

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.83/Jodh/2020
(ASSESSMENT YEAR- 2013- 2014)**

Shri Amar Singh Saharan, S/o-Shri Chimna Ram, Dhani-Asha, Tehsil- Taranagar, Churu-331304.	vs	ITO, Ward-2, Churu
(Appellant)		(Respondent)
PAN No. DRBPS4493E		

Assessee By	Shri Suresh Ojha, Advocate
Revenue By	Shri S.M.Joshi, JCIT DR
Date of hearing	23/03/2023
Date of Pronouncement	24/03/2023

ORDER

PER KUL BHARAT, J.M.:

The present appeal filed by the assessee for the assessment year 2013-14 is directed against the order of Ld. CIT(A)-3, Jaipur dated 04.06.2019. The assessee has raised following grounds of appeal:-

- 1. "That the order passed by the Assessing Authority and sustained by the Commissioner of Income Tax (Appeals) is illegal and against the law.*
- 2. That the Order is illegal in view of the fact that the Commissioner of income Tax (Appeals) as well as the*

Assessing Authority fails to cross-examine the deponent of the affidavits submitted before the CIT(A). In view of judgment of Hon'ble Supreme Court delivered in the case of M/s. Mehta Parekh & Co., the contents of the affidavit should have been accepted.

3. That the Commissioner of Income Tax (Appeals) should have accepted the submission and evidence submitted before CIT(A) during the course of hearing.

4. That the Assessing Officer as well as the Commissioner of Income Tax (Appeals) committed the legal mistake in respect of making/ sustain the addition when the proof of payment of consideration was made in the immediately preceding year. Hence, the addition made and sustain during the year is not in accordance with the law.

5. That the entire amount was explained but rejected without assigning any reason.

6. That the reopening of assessment u/s 147/148 of IT Act is illegal and against the law as such the assessment completed is illegal.

7. That the charging of interest is illegal and against the law.”

2. At the outset, Ld. Counsel for the assessee submitted that in this case, this Tribunal was pleased to recall its order dated 07.09.2021 to decide **Ground No.2** raised by the assessee. Ground No.2 of the assessee's appeal is reads as under:-

2. *“That the Order is illegal in view of the fact that the Commissioner of income Tax (Appeals) as well as the Assessing Authority fails to cross-examine the deponent of the affidavits submitted before the CIT(A). In view of judgment of Hon'ble Supreme Court delivered in the case of M/s. Mehta Parekh & Co., the contents of the affidavit should have been accepted.”*

3. Ld. Counsel for the assessee further reiterated the submissions as made in the written submission dated 28.10.2020. For the sake of clarity, the written submission is reproduced as under:-

“Sir,

With reference to above it is submitted that the assessee took 7 grounds in the memo of appeal. I am submitting my submission without prejudice to each other ground wise:

As regards the Ground No.1, it is stated that on account of following reasons the order is illegal:-

As far as the illegality is concerned I want to submit that the assessee is maintaining books of accounts and the copy of balance sheet was submitted. Maintenance of books of accounts was admitted in the statement before the investigation wing as well as also mention in the cash flow chart before the income tax officer. The document is at page 8 and 28 of paper book .The rejection of books of account without assigning any reason is illegal. Furthermore without rejection of books of account no addition can be made. In this

respect your kind attention is invited to ask the order of income tax appellate Tribunal in following case and also reproducing relevant portion thereof.

DEPUTY COMMISSIONER OF INCOME TAX vs. MEWAR TEXTILESMILLS LTD.

ITAT, JAIPUR A.M.ITA Nos. 2018 & 2019/Jp/1991; Asst. yrs. 1984-85 & 1985-86

The AO nowhere has invoked the provisions of s. 145(1) and if provisions are not invoked then the estimate of profit is not possible in the eyes of law. No defect of any kind was pointed out by the AO.

6.1. In case of R. B. Banshilal Abirchand Spinning & Weaving Mills vs. CIT (supra) at 282 the Bombay High Court has observed that :

"The officer's right under the proviso to s. 13 arises only after a finding is recorded as to the unacceptability of the method and irregularity of the accounts kept. In the absence of such a finding recorded by the authorities, the book results cannot be ignored or brushed aside. The mere fact that the percentage of dead loss of cotton is high in a particular year cannot lead to an inference that thereby there has been a suppression of the production in a spinning mill.

On the above observations, the Hon'ble High Court has allowed the appeal of the assessee.

6.2. In case of CIT vs. Maharaja Shree Umaid Mills Ltd. (1991) 192 ITR 565 (Raj), the Hon'ble Rajasthan High

Court has held that the Tribunal was justified in holding that since books of accounts had not been rejected, the mere fact that there had been a fall in the g.p. rate would not lead to the inference that the expenditure had been inflated.

6.3. In case of CIT vs. Padamchand Ram Gopal (1970) 76 ITR 719 (SC), the Hon'ble Supreme Court has held that no addition is justified if the books of accounts are not rejected.

6.4. We have also seen the other case law relied upon by the learned authorised representative and we find that the book results cannot be ignored if the books of accounts are not rejected or any defect were not pointed out by the AO. Therefore, we do not see any infirmity in the order of the CIT (A). On the reasons given by CIT (A) and on the reasons given here by us, the order of the CIT(A) is confirmed here by us.

The above order is applicable in toto . The order is order of the co-ordinate Bench. It is further submitted that the amount of rupees two lacs were given in the last year that is AY 2012-13 and the amount belongs to last year cannot be treated in any way in the year under consideration . In this fact and circumstances the sustaining of addition of rupees 2 lacs is illegal. You are therefore requested that same may kindly be deleted.

As regards the Ground No.2,

It is submitted that ASSESSEE in support of his contention also submitted in affidavit the document is at page 5 of paper book stating full fact before the Commissioner of Income Tax appeals Jaipur the Commissioner of Income Tax appeals forwarded the submission to be income tax officer for comments. The remand report was also submitted by the Income Tax Officer. Copy of remand report is at page 17 of the paper book and affidavit is at page 5 of the paper book. From the perusal of the covering letter you will observe that in the said submission it has categorically stated that an affidavit is been attached to this effect. The affidavit is self speaking in this respect. In this connection it is submitted that an affidavit if submitted before the authority in that case contention thereof has to be accepted if the deponent is not cross-examine in. This case neither the CIT (A) nor the assessing officer at the time of remand report cross examine the deponent. THIS FACT IS ON RECORD.

When the assessee submitted affidavit and the Assessing Officer fails to examine the deponent in that case it shall be presumed that contents mentioned in the affidavit have been accepted by him. In view of the judgment of Hon'ble Supreme Court reported in 30 ITR Page 181 in case of Mehta Parekh and Company in which It has been held that the Deponent is not cross examined contents thereof has to be accepted. The Appellate Authorities including the Appellate Tribunal invariably accept the same. In case of Dr. Prakash Rathi reported in 36 Tax World Page 1 the Hon'ble Income-tax Appellate Tribunal, Jodhpur Bench, Jodhpur (Jurisdictional

Tribunal) accepted that if the Assessing Officer fails to cross examine the deponent, the fact mentioned in the affidavit cannot be discarded. In case of the assessee the assessee was not confronted and affidavit was submitted therefore the addition is arbitrary and illegal.

As regards Ground number 3

It is that the Commissioner of Income Tax summary partly allowed the appeal; the appeal has been decided by adopting the mode of cut and paste and even ignoring the binding nature judgment of even Supreme Court. it will be worthwhile to submit and draw your attention that the assessee categorically stated in the statement recorded before the A.D.I. that he is maintaining books of account and also produce the balance sheet thereof before the ADI and CIT(A). The statement of assessee is at page 14 to 16 and the version in respect of maintenance of books is at page 20 of the said statement. The books of accounts are being maintained and the assessing officer mention that assessee is not maintaining the books of account and the Commissioner of Income Tax follow the same reason best known to him. From the perusal of the balance sheet you will observe that amount of Rs. 2,00,000/- as advance in the immediately preceding year. The income tax officer fails to accept the same when balance sheet was there. The copies of balance sheets for the year ending on 31st March 2011, 31st March 2012 and 31st March 2013 are being attached in paper book at page No 14 to 16. As far as the savings is concerned the ASSESSEE categorically even in the statement

recorded before A.D.I. also stated that he is having no income other than the agriculture. The assessee submitted cash flow which is page at 8, in which details has been given but the assessing officer not consider the same without assigning a reason. The explanation was rejected just for the sake of rejection.

You are requested to kindly accept the amount of investment out of Agricultural income during the year under consideration and also requested that a sum of rupees 2,00,000/- may kindly be consider as paid in the immediately preceding year as shown in the balance sheet. The holding of agricultural land is not in a dispute the cultivation is not in a dispute but the income tax officer reason best known to him not accepting the amount

In the Question No. 16, the assessee explained in respect of income. The document is at page 28 of paper book The relevant portion of question and answer is reproduced hereunder.

.....

From the perusal of about you will observed that the assessee even before the investigation will also stated that he is maintaining books of accounts and same were produce.

From the last line of Cash Flow statement, The document is at page 8 paper book you will observe that the assessee mentioned.....

Therefore the fact in respect of production of books is not correct. The assessee is not educated.

Furthermore, there was specific query in respect of furnishing Income Tax ' Return and the reply of the same reproduced hereunder:

.....

As regards Ground number 4

It is stated that the submission have already been submitted in the argument of earlier ground. The books of accounts are being maintained and it was admitted in the statement which is at page 22 and also submitted balance sheet which are at page 14-16, as per the law the investment of the previous year cannot be treated as income of the subsequent Year. No law of land is permeating but the Commissioner of Income Tax appeals as well as the income tax officer committed mistake in the law you are therefore requested that order passed may kindly be declared as illegal.

Addition of Rs. 2, 00,000 sustain by the Commissioner of Income Tax is also without any bases. The assessee explains the source therefore even otherwise the entire amount is explained.

You are therefore requested that the order may kindly be declared as illegal.

Thanking you.”

4. On the other hand, Ld. JCIT DR opposed these submissions and supported the orders of the authorities below.

5. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld. CIT(A) in para 6.3 of the impugned order has decided the issue as under:-

6.3. "I have carefully consider the observation made by the Assessing Officer in the assessment order, submission and additional evidences filed by the A/R of the appellant, remand report of the Assessing Officer and rejoinder filed by the A/R of the appellant. I find that the Assessing officer made the addition of Rs.4,00,000/- making detail observation that the appellant produce the Jamabandi and Girdawari but no bills of sale of agricultural products are produced. In support to his claim of source of investment the assessee produced a page giving head payment, income, loan and saving account on a white paper and apart from this produced nothing to his support. In view of this it is clear that it is crooked story written only on white paper. However, benefit of agricultural income, KCC loan is allowed to the extent of Rs.4.17 lakh.

The A/R of the appellant submitted that the appellant is having only agricultural income. He is having agriculture land 60 Bigha. This fact is also accepted by the Assessing Officer in the assessment order that appellant produce the Jamabandi and Girdawari only but no bill of agriculture produced/crop were produced. Only on account of not furnishing the sale bill the rejection of agriculture income is illegal. The assessing officer should have accepted the explanation which was based on

evidence submitted by him including the copies of balance sheet of the previous years that is for assessment 2011-12 and assessment year 2012-13 etc.

I perused the record I find that the copy of balance sheet filed by the A/R of the appellant are not reliable because these are not part of regular books of account. This is fact that the appellant is having an agriculture land of 60 Bigha. The Assessing Officer in the assessment order admitted that the appellant produce the Jamabandi and Girdawari. The Assessing Officer only disputed the sales bills was not produce by the appellant. This objection of the Assessing Officer is not correct in the eyes of law because in the rural area the crops was sales in village and some time crops sales in Mandi but bills was not kept by the farmers. Therefore considering the land holding and status of the appellant I allow the benefit of Rs.6,17,000/- out of KVC loan and agriculture income. Accordingly, I confirm the addition of Rs.2,00,000/- and balance amount of Rs.2,00,000/- is deleted. These grounds are partly allowed.”

6. During the course of hearing, Ld. Counsel for the assessee further pointed out that before Ld.CIT(A), an affidavit was filed which has already been placed on record. The Assessing Officer (“AO”) did not opt for cross-examining the assessee. Therefore, in view of the judgement of the Hon’ble Supreme Court rendered in the case of *Mehta Parikh & Co. Vs CIT [1956] 30 ITR 181 (SC)*, the Ld.CIT(A) ought to have deleted the addition treating the contents

of the affidavit as true and correct. It is also brought to our notice that under the identical facts, the Tribunal in the case of *Ashok Kumar Banthia vs. DCIT in ITA No.297/Jodh/2019* [Assessment Year 2012-13] order dated 06.09.2021, has held as under:-

10. *“Although, the assessee had also filed an affidavit in support of his contention but he was never cross examined by the AO Therefore, the averments contained in duly sworn affidavit are to be accepted as a correct unless the same are rebutted by the evidence. On this proposition, we found support from the decision of Hon'ble Supreme Court in the case of Mehta Parikh & Company vs. CIT (1956) 30 ITR 181 (SC), Dr. Prakash Rathi vs. ITO 36 TW 1 (Jodh-Trib), ITO vs. Doctor Tej Gopal Bhatnagar 20 TW 368 (Jodh-Trib.), Labh Chand Bohra vs. ITO (2008) 219 CTR (Raj) 571 : (2008) 8 DTR (Raj) 44, Shrikumar vs. ITO (1990) 36 TTJ (Jp) 538, Smt. Savitri Devi vs. ITO (1985) 11 ITD 422 (Del), CTO vs. Kewal Ram Sunnomal Cavanduspur 92 STC 629 (Raj), ITO vs. Vardhaman Industries 99 TTJ 509 (Jodh-Trib.), ACTO vs. Kishore Shyam Brajesh Kumar 93 STC 213 (Raj), Indo Malwa United Mill Ltd. vs. State of MP (1966) 60 ITR 41 (SC), Late Mangilal Agarwal Through LRs. vs. Asstt. CIT (2007) 208 CTR (Raj) 159, CIT vs. Daulat Ram Rawat Mull 1972 CTR (SC) 411: (1973) 87 ITR 349 (SC) and Union of India vs. Kamalaxmi Finance Corporation (1994) 72 Taxman 43 (SC). Considering the totality of facts and circumstances of the case, we are of the view that the amount seized from the assessee at the Delhi Air Port belonged to the Lux Industries Ltd. and not the assessee. The AO as well as the learned CIT(A) wrongly*

made and confirmed the assessment and added the same in the income of the assessee, therefore, we direct to delete the addition qua this issue.”

7. In the light of the binding precedent, we are of the considered view that when the assessee stated on oath by way of an affidavit, the Assessing Authority ought to have cross-examined and also made further inquiry with regard to the correctness of the contents of such affidavit. When the Assessing Authority failed to avail this opportunity, Ld.CIT(A) ought to have deleted the entire additions. We therefore, allow Ground No.2 raised by the assessee and direct the AO to delete the remaining impugned addition of Rs.2,00,000/-.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 24/03/2023.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Asstt. Registrar,
Jodhpur Bench