

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &  
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 306/JP/2023  
निर्धारण वर्ष / Assessment Year : 2013-14.

Shri Sunil Dutt Jain, Prop. M/s. Jain Food Products, 266/33, Diggi Chowk, Ajmer.	बनाम Vs.	Asstt. Commissioner of Income –tax, C.R. Building, Opposite Session Court, Jaipur Road, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAQPJ 8741 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA

राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 12/07/2023

उदघोषणा की तारीख / Date of Pronouncement: 29/08/2023

आदेश / ORDER

PER BENCH :

This appeal by the assessee is directed against the order dated 21.03.2023 of Id. CIT (A), Udaipur-2 passed under section 250 of the IT Act, 1961 for the assessment year 2013-14. The assessee has raised the following grounds :-

1. The Id. CIT (A) has erred on facts and in law in confirming the addition of Rs. 2 lacs on account of unexplained investment in property u/s 69A of the Act by not accepting the explanation of assessee that source of same is out of earlier year income & DLC difference of property sold during the year by making irrelevant observations.
2. The appellant craves to alter, amend and modify any ground of appeal.
3. Necessary cost be awarded to the assessee.

2. The brief facts of the case are that the assessee is engaged in manufacturing, wholesale and retail business of Namkeen and Sweet products in his proprietary concern M/s Jain Food Products. This is the family business of assessee which he carries out along with his brother Shri Kamal Kant Jain. He filed the original return of income on 21.09.2013 declaring total income of Rs.30,19,200/-(PB 78-81).A search and survey was carried out on 12.09.2018 at the residential and business premises of assessee. The assessee in response to notice u/s 153A filed the return of income on 12.06.2019 declaring returned income. During the course of search a sale agreement dt. 30.11.2012 (PB 75-77) marked as Pg 4-6 of Exhibit-16 of Annexure-AS was found as per which assessee has entered into an agreement with Smt. Navratan Mehta for purchase of 'Chabutari' for Rs.18 lacs out of which he has made advance payment of Rs.2 lacs in cash. In course of assessment proceedings assessee submitted that the deal could not be finalized and got cancelled. The source of advance payment of Rs.2 lacs is stated to be out of additional funds of Rs.13.63 lacs received in cash on sale of Green City Property in Jaipur. The AO did not accept the contention of assessee by holding that since the issue of sale of Green City Property has itself remained unverified and has not been considered during the course of assessment proceedings, the source of advance payment of Rs.2,00,000/- also remained unverified. Accordingly he made addition of Rs.2 lacs in the hands of assessee u/s 69A of the Act on account of unexplained investment in property.

2.1 The Ld. CIT(A) confirmed the addition made by AO by holding that (a) there was search conducted on the premises of the appellant and no evidence of availability of cash with the appellant from any other transaction as claimed was

found (b) the appellant has not paid due taxes on the so claimed transactions and hence not reliable (c) the claim of the appellant with regard to adoption of value as per provisions of section 50C in place of actual value mentioned in the registered agreement and showing it in the return of income is because of deeming fiction of law and it do not prove availability of cash in the hands of appellant.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee submitted that during the year assessee has sold the property Plot No.311, Green City, Sikar Road, Jaipur to Smt. Amrita vide sale deed dt. 26.12.2012 (PB 82-93). The actual sales consideration at which the property is sold is Rs.20,88,000/- which is also the DLC value(PB 89)but at the insistence of buyer the same has been shown in the sale deed at Rs.7,25,000/-(PB 88).Thus assessee has received additional consideration of Rs.13.63 lacs (20,88,000-7,25,000) in cash. Though sales consideration of Rs.7,25,000/- is recorded in the sale deed but tax has been paid by assessee by taking the sale consideration at Rs.20,88,000/- as evident from the return (PB 80). Thus the source of advance payment of Rs.2,00,000/- for purchase of 'Chabutari' is out of the additional consideration of Rs.13.63 lacs received by the assessee in cash.The assessee has also filed an affidavit dt.06.03.2021 (PB 94-96)during assessment proceedings where at Point No.3(PB 95)all these factshas been mentioned. Hon'ble Supreme Court in case of Mehta Parikh & Co. Vs. CIT 30 ITR 181 at Pg 187 has held that the rejection of affidavit filed by the assessee is not justified unless the deponent has either been discredited in cross examination or has failed to produce other supporting evidence when called upon to do so. This is also reiterated by Hon'ble ITAT, Jaipur Bench in case of Kuldeep Chand Garg Vs. ITO 37

Tax World 127 where it held that contents of duly sworn and affirmed affidavit are to be accepted as such unless the deponents are examined to established otherwise. The observation of Ld. CIT(A) that no evidence of availability of cash with the appellant from any other transaction was found and the appellant has not paid due taxes on the claimed transactions is incorrect. Further the observation of Ld. CIT(A) that the actual value shown in the return of income is because of deeming fiction of law and it do not prove availability of cash in the hands of appellant is also incorrect considering the fact that affidavit of assessee is not controverted.

In view of above, addition of Rs.2 lacs confirmed by Ld. CIT(A) be directed to be deleted.

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard the rival contentions, perused the material on record and gone through the orders of the lower authorities. We note that as per the sale agreement dated 30.11.2012 found and seized during the course of search and seizure action, assessee entered into agreement for purchase of 'Chabutari' for Rs.18,00,000/- against which an advance payment of Rs.2,00,000/- was made in cash. The assessee claimed that the source of such payment is out of the additional funds of Rs.13.63 lacs received in cash on sale of Green City property at Jaipur but the same was not accepted by the lower authorities on the ground that sale consideration as per sale deed is Rs.7,25,000/- received by cheque. We find that in the return of income the assessee has declared the capital gain by taking the sale consideration of property at Green City at Rs.20,88,000/-. Assessee has also filed an affidavit dated 06.03.2021 wherein he has specifically admitted that as per the sale

deed the sale consideration is Rs.7,25,000/- but actual consideration is Rs.20,88,000/- on which stamp duty was paid and thus on such sale extra amount of Rs.13,63,000/- was received. He further affirmed that in Financial Years 2010-11 & 2011-12 also he received Rs.38,63,000/- on sale of some shops for which documents were found in search. This affidavit is not discredited by the AO. The Hon'ble Supreme Court in case of Mehta Parikh & Co. vs. CIT, 30 ITR 181 at Page 187 has held that the rejection of affidavit filed by the assessee is not justified unless the deponent has either been discredited in cross examination or has failed to produce other supporting evidence when called upon to do so. The coordinate bench of the Tribunal, Jaipur in the case of Kuldeep Chand Garg vs. ITO, 37 Tax World 127 held that contents of duly sworn and affirmed affidavit are to be accepted as such unless the deponents are examined to established otherwise. Considering all these facts, we are of the view that source of investment of Rs.2,00,000/- is out of additional funds received in cash on sale of Green City Property in Jaipur and funds received from sale of shops. Hence, we delete the addition. The ground of the assessee is allowed.

6. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 29/08/2023.

Sd/-

( राठौड़ कमलेश जयंतभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Sunil Dutt Jain, Ajmer.
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle, Ajmer.
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. 306/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar