/- During the course of assessment proceedings the assessee was asked to explaining source of such difference income shown in his revised ITR with documentary evidences. In this regard the assessee had produced relevant documents and details of Income

from services a/c, e-banking to direct tax, NSDL PAN, Commercial Tax A/c, House rent receipts A/c, Agricultural Income (rent) A/c, Share and Commodities A/c, P&L, Capital A/c & Balance Sheet etc The submission of the assessee along with details and documents has been duly considered and Assessing Officer find that the **assessee HUF suffered heavy loss from speculation business**, for which payment of the heavy losses the assessee has shown excess income in his ITR from undisclosed sources. Therefore, the Assessing Officer accepted only original return of income and difference of Rs. 3,39,631/- (4,91,791-1,52,160) is added to the total income of the assessee from undisclosed source u/s 68 of the Act. Considering these facts of the case, I find that the appellant could not produce the documentary evidence with regard to the difference amount of Rs. 3,39,631/- during the course of appellate proceedings and appellant failed to discharge onus of proving supporting evidence towards these difference amount in his revised return of income. It is an admitted fact that the appellant has not filed any specific written submissions in support of his contention by the appellant either before the Assessing Officer or before the undersigned, in this regard. Keeping in view the facts and circumstances of the case I find that the AO is correctly added the sum of Rs. 3,39,631/- on account of difference in original and revised return of income. The appellant fails on this issue. The ground No. 2nd raised regarding this issue is dismissed.”

3.2 During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) has erred in sustaining the addition. The ld.AR further submitted that as per return in response to notice u/s 148 of the Act, the assessee had shown excess income of Rs.3,39,631/- business/ professional income. This income has been credited in the books of accounts and books accounts were produced before the assessing authority at the time of assessment and assessing authority accepted the amount shown in the books. The assessing authority without any specific noticed taxed Rs.3,39,631/- u/s 68 of the Act which is against the principles of natural justice. The assessee had filed complete details and discharged his primary burden and the assessing officer has not made further enquiry and contention of the

assessee cannot be ignored on the opinion of assessing officer. The ld. AR relied upon the decision of Hon'ble Supreme Court in the case of CIT vs P.K. Noorjahan 237 ITR 570. Further the ld. AR relied upon the decision of Hon'ble Madras High Court in the case of Salem Sree Ramavilas Chit Company Pvt. Ltd. Vs DCIT (W.P. No. 1732 dated 4-02-2020). He further submitted that the tax payer has declared higher income in return filed in response to notice u/s 148 of the Act voluntarily and there is nothing to prove that the tax payer has concealed income malafidely and the AO has assessed the tax u/s 68 of the Act without considering the assessee's reply and contravening the facts. Thus the addition so sustained by the ld. CIT(A) is required to be deleted.

3.3 On the other hand, the ld. DR supported the orders of the ld. CIT(A)

3.4 We have heard both the parties and perused the materials available on record. In this case, the AO during the course of assessment proceedings noticed that the assessee HUF suffered heavy loss from speculation business for which payment of the heavy losses the assessee had shown excess income in his ITR from undisclosed sources. Therefore, the Assessing Officer accepted only original return of income and difference of Rs.3,39,631/- (4,91,791 – 1,52,160) was added to the total income of the assessee from undisclosed sources u/s 68 of the Act which has been confirmed by the ld.CIT(A). In this case, it is noticed that the assessee had

produced relevant documents and details of income from service a/c, e-banking to direct tax, NSDL PAN, Commercial Tax, House Rent Receipts A/c, Agricultural Income (Rent) A/c, Share and Commodities A/C, P&L, Capital A/c & Balance Sheet etc. The AO has considered the submissions of the assessee as well as documents filed by the assessee but the AO did not controvert the submissions as to the addition made in the assessment order. The AO did not reject the books of account of the assessee. The assessee had filed complete details and discharged his primary burden and the AO had not made further enquiry. It is also noteworthy to mention that Hon'ble Supreme Court in the case of CIT vs P.K. Noorjahan 237 ITR 570 held that if explanation is dissatisfactory even though the addition is not sustainable and that provision of Section 68 is discretionary and discretion must be used as per law and decided judgements and not according to the presumption. Since the assessee has submitted the entire details, books of accounts etc. and the AO did not reject the books of account of the assessee, hence the addition so made on presumption basis does not support in view of the decision of Hon'ble Supreme Court in the case of CIT vs P.K. Noorjahan (supra). Therefore, we do not concur with the findings of the ld. CIT(A) and this Ground No. 2 of the assessee is allowed.

4.1 Apropos Ground No.3, the facts as emerges from the order of the ld. CIT(A) are as under:-

5.2. I have considered the facts of the case, assessment order and the appellant's submissions and find that the AO had information on record (ITS details), for the year under reference, the appellant had made cash deposits in his ICICI Bank a/c of Rs. 13,70,000/- and Union Bank of India to Rs. 26,85,300/- totaling to Rs. 40,55,300/- in his two saving banks account. During the course of assessment proceedings, the appellant was asked to explain the source of the cash deposited in his saving bank accounts during the year under consideration. In support, assessee submitted that cash received from the receipts of e-Banking services, House rent income, Agriculture Income (Rent) and receipts of unsecured loans from various parties, because the assessee suffered heavy loss from speculation, hence to pay the loss amount to broker the assessee had taken cash loans from different persons and same was deposited into the his savings bank account. In the statement, assessee explained the source of cash deposit of Rs. 32,92,300/- the assessee explained that it was receipts from e-banking direct taxes, e-banking NSDL PAN, e- banking Commercial Tax, House rent receipts, Agriculture income, Income from service account and unsecured loan from various parties, The explanation filed by appellant was found tenable but not fully satisfactory by Assessing Officer. During the course of assessment proceedings, the AO noted that the assessee in his books of account had shown the following entries as unsecured loan:-

S.No.	Name	Amount of Loan
1	Raj Kumar Khatri Member of HUF	53,000/-
2	Nayan Khatri Member of HUF	50,000/-
3	Khem Chand Khatri	1,00,000/-
4	Khem Chand Khatri HUF(Karta Khem Chand Khatri	5,60,000/-
	Total	7,63,000/-

The AO asked the assessee to prove the genuineness of this loan amounting to Rs. 7,63,000/- by furnishing Name of lender, address, PAN, Mode of payment, Affidavit/ confirmation etc. The AO mentioned that the assessee. did not file any affidavit/confirmation to prove the genuineness and creditworthiness of the lenders. The AO further mentioned that the assessee was required to establish genuineness and creditworthiness of the lender as required in the sec. 68 of the Act, which he failed to do so. Out of total Unsecured loans of Rs. 19,64,700/-, part was treated as explained and remaining sum of Rs. 7,63,000/- was treated as undisclosed cash deposited. Accordingly, the AO added the same u/s. 68 of the Act.

5.3 I find that the assessee had shown unsecured loan in names of Snri Raj Kumar Khatri & Shri Nayan Khatri amounting to Rs. 53,000/- & 50,000/- in cash during the year under consideration. The AO asked the assessee to furnish confirmation from the creditors, to establish identity, credit worthiness of the creditor and genuineness of transaction. The Assessing Officer noted that the Sh. Raj Kumar Khatri and Shri Nayan Khatri are member of HUF and age of 14 & 10 years and they are minors at the time of deposit of amount in HUF for the relevant A. Y. They did not file their returns of income. The AO further observed that the assessee was under obligation to prove identity, credit worthiness of the creditor and genuineness of the transaction for any sum found credited in his books of accounts maintained for any previous year. Further the assessee had shown unsecured loan in name of Khem Chand Khatri HUF (Karta Shri Khem Chand Khatri) amounting to Rs. 5,60,000/- in cash during the year under consideration. The AO asked the assessee to furnish confirmation from the creditor, to establish identity, credit worthiness of the creditor and genuineness of transaction. The Assessing Officer noted that Karta of HUF Shri Khem Chand Khatri had unfortunately died on 27.03.2017. Therefore he was not before the Assessing Officer and submitted that Khem Chand Khatri sold ornaments of HUF and given to assessee loan of Rs. 5,63,000/-. In this regard Sh. Dhanpat Raj Khatri placed reliance upon the affidavit of which the capacity of the lender/donor or genuineness of the transaction could not be established. The appellant failed to produce any material or evidence to substantiate his claim. The settled position of law is, if the assessee fails to do so the sum so credited may be charged to income-tax as the income of assessee of that previous year as provided u/s 68 of the Act. The AO mentioned that the assessee failed to do so and the explanation given by the assessee in this regard was not found satisfactory. So the cases relied upon by the appellant do not help the cause of the appellant. The appellant failed to produce any material or evidence to substantiate his claim.

5.4 Similarly, the appellant has objected to the AO's action in disallowing unsecured loan amounting to Rs. 1,00,000/- received in cash from Sh. Khem Chand Khatri (Individual). The Assessing Officer observed that Sh. Khem Chand Khatri died on 27.03.2017. In this regard the assessee had furnished all relevant details and documents. The AO mentioned that the assessee failed to do so and the explanation given by the assessee in this regard was not found satisfactory. The AO observed that the assessee failed to explain the source of cash of deposit of Rs. 1,00,000/- in his saving bank account. Accordingly, the AO treated the same as unexplained income of the assessee and made the addition u/s. 69 of the Act. During the course of appellate proceedings, the appellant made written submissions through the AR. I find that in the instant case, the appellant has duly proves the source of the loan received from Sh. Khem Chand Khatri. He had

retired from Post office around 12 years ago and received pension and had interest income from bank. The AR of the appellant submitted before me copy of ITR and capital a/c and balance sheet. I hold that the appellant has satisfactorily explained the source of cash deposited in saving bank account that the amount of Rs. 1,00,000/-. I therefore, hold that the AO was not justified in making addition of Rs. 1,00,000/- and addition made on this account is directed to be deleted, hereby..

Considering the factual position as discussed above, it is held that the AO was justified in making the addition to the extent of Rs. 6,63,000/- u/s 68 of the Act treating it unexplained cash deposit. Accordingly, addition made by the AO is sustained upto the extent of Rs.6,63,000/-, hereby. The ground raised by the appellant regarding this issue is partly allowed.”

4.2 After hearing both the parties and perusing the materials available on record. It is noted that the ld. CIT(A) confirmed the addition to the extent of Rs.6,63,000/-. In this case, the assessee is a member of Khem Chand Khatri, HUF, filed the detailed affidavit which is placed at Paper Book Page 7 wherein the father of the assessee Shri Khemchand Khatri sold HUF gold ornaments and given to the assessee to pay loan and after that the father of assessee died in 27 March 2017. It is also noteworthy to mention that the assessee has also filed affidavit at page 6 giving therein the reason for urgent need of money. However, the AO has mentioned as to the issue at page 5 of his assessment order but he did not accept the contention of the assessee and the ld. CIT(A) also did not consider the submission of the assessee. It is also noted from the affidavit that his father sold the ancestral gold worth Rs.5,60,000/- in the market and handed over the money to him in order to meet out his urgent requirement of funds but the assessee could

not obtain the information from his father as to where he had sold the gold. This amount of Rs.5,60,000/- was deposited by the assessee in the bank account of Dhanpatraj Khatri, HUF. As regards the other amount of 53,000 (in the name of Raj Kumar Khatri, Member of HUF) and Rs.50,000/-(in the name of Narayan Khatri, Member of HUF) and both these amounts were taken by the assessee from the small savings of both the children who were minor. To this effect, the Id. AR of the assessee relied upon the decision of ITAT, Jaipur Bench in the case of Shweta Goyal vs ITO (ITA No.202/JP/2020, A.Y.2010-11 dated 8th April, 2021 *wherein the Bench has observed once the AO has examined the documents so produced by the assessee and recorded his satisfaction regarding the identity of the donors, the genuineness of the gifts and the source of such gifts, the assessee has discharged the necessary onus cast on her and no addition can be made in her hand- hence, the addition so made is deleted.* The Id. AR of the assessee also relied upon the decision of Hon'ble Supreme Court in the case of M/s. Mehta Parikh & Co. vs CIT (1956 AIR 554, 1956 SCR 626 dated 10-05-1056) wherein the head note is 'Income Tax – Income from undisclosed sources- assessment assessee's explanation based on accounts supported by affidavit, Accounts accepted as genuine and statements in affidavits not controverted- Finding based on no evidence- Inference from proved or admitted facts-If question of law – Principle of interference from Income Tax Act- Indian Income Tax Act (XI of 1922, ss 62(3),

26A. The Bench taking into consideration the submissions of the assessee and the case laws cited above do not concur with the findings of the lower authorities in disallowing the addition so made amounting to Rs.7,63,000/- u/s 68 of the Act. Thus Ground No. 3 of the assessee is allowed.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Dated : 24 /01/2023

**Mishra*

Copy to:

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2. The Respondent
3. The CIT
4. The CIT(A)
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Assistant Registrar
Jodhpur Bench