

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA No. 92/Jodh/2020
(ASSESSMENT YEAR- 2013-14)

The ACIT Circle-Pali	Vs	Shri Shahnavaaj Najik L/h of Late Shri Iqbal Najik 173, Ashapura Nagar, Pali
(Appellant)		(Respondent)
PAN NO. AALPN 5861 D		

Assessee By	Shri N.R. Mertia, CA
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	17/01/2023
Date of Pronouncement	05/04/2023

ORDER

Dr. S. SEETHALAKSHMI, JM

The Revenue has filed this appeal challenging the order passed by Ld CIT(A)-1, Jodhpur for the assessment year 2013-14 raising therein following grounds of appeal.

“1. Whether on the facts and in the circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.83,83,397/- u/s 68 of the Act on account of unexplained cash credits ignoring the fact that the assessee failed to establish the identity, creditworthiness and genuineness of the creditors during the course of assessment proceedings.

2. Whether on the facts and in the circumstances of the case, the ld. CIT(A) has erred in accepting the confirmations filed by the assessee before the ld. CIT(A) for the first time as additional evidence as sufficient proof to accept the genuineness of the creditors without the assessee furnishing further details like return of income bank statement, balance sheet and capital account, ledger of creditors etc. to establish creditworthiness of the person advancing loans.

3. Whether on the facts and in the circumstances of the case, the ld. CIT(A) has erred in deleting the disallowance of Rs.1,34,00,000/- on account of expenditure incurred in cash for purchase of land u/s 40A(3) of the I.T. Act, 1961 ignoring the fact that there is clear mention that such payment was made in contravention of provisions of Section 40A(3) of the Act.”

2. Brief facts of the case are that the assessee is a colonizer/ developers who purchased the land and then sold the plots of land after making development. The first issue relates to the addition made u/s 68 of the Act. During the year under consideration, the assessee had purchased agriculture land situated at Village Pal for Rs.1.92 crores. For that purpose, the assessee has availed loan of Rs.75,00,000/- from Smt. Rinku Gaur through her father Shri M. D. Gaur. The loan was received by the appellant in 3 parts i.e. Rs. 30 lacs, 15 lacs & 30 lacs through the assessee's bank account. Before the AO, the assessee produced copy of

bank statements to prove the receipt of loans. He also furnished details of PAN number of lender, but could not file confirmation letter. It was submitted that the father of Smt. Rinku Gaur, who had provided the cheques to appellant, informed that his daughter is residing in Australia. Accordingly, the assessee requested the AO to make direct inquiries through his official channels. However, the AO did not make any such enquiries. Accordingly the AO assessed the loan amount of Rs.75.00 lakhs as unexplained cash credit u/s 68 of the Act. Hence, the AO also disallowed interest expenditure of Rs.5,83,397/- claimed thereon. Thus the total addition aggregated to Rs.80,83,397/-.

3. Before the Ld CIT(A) the assessee filed evidences to show that the lender has filed suit against the assessee for recovery of loan amount. By admitting those additional evidences, the Ld CIT(A) accepted the genuineness of loan and accordingly deleted the addition. It is pertinent to note that the Ld CIT(A) did not confront the said additional evidences with the AO, thus violating the provisions of Rule 46A of I T Rules.

4. The revenue is aggrieved. We heard the parties and perused the record. Since there is violation of Rule 46A of the I T Rules, we deem it proper to restore this issue to the file of Ld CIT(A), who shall adjudicate this issue afresh after duly confronting the additional evidences with the assessing officer.

5. The next issue contested by the revenue relates to the addition made u/s 40A(3) of the Act, which was deleted by Ld CIT(A). The AO noticed that the assessee has purchased a land during the financial year by paying part of consideration aggregating to Rs.1,34,00,000/- in cash, which was in violation of Section 40A(3) of the Act. The AO further noted that the assessee did not show the land in his personal balance sheet whose details are mentioned as under:-

S.N.	Particulars	Amount	Date of Payment	Mode
1.	Land at Pal – Khasra No. 390/1, 12 Bigha land purchased from Kashiram Badri Narayan and Pukhraj for 1.92 crores	31,00,000	01-08-2012	Cash
		33,00,000	16-08-2012	Cash
		42,66,000	23-08-2012	Cheque
		42,66,000	23-08-2012	Cheque
		42,66,000	27-08-2012	Cheque
		2,000	27-08-2012	Cash
		1,92,00,000		
2.	Land at Tanawara-Khasra No. 230/2 & 230/3 20 Bigha land purchased from Chaina Ram and others for 70 lacs	70,00,000	24-02-2013	Cash

Hence the AO disallowed Rs.1,34,00,000/- u/s 40A(3) of the Act.

6. The Ld CIT(A), however, allowed the claim of the assessee by following a CBDT circular issued in connection with the old provisions of Rule 6DD, which had earlier provided for allowing the expenditure, if the payment had been made under exceptional circumstances. It is pertinent to note that the said provision has since been deleted long back and hence the relevant CBDT circular relied upon by the Ld CIT(A) is no longer applicable to the year under consideration. Under these set of facts, we are of the view that this issue also requires adjudication afresh at the end of Ld CIT(A). Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for adjudicating afresh in the light of provisions of Rule 6DD as applicable to the year under consideration.

7. Needless to mention, the assessee should be provided with adequate opportunity of being heard.

8. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

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

Dated : 05/04/2023

**Mishra*

Copy to:

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

Sd/-

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Asstt. Registrar

Jodhpur Bench