

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 150/Rjt/2018
With
C.O No.18/Rjt/2018
निर्धारण वर्ष/Asstt. Years: 2009-2010

The D.C.I.T, Circle-3(1), Rajkot.	Vs.	M/s. J.Y. Resources Pvt. Ltd., 7-Patel Nagar, 80 Feet Road, Nr.Sorathiyawadi, Rajkot. PAN: AABCJ8658R
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Revenue by	:	Shri B.D Gupta, Sr. D.R
Assessee by	:	Shri R.K. Doshi, A.R

सुनवाई की तारीख/**Date of Hearing** : **21/02/2023**
घोषणा की तारीख /**Date of Pronouncement**: **22/03/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue and CO filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad, dated 07/02/2018 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-10.

2. The Revenue has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in granting the relief without appreciating the facts of the case and holding legally seized document as dumb document.*

2. *On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in ignoring the cash receipts corroborated with the cheque received by the assessee and deposited in its bank account, thereby adjudicating by the Id.CIT(A) of document being dumb is gross error of adjudication.*

2.1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the addition made of Rs.2,00,00,000/- on account of cash receipt as the Page 75 of Annexure BS-10 of the seized material found from the premises of Shri Hitesh Bagdai clearly shows the cash transaction acknowledged by Shri Hitesh Bagdai. The seized documents during the course of search action and as acknowledged by the concerned assessee cannot be treated as dumb document.*

3. *On the facts and circumstances of the case and in law, the id. CIT(A) ought to have upheld the order of the Assessing Officer.*

4. *Any other ground that the revenue may raise before or during the proceeding before the Hon'ble I.T.A.T.*

5. *It is, therefore, prayed that the order of the C.I.T.(A) may be set aside and that of the A.O. be restored to the above extent.*

3. The only issue raised by the Revenue is that the learned CIT(A) erred in deleting addition the made by the AO for Rs. 2 crores on the basis of cash receipt found from the premises of loan party.

4. The facts in brief are that there was search proceedings, carried out in the case of the partly namely Shri Hitesh Bagdai where a cash receipt dated 26-06-2008, duly signed by Shri Hitesh Bagdai was found. The impugned cash receipt was containing information about cash amounting to Rs. 2 crores received from the appellant assessee against the transfer of amount through banking channel vide cheque No. 703971 & 703972 to the assessee. The AO also noted that the cheque numbers mentioned in seized cash receipt were credited in the bank of the assessee and shown as loan by the appellant assessee in its books of accounts. However, the transaction of payment of cash was not recorded in the books of account of either of the party. Accordingly, income escaping proceedings under section 147 of the Act were initiated in the case of assessee.

5. The assessee during the assessment proceeding denied to have entered into any cash transaction with Shri Hitesh Bagdai except the transaction of loan through banking channel which was duly recorded in the books of accounts. The assessee further contended that impugned receipt was neither found from its premises nor signed or written by its director/employee/key person. Shri Hitesh Bagdai in the statement recorded under section 132(4) of the Act also categorically denied to have received cash or entered into any unaccounted cash transaction with it (assessee). There is no clarity with respect to the fact who wrote the impugned cash receipt and there was no other corroborative material suggesting cash payment was made by the assessee. Therefore, considering the fact that the impugned material found from the premises of third party without having any direct nexus and supporting corroborative evidence, no credence can be given to such cash receipt and no adverse inference can be drawn against it.

6. However, the AO disagreed with the assessee and held that the cash receipt was duly signed by the recipient stating that he has received cash against cheque transfer and the cheque details were also mention which duly corroborate with the books of accounts of the assessee. Therefore, it cannot be said that the impugned cash receipt is a dumb document. The fact that assessee paid unaccounted cash to Shri Histesh Badai for taking fund through banking channel which was utilized for purchase of land property will not change merely for the reason that impugned receipt was not found from the premises of the assessee. The AO also alleged that the assessee was in the process of acquiring land property for which it required accounted money in bank account. Thus, the assessee paid unaccounted cash to Shri Hitesh Bagdai and lieu of such cash, received amount in the bank through cheque and shown the same as loan in the books of accounts. Accordingly, the AO treated the amount of cash as per impugned cash receipt as unexplained cash in the hand of the assessee and added the same to the total income of the assessee.

7. The aggrieved assessee carried the matter before the learned CIT(A) and reiterated its contention that the impugned cash receipt is a dumb document as the same was not signed or written by its director or employee, not found from its premises. Shri Hitesh Bagdai from whose premises such receipt was found categorically denied to have received such cash. There was no other material corroborating the fact that cash was actually paid by the assessee against the transfer of fund through banking channel. The assessee further submitted that the year under consideration was only second year of its incorporation and was not having any source of income. Therefore, the question of accumulation of unexplained/unaccounted cash does not arise.

8. The learned CIT(A) after considering facts in totality deleted the addition made by the AO by observing as under:

*5.1.4 Assessment order, submissions of the appellant, Remand report and the Rejoinder have been carefully considered alongwith the documents seized and the case laws cited. There is no dispute about the facts that the document which has been relied upon for making the addition was not found from the premises of the appellant or its directors, but it was found from the premises of Shri Hitesh Bagadia. There is also no dispute that this document is not in the handwriting of any director or employee of the appellant. This document is not signed by any director or employee of the appellant. In such circumstances, this document is nothing but a 'dumb document' as far as the appellant is concerned and the additions made on the basis of 'dumb' document in the hands of third person are not legally sustainable. The Hon'ble jurisdictional High Court of Gujarat, Ahmedabad held in the case of Krishan Textiles v/s, CIT (2009) 310 ITR 227 (Guj) that an amount found credited in the name of the assessee in the books of another party, the same cannot be treated as unexplained income of the assessee, The Hon'ble High Court of Delhi in the case of CIT v/s Vivek Agrawal (2015) 121 DTR 241 held that if the document found is unsigned by the assessee, it could be held as a dumb document and no addition can be made on the basis of such document. Similar findings have been given by the various judicial authorities in several cases. In the case of **Meghmani Organics vis. DCIT 6 ITR 360 (And), jurisdictional Ahmedabad Tribunal** has held that when the papers found showing the name of an assessee were found from a third party but papers were not prepared by the assessee, such papers cannot be said to be used against the assessee. The appellant's case is clearly found covered by the above mentioned binding judgements, hence, the additions made by the AO on the basis of dumb document is not found legally sustainable, therefore, these are **deleted**.*

5.1.4 It is also very important to mention that when Shri Hitesh Bagadia was confronted this page found & seized during the search while recording statement u/s. 132(4) of the Act on oath, he denied having received any cash from the appellant. The statement was given on oath u/s. 132(4) which is an admissible evidence. There is no material mentioned in the assessment order, which prove this statement of Shri Hitesh Bagdai is untrue.

*Moreover, survey proceedings were conducted on the same day upon the appellant company and nothing incriminating was found. This is confirmed by the fact that even after conducting survey u/s. 133A of the Act, the case of the appellant was not taken under mandatory regular scrutiny but reopened by issuing notice u/s. 148 of the Act. The AO relied upon the statement of one of the director of the company Shri Yusufi Ismail bhai who stated at the start of the answer that he does not know about this transaction and other directors knows about it, but payment of cash may happen. The AO ignored the first lines of the statement but relied upon only few last words. Shri Yusufi Ismail bhai was sure that he does not know about the transaction, which has been ignored by the AO but payment in cash may happen was relied upon. Statement or the seized document should be read as a whole to understand the true nature of the transaction. Thus, the relying upon the statement, which itself is contradictory cannot be held justified. Further in the assessment order, it is stated at several places mentioned probabilities but not concrete findings. In para 9.1 of the order, it is stated that it is logical that the signature of the payer does not appear on the cash receipt. This was to counter the contention of the appellant that receipt was not signed by the appellant- The AO further mentioned that it is also possible that there may be two copies of the cash receipt Additions made on the basis of possibilities cannot be sustained. In para 9.2 of the order, it is stated that there is every reason to believe that the evidences would have been removed from the appellant's premises. Reason to believe is good for reopening of the assessment proceedings but to make the additions, concrete evidences are required. Mere reason to believe is not sufficient. In para 9.3 of the order, it is stated that it is possible that Mr. Bagdai might have prepared the receipt to handover to the appellant but as search took place, it could not be handed over. Here also, only possibilities are written to make the additions. The receipt contain the date of 26.6.2008 and search took place on 15.9.2009 i.e. about after 15 months. Therefore, even, this possibility is found factually incorrect. Mr. Bagdai had enough time to handover receipt to the appellant. In para 10, it is stated that facts "transpires" from the whole gamut of the transaction. But additions cannot be made on the basis of "transpires" but there has to be definite findings. Regarding making the CIT(A)'s order in the case of Shri Hitesh Bagdai as basis for making additions in the appellant's case, the CIT(A)'s order is not binding upon the AO. The AO should have make independent enquiries and give his findings. There is no mention that the CIT(A) has given these findings after allowing opportunity of being heard to the appellant. Looking to the discussion as above, the additions made by the AO amounting to Rs.2 crore are not found justified. Hence, these are **deleted**. This ground of appeal is **allowed**.*

9. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

10. The learned DR before us submitted that there was the investment made by the assessee in the property for which the assessee was requiring the fund in accounting form. Thus, the assessee against the transfer of fund in its bank account has handed over cash to the party. The Id. DR vehemently supported the order of the AO.

11. On the other hand, the learned AR before us filed two paper books running from pages 1 to 53 and 1 to 120 and contended that there was no doubt raised by the Revenue on the interest on the loan paid by the assessee. Therefore, the genuineness of loan cannot be doubted. The Id. AR vehemently supported the order of the Id. CIT-A.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has received Rs. 2 crores from Shri Hitesh Bagdai through banking channel on 25 and 26th June 2008 and treated the same as unsecured loan in the books of account. The AO treated the same as unexplained money in the hand of the assessee and added the same to its total income. As such the AO has not doubted the identity and credit worthiness of the party but held that transaction of loan is not genuine. The entire basis of treating the loan amount as unexplained cash of the assessee a cash receipt of Rs. 2 crore dated 26th June 2008 found during the search proceedings at the premises of the impugned loan party namely Shri Hitesh Bagdai. On the impugned cash receipt it was noted that the "*sum of Rs. 2 crore by cash received from respondent assessee against the shareholder deposit given on 26-06-2008 for Rs. 2 crore vide cheque no. 703971 and 703971 drawn on Indusland Bank Rajkot and there no debt, interest liability remains on this count. The account is settled from our part*". The impugned receipt also bearing the signature of Shri Hitesh Bagdai. However, Shri Hitesh Bagdai in the statement recorded under section 132(4) of the Act denied to indulge into such cash transaction. Finally, the Id. CIT-A was pleased to delete the addition made by the AO for the reasons discussed above.

12.1 On perusal of the seized document discussed above, it is transpired that the information contained therein is self-explanatory and without any ambiguity. In simple words, the information contained in the seized document can be interpreted and the inference based on the same can be drawn as far as the

message reported therein is concern without any misleading of the facts. Whatever has been recorded in the seized document is also getting corroborated based on the books of accounts as far as banking transactions are concern. Thus we are of the view that such information cannot be alleged as dumb information. Accordingly, we are of the view that the same is incriminating information. But the crucial question arises whether information contained in the seized document can be used for the purpose of the addition in the hands of the assessee in the given facts and circumstances. First of all, we note that the information contained in the seized document is unilateral act of the party namely Shri Hitesh Bagdai. In other words, the signature of the assessee is not appearing anywhere. Assuming that the party namely Shri Hitesh Bagdai has unilaterally recorded such information on the piece of paper even without informing to the assessee, can the assessee be penalized in such facts and circumstances. The answer certainly stands in negative particularly in the situation which is before us. As such the party namely Shri Hitesh Bagdai in the statement furnished under section 132(4) of the Act has categorically denied to have entered into any cash transaction with the assessee.

12.2 In our understanding, the information contained in the seized document is relevant information which can be the reason to look more deep into the facts to unearth the truth. But solely the receipt can't be the foundation of making the addition in the hands of the assessee.

12.3 Be that as it may, the theory adopted by the AO for making addition in the hand of the assessee based on impugned cash receipt is that the credit of loan from Shri Hitesh Bagadi is not genuine. As such, the theory of the AO is that loan amount credited is nothing but the own unaccounted money of the assessee received in the guise of loan. In this connection, we note that the assessee in its books of account has shown credit of loan through banking channel on 25 & 26 June 2008 and at the end of the year credited interest of Rs. 18,36,892/- only on the same. The assessee on credit of interest also deducted tax at source under

the provision of section 194A of the Act. Furthermore, in the immediate subsequent year i.e. in the month of April 2009, the entire loan amount along with interest was repaid to the party through banking channel which is much before the date of search. The revenue has not raised any iota of doubt on the genuineness of the interest claimed by the assessee which evidences that the amount of interest on the loan by the assessee was genuine. We also find the Hon'ble Gujarat High Court in the case of the CIT Vs. Rohini Builders reported in 256 ITR 360 wherein the facts and circumstances were identical to the facts narrated above that loan was received through banking channel and same was repaid along with interest through banking channel. The Hon'ble High Court held as under:

"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."

12.4 Therefore, considering the facts in totality and respectfully following the judgment of Hon'ble Jurisdictional High Court as mentioned above, we hold that the transaction of loan shown by the assessee is genuine. Thus, in our considered opinion addition cannot be made based on impugned cash receipt found from the premises of Shri Hitesh Bagdai which has been denied by the both assessee and Shri Hitesh Bagdai. Hence, the ground of appeal of the Revenue is hereby dismissed.

12.5 In the result, the appeal of the Revenue is dismissed.

Coming to CO No. 18/RJT/2018

13. As the assessee has succeeded on merit of the case, we do not find any reason to adjudicate the issue raised by the assessee on technical ground i.e. challenging the initiation of the proceedings under section 147 of the Act. Hence, we dismiss the same as infructuous.

14. In the result, the CO of the assessee is dismissed as infructuous.

15. In the combined results, the appeal of the Revenue and CO of the assessee are dismissed.

Order pronounced in the Court on 22/03/2023 at Ahmedabad.

Sd/-
(T.R SENTHIL KUMAR)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 22/03/2023
Manish