

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. 307/JP/2023
निर्धारण वर्ष/Assessment Year : 2015-16.

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 2015-16. 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. 20 lacs u/s 69A of the Act on account of alleged unexplained investment in Plot No. 12, Nosar, Ajmer by making various observations even when seized documents do not show that plot is purchased by assessee, seller Smt. Reena Mathur accepted vide letter dated 27.11.2018 that she has sold the said plot to Smt. Padmini Meena vide sale deed dt. 17.05.2018 & to Shri Praveen Barothiya vide sale deed dt. 07.08.2018 and assessee has retracted from his statement u/s 132(4) dated 13.09.2018 in

post search proceedings vide letter dated 23.10.2018 and statement of even date.

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 his original return of income on 16.09.2015 declaring total income of Rs.9,12,760/-. 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 total income of Rs.13,62,760/-. During the course of search certain documents marked as Pages 67 to 74 of Exhibit 21 of Annexure AS was found and seized. These documents are unexecuted sale agreement, power of attorney and Vasiyatnama in respect of property Plot No.12, Nosar, Ajmer (**PB 109-119**). As per the agreement this property was purchased by Smt. Reena Mathur for Rs.7 lacs on 07.10.2014 which she sold for Rs.20 lacs. In the sale agreement the name of buyer and in the power of attorney & Vasiyatnama, the name of person in whose favour it has been executed has been left blank. The assessee in his statement dated 12.09.2018 recorded u/s 132(4) of IT Act, 1961, in reply to Question No.31 (**PB 14-15**) and Question No.58 (**PB 38-39**) admitted that he has purchased the above property from Smt. Reena Mathur for Rs.20 lacs which has not been recorded in his books

of accounts and thus offered the same as his unaccounted investment. Immediately thereafter assessee vide letter dt. 23.10.2018 to DDIT, Investigation, Ajmer **(PB 51-64, specific Pg 60)** retracted from his statement stating that his name is not written in any of the document and that Smt. Reena Mathur has subsequently sold this property to third person which may be verified. He has neither purchased this property nor made any payment towards the said purchase. To examine the above facts, summon u/s 131 of IT Act was issued by DDIT, Investigation, Ajmer to Smt. Reena Mathur. Smt. Reena Mathur vide letter dt. 27.11.2018 **(PB 121)** explained the reason for keeping the documents with assessee. She further submitted that later on this plot was sold by her in two parts to Smt. Padmini Meena and Sh. Praveen Barotiya for which she has received the amount through cheque and the assessee has nothing to do with this. The AO, however, held that it is a general tendency of market that one who wants to invest his/her unaccounted money in immovable property, takes the chain of documents i.e. Power of attorney, Will and Agreement of sale keeping the name of the beneficiary blank, from the seller and pays his/her unaccounted money. Later on whenever he/she feels feasible or wants to sell this property, he/she completes all chain of documents by filing the name of the beneficiary and sells the property. In this case also, the same has been followed by Shri Sunil Dutt Jain to invest his unaccounted money and he purchased this property from Smt. Reena Mathur amounting to Rs.20,00,000/- by keeping the name of the beneficiary blank. On the basis of these documents Shri Sunil Dutt Jain in due course of time would have either registered the above property in name of self or family member or could sold this land to another party directly by just filling the name of beneficiary at blank

space in all the documents. All the original chain documents were found in possession of Shri Sunil Dutt Jain at his residence and during the search proceedings in his statement recorded u/s 132(4) of the I.T. Act, 1961, he accepted the dealing of this plot in Rs.20,00,000/- and voluntarily surrendered the amount for taxation. During the course of post search proceedings as well as during assessment proceedings, Shri Sunil Dutt Jain retracted from his earlier statement of 12.09.2018 recorded at the time of search proceedings merely on the one ground that documents executed by Smt. Reena Mathur are left blank and his name is not written anywhere on the documents. Thus, it is apparent that Shri Sunil Dutt Jain purchased this plot from Smt. Reena Mathur for Rs.20,00,000/-. Further he has sold this plot through Smt. Reena Mathur and registered it for an amount of Rs.11,81,000/- (4,11,000/- + 9,70,000/-). Therefore, an amount of Rs.20,00,000/- is considered as his unexplained investment u/s 69 r.w.s. 115BBE of the I.T. Act, 1961.

2.1 Being aggrieved by the order of A.O, the assessee preferred appeal before Id. CIT(A). The Id. CIT (A) held that the addition made by the AO is based on statement u/s 132(4) and corroborative evidences. The statement recorded during search operation u/s 132(4) is having strong evidentiary value. The appellant is found in possession of original papers, Sale deed, Power of Attorney and Will of the same plot of land. The sale deed is duly signed by the seller in the presence of two witnesses. The document is duly notarized by an advocate named Mr. V. J. Singh and date of 07.03.15 is noted on this document. The fact that this document is found from the possession of the appellant proves that the transaction is done by the appellant. In addition to this General Power of Attorney was also found and seized where the name of person in favour of whom this power is given is not

written but it is also signed by Smt. Reena Mathur. Further Smt. Reena Mathur has written a Will for this property. For the same property Sale Deed, General Power of Attorney and Will is prepared on the same date. This was done by Smt. Reena Mathur because she received cash consideration of the property from the appellant. After a substantial gap of time the appellant retracted from the statement which is nothing but an effort to avoid the tax liability. The statement of Smt. Reena Mathur after search is not reliable because this does not disprove the signature of her on sale deed prepared on stamp paper, in this sale deed cash receipt of Rs.20,00,000/- is noted and Smt. Reena Mathur is an interested party and admission by her will cast tax liability on her. He further relied on Page 66 of seized annexure **(PB 120)** to held that this plot has been subsequently sold for Rs.32.93 lacs (correct amount Rs.33.29 lacs) as against Rs.13,81,000/- (9,70,000 + 4,11,000) in the month of May & August, 2018. Accordingly by relying on the various case laws, he confirmed the addition made by AO.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee submitted that both the lower authorities on the basis of statement of assessee dated 12.09.2018 recorded u/s 132(4) where he has admitted that he has purchased the property from Smt. Reena Mathur for Rs.20,00,000/- and on the basis of unexecuted Sale Agreement, Power of Attorney & Will signed by Smt. Reena Mathur where the name of buyer/name of person in whose favour it has been executed has been left blank but were found in the possession of assessee made/confirmed the addition in the hands of assessee by treating it as unexplained investment u/s 69 of the Act. Regarding statement of assessee dated 12.09.2018 recorded u/s 132(4) it is

submitted that immediately thereafter assessee vide letter dt. 23.10.2018 to DDIT, Investigation, Ajmer (**PB 51-64, specific Pg 60**) retracted from his statement stating that his name is not written in any of the document and that Smt. Reena Mathur has subsequently sold this property to third person which may be verified. He has neither purchased this property nor made any payment towards the said purchase. To examine this fact summon u/s 131 of IT Act was issued by DDIT, Investigation, Ajmer to Smt. Reena Mathur. Smt. Reena Mathur vide letter dated 27.11.2018 (**PB 121**) submitted that as she was in urgent need of funds she has given these documents to assessee so that in her absence assessee can sold the plot by filling the name of buyer and receive the sale amount. However, later on this plot was sold by her in two parts for which she has received the amount through cheque and the assessee has nothing to do with this. Thus the documents which she has given to assessee have become ineffective. The DDIT, Investigation, Ajmer after considering this reply has not taken any further action. Hence the statement of assessee which has been immediately retracted thereafter cannot be the basis for making the addition.

3.1 So far as unexecuted sale agreement, Power of Attorney & will signed by Smt. Reena Mathur which were found in the possession of assessee are concerned, it is submitted that assessee's name is not written in any of these documents. Smt. Reena Mathur vide letter dated 27.11.2018 (**PB 121**) has explained the reason as stated above for keeping these documents with the assessee. Subsequently she has sold this plot in two parts to Smt. Padmini Meena vide sale deed dated 17.05.2018 for Rs.4,11,000/- (**PB 122-135**) & to Shri Praveen Barotiya vide sale deed dated 07.08.2018 for Rs.9,70,000/- (**PB 136-147**) and has received the

amount through cheque. Thus all the documents which have been kept with the assessee have become ineffective and hence no addition can be made in the hands of assessee on the basis of these documents.

3.2 It may be noted that Smt. Reena Mathur has declared capital gain on sale of this plot in AY 2019-20. The fact that this plot is sold to Smt. Padmini Meena and Shri Praveen Barotiya is not in dispute. Therefore, in case addition is made on account of unexplained investment in the year under consideration in the hands of assessee, the AO ought to have computed capital gain/loss on subsequent sale of this plot in AY 2019-20. Having not done so, it is not correct on part of the lower authorities to make addition on account of alleged unexplained investment in the plot only on surmises & conjectures.

3.3 The Ld. CIT(A) has referred to Page 66 of Exhibit 21 of Annexure AS (**PB 120**) to presume that this plot was finally sold at around Rs. 34,00,000/- in which assessee has taken his share of cash plus some profit and Smt. Reena Mathur might have taken the money transacted by cheque. This paper nowhere leads to such inference. As per the calculation made on this paper the DLC value of land is worked out at Rs.6,00,000/- whereas market value is estimated at Rs.32.93 lacs. The actual sales consideration is Rs.13.81 lacs (9.70 lacs + 4.11 lacs). Thus the actual sales consideration is much more than the DLC value. Had the market value estimated on this paper is correct, the AO ought to have calculated capital gain based on the amount recorded on this paper. However, this is not done. Hence once on the basis of this paper no adverse inference is drawn, no addition for alleged unexplained investment of Rs.20,00,000/- in the year under consideration can be made.

3.4 The Ld. CIT(A) has made certain observations at Pages 7 to 16 of his order and relied on certain case laws. He has stated that retraction of statement after a considerable time is not acceptable. However, he ignored the fact that retraction is made within 40 days of recording of statement u/s 132(4) which cannot be said to be after a considerable lapse of time. Further, Smt. Reena Mathur in post search proceedings has filed a letter dated 27.11.2018 to DDIT, Investigation, Ajmer explaining the correct facts. This has not been controverted. Therefore, addition confirmed by Ld. CIT(A) is without appreciating the correct facts.

In view of above, addition of Rs.20 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 rival contentions, perused the material on record and gone through the orders of revenue authorities. We note that both the lower authorities on the basis of statement of the assessee dated 12.09.2018 recorded u/s 132(4) wherein he has admitted that he has purchased the property from Smt. Reena Mathur for Rs.20,00,000/- and on the basis of unexecuted Sale Agreement, Power of Attorney & Will signed by Smt. Reena Mathur, wherein the name of buyer/name of person in whose favour it has been executed has been left blank but were found in the possession of assessee, made/confirmed the addition in the hands of assessee by treating it as unexplained investment u/s 69 of the Act. However, we find that assessee vide letter dated 23.10.2018 to DDIT, Investigation, Ajmer retracted from

his statement stating that his name is not written in any of the documents and that Smt. Reena Mathur has subsequently sold this property to third person. To examine this fact summon u/s 131 of IT Act was issued by DDIT, Investigation, Ajmer to Smt. Reena Mathur who vide letter dated 27.11.2018 stated the reasons as to why these documents were given by her to the assessee and also admitted that later on this plot was sold by her to other persons on which she also declared capital gain in AY 2019-20. We find that during the course of search, no evidence was found to prove that assessee has paid Rs.20,00,000/- to Smt. Reena Mathur. The statement given u/s 132(4) is also retracted within 40 days of recording the statement. Smt. Reena Mathur also affirmed that she has sold this plot to some other persons and not to the assessee. Thus in the absence of any material on record that assessee has paid Rs.20,00,000/- to Smt. Reena Mathur, addition confirmed by lower authorities is not justified. Hence the same is deleted. The ground of 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. 307/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar