

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

**VIRTUAL HEARING**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA No. 18/Jodh/2019**  
**(ASSESSMENT YEAR- 2014-15)**

|  |    |                             |
|--|----|-----------------------------|
| Naresh Kumar Jindal<br>Prop. M/s Jindal & Co.<br>Shop No. 25C, Dhan Mandi<br>Hanumangarh Jn. | Vs | DCIT,<br>Circle-02, Bikaner |
| <b>(Appellant)</b>   |    | <b>(Respondent)</b>         |
| <b>PAN NO. ADHPK 8715 C</b>  |    |                             |

|                                  |                          |
|----------------------------------|--------------------------|
| <b>Assessee By</b>               | Sh. Rajendra Jain, Adv.  |
| <b>Revenue By</b>                | Sh. S. M. Joshi, JCIT-DR |
| <b>Date of hearing</b>           | 06/07/2023               |
| <b>Date of<br/>Pronouncement</b> | 31/07/2023               |

**ORDER**

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the Commissioner of Income Tax (Appeals), Bikaner dated 09.10.2018 [here in after (Id. CIT(A))] for assessment year 2014-15 which in turn arise from the order dated 30.12.2016 passed under section 143(3) of the Income Tax Act, by the DCIT, Circle-02, Bikaner.

2. The assessee has marched this appeal on the following grounds:-

*“1. THAT both AO and CIT(A) were not justified in law & in facts for addition of Rs. 11,20,000 made being peak credit of unaccounted transaction alleged to have been found in duplicate books though explained to be common joint books having transactions of three relatives during the period from 01.04.2012 to 28.05.2013 falling in two assessment years- 2013-14 and 2014-15 and peak credit of non-tallying transactions till 28.05.2013 was worked out at Rs.93.02 Lac on 04.05.2013 against which assessee and his two relatives have declared total Rs. 1,18,40,600 for non-tallying transactions as their income in respective returns of income filed by them for both the years but AO allowed gave credit for Rs. 81.82 Lac only.*

*2. THAT both AO and CIT(A) were not justified for addition of Rs.16,226 made for differential amount in DLC Value and consideration disclosed in registered purchase document after referring to section 56(2)(vii)(b) whereas these provisions would not apply in a case where difference in DLC Value and consideration shown in registered documents is less than Rs.50,000.”*

3. The fact as culled out from the records is that the assessee has filed his return for the A.Y 2014-15 on 01.12.2014 declaring total income of Rs. 17,46,710/-. This case was selected for Compulsory Manual Scrutiny for the reason a survey u/s 133A was carried out at the business premises of the assessee on 28.05.2013 and during the course of survey proceedings it was observed by the Survey party that the assessee was found to have maintained duplicate set of books of account and various incriminating documents/loose papers were found and impounded. Accordingly, a notice u/s 143(2) was issued on 10.09.2015 by fixing the date of hearing on 18.09.2015. Despite the

proper service of the notice upon the assessee none complied with and no response was received from the assessee's side. Eventually, after downloading the Audit Report, ITR and Financial Statements relevant to assessee's case from ITBA application a detailed questionnaire was issued on 16.11.2016 along with a notice u/s 142(1) fixing the date of hearing 22.11.2016. Subsequently, by virtue of another supplementary questionnaire dated 23.11.2016 the assessee was given further time to furnish his complete reply on 25.11.2016 and on 12.12.2016 for the questionnaire issued on 23.11.2016. In the assessment proceeding the Id. AO has considered the working of the peak of the credit and debit of the material found and arrived the peak at Rs. 93,01,539/- (say 93.02) however he has allowed the peak credit of Rs. 81.82 as stated in the order at page 6 and added difference of Rs. 11,20,000 (being the difference of 93.02-81.82). The Id. AO also added as sum of Rs. 16,226/- being the deemed income u/s. 56(2)(vii)(b) of the Act.

4. Aggrieved from the order of the Id. AO, assessee preferred an appeal before the Id. CIT(A). A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

"I have considered the facts of the case and appellant's submissions and I find that the AO after accepting the assessee's plea adopting Peak Credit Theory, had worked out Peak Credit at Rs.93.02 as on 04.05.2013 and after giving set off for amounts Rs.25.15 Lac & 16.80 Lacs declared in both years and Rs.30.95 Lac & Rs.8.92 Lacs for Peak relatable to other family concerns of Smt.Parkash Devi & Sh.Ram Gopal, made addition of Rs. 11,20,000/-.

From the appellant's submissions, it is seen that the appellant again pleaded that amount of Rs.93.02 Lac was non-tallying Peak Credit on 04.05.2013 which would be arrived only after considering non-tallying entries till 31.03.2013 therefore additional Incomes of Rs.69.65 Lac shown in different respective hands of appellant and his two family concerns should have been given set-off instead of Rs.81.82 Lac allowed by AO. I find that this plea has already been considered by the AO at page no. 6 and 7 of the assessment order and due set off had already been allowed. Hence, I find no justifiable reason to disturb the AO's action in this regard. Accordingly, the addition of Rs. 11,20,000/- is sustained. The grounds of appeal raised by the appellant regarding this issue are dismissed.

The next ground of appeal relates to the addition of Rs. 16,262/- u/s. 56(2)(vii)(b). The AO's relevant findings regarding this issue are reproduced as under:-

*"The assessee had purchased a plot at Pilibanga, admeasuring 5400 Sq. Feet on 05.02.2014, jointly with Sh. Vijay Kumar and Neelam Rani for a consideration of Rs, 20 lacs. In this purchase transaction the assessee contributed 50% of the purchase price and Sh. Vijay Kumar and Neelam Rani bore the remaining cost. The Sub-Registrar, Pilibanga held the DLC rate of this plot u/s 54 of the land Revenue Act at Rs. 20,32,452/- against the documented price of 20 lacs. As such the half share of the differential value of Rs. 32,452/-, amounting to Rs. 16,226/- is deemed as the income of the assessee u/s 56(2)(vii)(b) of the IT Act for the reason the consideration is shown as less than stamp duty value and assessee has not included the same in his computation. As such an addition of Rs. 16,226/- is made to the total income of the assessee."*

On overall consideration of facts of the case and appellant's submissions, I find that no force in appellant's claim that addition of Rs. 16,2268/- u/s. 56(2)(vii)(b) for deficit DLC value of plot compared to its value shown but provisions referred by AO does not apply in case of value less than 50,000/-, I am not inclined to agree with appellant's argument. I may refer to explanatory notes to

the provisions of the Finance Act 2013 issued by CBDT. For the sake of clarity relevant portion is reproduced as below:-

*"The existing provisions of sub-clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act, inter alia, provide that where any immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources."*

*The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. It is proposed to amend the provisions of clause (vii) of sub-section (2) of section 56 so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration, shall be chargeable to tax in the hands of the Individual or HUF as income from other sources.*

*Considering the fact that there may be a time gap between the date of agreement and date of registration, it is proposed to provide that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property.*

*This amendment will take effect from 1st April 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years."*

From the above, it is clear that the provision of section 56(2)(vii) is applicable to individual and HUF and as per this section, the AO is bound to make addition of difference amount of face value and value as determined by the stamp authority. In this regard, I may refer to the decision of Hon'ble Bombay High Court in the case of CIT vs. Neelkamal Realtors & Erectors India (P) Ltd. (2017) 246 TAXMAN 274. Therefore, the arguments of the appellant regarding non-taxability of this amount for the instant AY 2014-15 u/s. 56(2)(viib) introduced by the finance

Act 2012 w.e.f. 1-04-2013 have no force and are rejected. The ground of appeal is dismissed.

5. As the assessee did not find any favor from the appeal so filed before the Id. CIT(A) therefore, the present appeal is filed before the tribunal on the grounds as stated in para 2 above. In support of the grounds the Id. AR of the assessee submitted as under :

#### Statement of Facts

During survey carried out under Section 133A simultaneously in three business premises of M/s Jindal & Co-Pilibangan (Proprietor-Sh Naresh Kumar Jindal), M/s Sita Ram Ram Gopal-Pilibangan (Proprietor Sh.Ram Gopal) (brother of the appellant) and site of brick-kiln of M/s Jai Durga Ent Udbyog-Dingwala Tehsil Pilibangan (Proprietor-Smt. Parkash Devi Jindal) (wife of the appellant) on 28.05 2013 covering two assessment years of 2013-14 & 2014-15 for which no returns of income were filed by any of these three persons till date of survey, the Survey Authorities impounded books of accounts, loose papers etc. including books of accounts pertaining to the assessee & his two close relatives found from the premises of M/s Jindal & Co., M/s Sita Ram Ram Gopal & brick kiln site of M/s Jai Durga Ent Udhyog-Dingwala Tehsil Pilibangan and books of account were found to be incomplete. Impounded documents were including some books of account containing common transactions of all of them the assessee and his two close relatives and out of them partly were tallying and partly were non-tallying with books of accounts found to be incomplete but they were completed after taking photocopies of impounded documents from the department therefore Total Income not less than Rs.140 Lacs in both assessment years was assured to be declared by the assessee and his other two relatives accordingly Total Income of Rs.1,53,66,910 (Rs 34,25,910 as per books of accounts prepared & Rs.1,18,40,600 for non-tallying transactions) was declared in returns of income for both the assessment years (Rs.94,82,380 in AY 2013-14+ Rs.54,84,530 in AY 2014-15) filed by them all. Aggregate Income of Rs.1,18,40,600 for non-tallying common transactions of impounded books of account amounting were declared in returns of income filed for both years by the assessee-appellant and his two relatives as detailed below:

| Name of person in whose hands declared    | A.Y 2013-14   | AY 2014-15     | Total          | Set off given by AO |
|---|---------------|----------------|----------------|---------------------|
| Appellant Prop M/s Jindal & Co.           | Rs. 25.15 Lac | Rs. 16.80 lac  | Rs. 41.95 Lac  | Rs. 41.95 Lac       |
| Parkash Devi Prop.M/s Jai Durga Ent Udyog | Rs. 34.00 Lac | Rs. 21.956 Lac | Rs. 55.956 Lac | Rs. 30. 95 Lac      |

|                                       |                      |                      |                      |                     |
|---------------------------------------|----------------------|----------------------|----------------------|---------------------|
| Ram Gopal Prop M/s Sita Ram Ram Gopal | <u>Rs. 10.50 Lac</u> | <u>Rs. 10.00 Lac</u> | <u>Rs. 20.50 Lac</u> | <u>Rs. 8.92 Lac</u> |
| Total                                 | Rs. 69.65 Lac        | Rs. 48.756 Lac       | Rs. 118.406Lac       | Rs. 81.82 Lac       |

AO had though proceeded on peak theory but credit for lesser amount of Rs.81.82 Lac comprising of Rs.41.95 Lac declared in the hands of assessee and Rs.30.95 Lac against Rs.55.956 Lac declared in the hands of Smt.Parkash Devi Jindal Prop Jai Durga Ent Udhyog and Rs.8.92 Lac against Rs.20.50 Lac in hands of Sh.Ram Gopal Jindal against which assessee-appellant was aggrieved because larger amounts on the basis of non-tallying transactions had been declared in the hands of appellant and his two relatives.

Addition of Rs.16226 for difference between consideration amount shown in registered purchase document and value adopted by stamp authorities was made under section 56(2)(vii)(b) whereas these provisions were applicable only in the case where difference in aforesaid values exceeds Rs.50000 therefore it was against clear legal provisions.

6. Per contra the Id. DR representing the revenue did not controvert the working of the peak credit but has relied upon the finding of the lower authority.

7. We have heard the rival contentions and perused the material placed on record. In this case, the first issue raised by the assessee before us is on account of addition of Rs. 11,20,000/- added to the income of the assessee in the year under consideration. The Id. AO accepted the working of credit theory which is worked out from trial balance peak at Rs. 93,00,539/-. After doing so the Id. AO has allowed

the following credit out of the peak credit computed at Rs. 81,82,000/-  
are given as under:-

- “1. Additional income offered to tax by the assessee Sh. Naresh Kumar Jindal
  - (a) For A.Y 2013-14 Rs. 25.15 lacs
  - (b) For A.Y 2014-15 Rs. 16.80 lacs
2. Total peak credit balance as on 04.05.2013 for separate consideration in the hands of family members
  - (a) Smt. Prakash Devi Jindal Rs. 30.95 lacs
  - (b) Sh. Ram Gopal Jindal Rs. 8.92 lacs
3. Total (1+2) = Rs. 81.82 lacs

Whereas, the assessee contended that the peak amount surrendered by the assessee and his family member is computed herein below which is even more then the peak credit considered by the Id. AO:

| Name of Assessee & his other two family members | Additional Income declared in Computation of Total Income for A.Y 2013-14 | Additional Income declared in Computation of Total Income for A.Y 2014-15 | Total             |
|---|---|---|-------------------|
| Sh. Naresh Kumar Jindal                         | Rs. 25,15,000   | Rs. 16,80,000   | Rs. 41,95,000/-   |
| Smt. Parkash Devi Jindal                        | Rs. 34,00,000   | Rs. 21,95,600   | Rs. 55,95,600/-   |
| Sh. Ram Gopal Jindal                            | Rs. 10,50,000   | Rs. 10,00,000/-   | Rs. 20,50,000/-   |
| Total   | Rs. 69,65,000/-   | Rs. 48,75,600/-   | Rs. 1,18,40,600/- |

The Id. CIT(A) has without considering the submission of the assessee that as against peak computed by the AO at Rs. 93,01,539/-. The

assessee offered more amount as tabulated here in above. The peak of credit worked out and offered for the family member, for which there is no error pointed out by the Id. AO through Id. DR and peak considered from the seized record is computed and alleged to be lower than what is offered by the assessee. Therefore, we are of the considered view that lower authorities has erred in not considering the contention of the assessee that assessee has already offered the total income of various family members which more than the amount of the peak worked at Rs. 93,01,539/- and therefore, we are of considered view that separate addition of Rs. 11,20,000/- devoid of any merits and therefore, the same is deleted. In terms of this observation the ground no. 1 raised by the assessee is allowed.

8. The Id. AR of the assessee disputed the addition of Rs. 16,226/- made u/s 56(2)(vii)(b) of the Act. The brief fact is that the assessee has purchased a plot at Pilibanga, admeasuring 5400 Sq. Feet on 05.02.2014, jointly with Sh. Vijay Kumar and Neelam Rani for a consideration of Rs 20 lacs. In this purchase transaction the assessee contributed 50% of the purchase price and Sh. Vijay Kumar and Neelam Rani born the remaining cost. The Sub-Registrar, Pilibanga

held the DLC rate of this plot u/s 54 of the land Revenue Act at Rs. 20,32,452/- against the documented price of 20 lacs. As such the half share of the differential value of Rs. 32,452/-, amounting to Rs. 16,226/- is deemed as the income of the assessee u/s 56(2)(vii)(b) of the IT Act for the reason the consideration is shown as less than stamp duty value and assessee has not included the same in his computation. As such an addition of Rs. 16,226/- is made to the total income of the assessee.

8.1 The Id. CIT(A) has also sustained the addition contending that there is no force in the arguments of the assessee. Whereas the Id. AR of the assessee drawn our attention to provision of section u/s 56(2)(vii)(b) of the Act which reads as:-

“(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 <sup>3</sup>[but before the 1st day of April, 2017],-

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

[(b) any immovable property,-

(i) without consideration, the stamp duty value of **which exceeds fifty thousand rupees, the stamp duty value of such property;**

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees,”

8.2 On going through the provision of the act as extracted hereinabove, the addition made is rupees below at Rs. 50,000/- and therefore, we considered the submission of the Id. AR of the assessee that the addition cannot sustain in law. In view of these observations, Ground No. 2 raised by the assessee is allowed.

9. Ground No. 3 being charging of interest which is consequential in nature and therefore, the same is considered accordingly.

In the result, appeal of the assessee is allowed.

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

Sd/-  
(Dr. S. Seethalakshmi)  
Judicial Member

Sd/-  
(Rathod Kamlesh Jayantbhai)  
Accountant Member

Dated : 31/07/2023

*\*Ganesh Kumar, PS*

Copy to:

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