

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 242/JP/2022
निर्धारण वर्ष / Assessment Years : 2007-08

Sh. Jagdish Singh Jat Shiv Nagar- II, Murlipura Scheme, Jaipur	बनाम Vs.	CIT(A)/ITO, Ward-4(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BBNPS 6238 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Devang Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 23/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 02/06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of Commissioner of Income Tax (Appeals)-4, Jaipur dated 31.03.2022 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2007-08 which in turn arise from the order dated 30.01.2015 passed under section 148/143(3) of the Income Tax Act, by ITO, Ward-4(3), Jaipur.

2. Feeling dissatisfied from the order of the Commissioner of

Income Tax, Appeal-4 Jaipur, the assessee has preferred this appeal on following grounds: -

- “1. The Id. CIT(A) erred in law as well as on the facts of the case in conforming the addition. The addition so made and confirmed by CIT(A) being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.
2. The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently, the impugned assessment framed u/s 143(3)/148 dated 30.02.2015 also kindly be quashed.
3. The impugned order u/s 143(3)/148 dated 31.03.2022 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.
4. Rs. 15,65,000/-. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs. 15,65,000/- made on account of undisclosed income (seized from the assessee). The addition so made, being totally contrary to the provisions of law and facts kindly be allowed as claimed.
5. The Id. AO erred in law as well as on the facts of the case in charging interest u/s 234A, 234B & 234C of the Act. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, kindly be deleted in full.
6. The appellant prays your honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing.”

3. The fact as culled out from the records is that in this case proceedings' u/s 147 of the IT Act 1961 were initiated for the A.Y 2007-08. Accordingly notice u/s 148 of the I.T. Act, 1961 was issued on 25.03.2014 after recording proper reasons and taking approval of the Addl. CIT, Range-04, Jaipur. The issued notice was duly served upon the assessee at the last known address by way of affixture by the Ward Inspector on 29.03.2014. A copy of the notice was also sent through speed post at the given address of

the assessee. In compliance to issued notice u/s 148 of the I.T. Act, 1961 dated 25.03.2014 neither the assessee attended nor filed any return of income. There after notice u/s 142(1) along with query letter was issued on 13.05.2014 fixing the hearing on 23.05.2014. Again, nobody attended nor submitted written reply. Thereafter again notice u/s 142(1) and query letter was issued on 26.09.2014 fixing the hearing on 14.10.2014. In this case as the information / report was received from the ADIT(Inv.)-III, Jaipur. As per the information / Report cash amounting to Rs. 15,65,000/- was seized from the assessee on 19.10.2006 by the SHO, Laxmangarh, Sikar. On information received from the S.H.O. Police station, Laxmangarh, Sikar inquiries were made by ITO ward-2, Sikar and during the conduct of inquiry statement of the assessee u/s 131 were recorded on oath on 09.11.2006. In the statements the assessee stated that the above money was belongs to Shri Babu Lal Jat his brother in law and he was carrying the above money from Jaipur to khudi Tehsil- Fatehpur on the direction of his brother in law Shri Babulal Jat S/o Shri Dula Ram Jat, R/o Khudi, Tehsil- Fatehpur, Distt.- Sikar. Further he also stated that one unknown person handed over this money to him in Jaipur for handing over to Shri Babu Lal Jat.

3.1 Further during the inquiries conducted by the I.T.O. Ward-2, Sikar statements u/s 131 were also recorded on oath of Shri Babu Lal on 10.11.2006 and in the statements he was asked to explain the source of above money. In the statements he stated that out of above Rs. 15,65,000/- a sum of Rs. 8,65,000/- belongs to him and were received by him based on sale agreement of land in the Village. No evidences except a copy of agreement written on plain paper has been furnished by him. He was asked that when he is not owner of the land how he can enter in to an agreement for sale, no satisfactory evidence or reply was available with him. He further stated that balance amount of Rs. 7,00,000/- belongs to one Sh. Ram Karan Jat of Udinsar, Tehsil-Fatehpur. But no evidence in this regard has been furnished. Therefore, the story cooked up by Sh. Babu Lal is not believable in the absence of any documentary evidences. Based on this observation the assessment was completed by making the addition of Rs. 15,65,000/- in the case of the assessee.

4. As the assessee was aggrieved by the order of the assessing officer preferred an appeal before the Id. CIT(A). Apropos to the

grounds of appeal raised by the assessee the relevant finding of the Id. CIT(A) is reiterated here in below :

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) The fact remains that cash amounting to Rs. 15,65,000/- was seized from the appellant on 19.10.2006 by the SHO, Laxmangarh, Sikar. On receipt of such information, enquiries were made by the ITO, Ward-2, Sikar and statement of the appellant u/s 131 of the Act was recorded on oath on 09.11.2006 wherein the appellant contended that the aforesaid money belonged to Shri Babul Lal Jat, his brother-in-law and that he was carrying the above money from Jaipur to Khudi Tehsit-Fatehpur on the direction of Shri Babu Lal Jat.

(ii) It is observed that the statement of Shri Babu Lal Jat was also recorded u/s 131 of the Act on 10.11.2006 by ITO, W-2. Sikar wherein he admitted that out of the sum of Rs. 15,65,000/-, a sum of Rs. 8,65,000/- belonged to him and was received by him on the basis of sale agreement of land in the village. However no evidences in this regard were filed by Shri Babu Lal Jat except a copy of agreement written on pipe paper. It was also observed that Shri Babu Lal Jat was not the owner of the land and no satisfactory evidence was filed by him to substantiate his claim for entering into such agreement of sale.

(iii) Further as regards to the balance amount of Rs. 7,00,000/-, Shri Babu Lal Jat submitted that the same belonged to one Shri Ramkaran Kulhari, however, no evidence in this regard could be furnished. Therefore the AO did not accept the claim of the appellant and on the basis of information available, the case of the appellant was reopened by issue of notice u/s 148 of the Act. During the course of assessment proceedings the AO requested the appellant to produce Shri Babu Lal Jat for examination for which summons were also issued and sent through speed post. The summons were returned back by the postal authority with the comments प्राप्तकर्ता विदेश गया हुआ है अतः वापस The AO observed that since the seized amount was released in favour of the appellant and as the same was deposited in his bank account, therefore the contention of the appellant that this money belongs to Shri Babu Lal Jat was not accepted by the AO. Further as during the course of enquiries, no evidence regarding the source of Rs. 15,65,000/- could be furnished by Shri Babu Lal Jat, therefore the contention of the appellant was not accepted and the aforesaid amount was treated as undisclosed income of the appellant and was added back to total income of the appellant.

(iv) Before me, the appellant has contended that Rs. 8,65,000/- belonged to Shri Babu Lal Jat and Rs.7,00,000/- belonged to one Shri Ramkaran Kulhari. It was also brought to my notice that the AO of Shri Babu Lal Jat i.e. the ITO Ward-2, Sikar himself recorded a categorical finding at page 3 that the assessee i.e, Sh. Babu Lal Jat claimed before the Courts of ACJM, Laxmangarh and ADJ-2, Sikar prior to 2014 that Rs. 8,65,000/- (out of the total amount of Rs. 15,65,000/-) seized by the police, belonged to him and should be released in his favor. The concerned AO recorded a categorical finding that "from the above facts it is very much clear that this amount of Rs. 8,65,000/- belonged to assessee Sh. Babu Lal Jat only. Though the AO being dissatisfied by the submission, made the addition in the hands of Shri Babu Lal Jat.

(v) I have considered the facts of the case and submissions of the appellant and it is observed from the assessment order passed u/s 144/147 in the case of Shri Babu Lal Jat and u/s 143(3)/147 in the case of Shri Ramkaran Kulhari that the Hon'ble Court rejected the contention of the appellant to release the cash in favour of Shri Babu Lal Jat. It is also observed that Shri Babu Lal Jat and Shri Ramkaran Kulhari appealed against the order of the Hon'ble Court of ACJM, Laxmangarh dt. 03.07.2009 before the Hon'ble Court of ADJ-2, Sikar which was again rejected by the Hon'ble Court vide order dated 27.07.2009 and it was held that the cash amount of Rs. 15,65,000/- owed to Shri Jagdish Singh Jat. Further it is observed that the aforesaid amount was released by Enforcement Directorate in favour of Shri Jagdish Singh Jat, the appellant and the same was deposited in his savings bank account. Therefore in view of the aforesaid facts and the order of the Hon'ble Court of ACJM, Laxmangarh and ADJ-2, Sikar, the amount of Rs. 15,65,000/- is considered to be belonging to Shri Jagdish Singh Jat. Since the aforesaid amount remained unexplained and no cogent evidence for source of the same could either be filed by the appellant Shri Jagdish Singh Jat or by Shri Babu Lal Jat and Shri Ramkaran Kulhari who claimed the amount to be pertaining to them, I find that the AO is justified in making the addition of Rs. 15,65,000/- in the hands of the appellant Shri Jagdish Singh Jat. Accordingly the addition of Rs. 15,65,000/- in the hands of the appellant Shri Jagdish Singh Jat is upheld and the Ground of Appeal No. 2 is treated as dismissed.

6. Ground of Appeal No. 3 is relating to charging of interest u/s 234A, 234B, 234C 7& 234D of IT Act.

6.1 In this regard, it is mentioned that charging of interest is mandatory and consequential in nature, therefore AO is directed to give effect of same on the income determined by the appellant order. Further the appellant has not filed any submission as to how the interest has not been correctly calculated. Accordingly, the Ground of Appeal No. 3 raised by the appellant on this issue is dismissed.

7.1 The last ground of appeal is that the appellant craves right to add, amend or alter any of the grounds of appeal.

7.1 The appellant has not added or altered any of the above mentioned grounds of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly treated as disposed off.

8. In the result, the appeal of the appellant is dismissed.”

5. As the appeal of the assessee was dismissed by the Id. CIT(A), this appeal is preferred on the grounds as reproduced at para 2 above. The Id. AR appearing on behalf of the assessee relied upon the submission so made before the Id. CIT(A) and the same is not reproduced for the sake of brevity. The Id. AR submitted that a sum of Rs. 15,65,000/- was found from the assessee and was added as his income based on the finding recorded in the orders of the lower authorities. The lower authorities did not controvert that the fact the said sum was since claimed as not belonging to the assessee and in support of his claim he has submitted the assessment order of Shri Babulal Jat where in a sum of Rs. 8,65,000/- was added a sum of Rs. 7,00,000/- was added in the case of Shri Ram Karan Kulhari. The Id. AR of the assessee since the revenue has already added a sum of Rs. 15,65,000/-(8,65,000+7,00,000) addition of the same amount cannot be in two hand. He further submitted that both the

assessment order placed on record in the paper book filed by the assessee and revenue could not controvert these facts placed on record and the amount added in these case is the same found from the assessee. The Id. CIT(A) merely based on the fact the amount is released in the name of the assessee and assessee deposited cash in his bank account did not correct. He further submitted that since the assessee cannot transfer this cash to the parties, he has deposited the same in his bank account. The Id. AR thus submitted that same cash cannot be added twice.

6. The Id DR is heard who has relied on the findings of the lower authorities and submitted that the amount was seized from the assessee and was also released to the assessee therefore, he supported the order of the lower authorities.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that in the assessment proceeding when the Id. AO asked the assessee to explain the source of cash of Rs. 15,65,000/- seized from him by the SHO, Laxmangarth Sikar, the assessee submitted that the money was not belonging to him but it belongs to Shri Babu Lal Jat. The Id. AO

directed the assessee to produce Shri Babulal Lal Jat which assessee could not do and therefore, since the money was found in possession of the assessee the same was added in the hands of the assessee. In the appeal before the Id. CIT(A), addition was confirmed observing that the aforesaid amount was released in favour of assessee and the same was deposited by the assessee in his bank account. But as argued that the Id. CIT(A) has not appreciated that the fact that the said some is repaid back by RTGS. It is not disputed by the revenue before us that pursuant to the seizure of this cash, case of Shri Ram Karan Kulhari (PAN No. AGLPK0501B) and case of Shri Babulal Jat (PAN NO. AJFPJ5168C) for an amount of Rs. 7,00,000/- & 8,65,000/- respectively added. The bench also noted that the amount seized from the party are paid to the owner of the money so seized and since the fact that the said some has already been taxed in the hands of Shri Baulal Jat and Shri Ram Karan Kulhari we see no reason to confirm the said addition and therefore, the addition made by the Id. AO is vacated in the hands of the assessee.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 02/06/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/06/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Jagdish Singh Jat, Jaipur
2. प्रत्यर्थी / The Respondent- CIT(A), Jaipur/ITO, Ward-4(3), 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. 242/JP/2022 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar