

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

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

**ITA Nos. 159/Jodh/2019  
(ASSESSMENT YEAR- 2013-14)**

Shri Manohar Singh 7/55 K.K. Colony, Basni, 1 <sup>st</sup> Phase, Jodhpur.	Vs	Income Tax Officer, Ward-1(3), Jodhpur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AJCPS 2699 Q</b>		

(Virtual hearing)

<b>Assessee By</b>	Shri Amit Kothari- C.A.
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	13/07/2023
<b>Date of Pronouncement</b>	04/10/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax-1, Jodhpur [herein after “Ld.CIT(A)”] dated 13.03.2019 for the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

*“1. The ld. CIT(A) has erred in sustaining the ex-parte order u/s 144 made by the ld. AO which is bad in law and bad on facts and is contrary to the principles of natural justice.*

*The best judgment assessment is highly arbitrary in the nature as all the credits in the bank account had been included as income.*

*2. The ld. CIT(A) has erred in sustaining the following deposit of cash in the bank account of the appellant. The addition so sustained is bad in law and bad on facts:*

<i>a. Punjab National Bank</i>	<i>:</i>	<i>Rs. 46,92,000/-</i>
<i>b. Federal Bank Ltd.</i>	<i>:</i>	<i>Rs. 16,54,000/-</i>
<i>c. ICICI bank</i>	<i>:</i>	<i>Rs. 25,000/-</i>
<i>(prop. Shyam Arts &amp; Crafts)</i>		
<i>d. ICICI bank</i>	<i>:</i>	<i>Rs. 5,000/-</i>
<i>e. Federal Bank</i>	<i>:</i>	<i>Rs. 15,000/-</i>
<i>(Prop. Shyam Arts &amp; Crafts)</i>		
<i>Total</i>	<i>:</i>	<i>Rs. 63,91,000/-</i>

*The addition so sustained is bad in law and bad on facts.*

*3. The ld. CIT(A) has erred in sustaining the addition of Rs. 30,92,536/- on account of deposit in Punjab National Bank for deposits other than cash, which is bad in law and bad on facts.*

*4. The ld. CIT(A) has erred in sustaining the addition of Rs. 78,96,568/- on account of deposit in Federal Bank Ltd. for deposits other than cash, which is bad in law and bad on facts.*

*5. The ld. CIT(A) has erred in sustaining credit of Rs. 50,00,000/- in SBBJ, Boranada, while the source of the credit was duly explained. The addition is bad in law and bad on facts.*

*6. The ld. CIT(A) has erred in sustaining the addition of Rs.19,421/- for credit in bank account for LIC commission. The addition so sustained is bad in law and bad on facts.*

*7. The ld. CIT(A) has erred in sustaining interest charged.*

*8. The initiation of penalty proceedings is also bad in law.*

*9. The appellant crave liberty to add, amend, alter, modify or delete any of the ground of appeal on or before its hearing before your honour.”*

3. Brief facts of the case are that the assessee filed the Return of Income for A.Y. 2013-14 on 30.03.2015 declaring total income at Rs. 1,90,200/-. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 03.09.2015. During the course of assessment proceedings the assessee was provided proper opportunities by the AO but the assessee had not complied with, therefore the AO completed the assessment on the basis of available information on records. Accordingly, the assessment was completed u/s 144 of the Act on 30.03.2016 determining the total income at Rs. 2,25,89,725/- making the additions/disallowances as mentioned in in the order of assessment.

4. Aggrieved from the order of assessment the assessee preferred an appeal before the Commission of Income Tax, (Appeals)-1, Jodhpur. The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“The onus of proving the source of a sum of money found to have been received by an assessee is on him. In the instant case the appellant had not proved the source of cash credits. Further he had not established the identity and capacity of its creditor from whom he supposed to have taken amount/loan through cheques. This fact is even more glaring the appellant failed to prove his stand during the assessment proceedings and even

during the appellate proceedings, he was given another opportunity, inspite of that he chose to not prove the transactions to the satisfaction of the assessing officer.

In view of facts of the case and legal position as discussed above, I hereby upheld the additions made by the AO. The Ground Nos. 1 to 4 are treated as dismissed. Appellant fails on these grounds.

5. The ground Nos. 5 and 6 raised by the appellant are regarding initiation of penalty proceedings under Section 271(1)(b) and 271(1)(c) of the Act, respectively. However, the issue of initiation of penalty proceedings under Section 271(1)(b) and 271(1)(c) of the Act being premature at this stage, both the grounds are dismissed.

6. The ground No. 7 raised by the appellant is regarding charging of interest amounting to Rs. 24,49,836/- u/s 234B of the Act. This being consequential in nature, the AO is directed to allow relief as per this order and charge interest u/s 234A, 234B, 234C and 234D of the Act as per law. Accordingly this ground is being treated as duly disposed off hereby.

7. Ground No. 8 is general in nature which does not require any specific adjudication thus is being treated as duly disposed off hereby.

8. In the result, the appeal is Dismissed.”

5. As the assessee not received any favor from the appeal filed before Id. CIT(A), the present appeal filed against the said order of the Id. CIT(A) dated 13.03.2019 before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below:-

“May It Please Your Honours’

The appellant respectfully submits following brief submissions before your honour :

## 1. Re : Gr. No. 1 : Validity of assessment

The only contention of the appellant is that the ld. CIT(A) has erred in sustaining the ex parte order u/s 144 made by the ld. AO which is bad in law and bad on facts, and even in the remand proceedings, no appreciation of facts had been done, and simply supported the addition made. The additions made are arbitrary in nature.

## 2. Re : Gr. No. 2 to 5 : Addition for deposit in Bank account :

## 1. The first addition relates to following deposits made in cash in the bank accounts of the appellant during the year under consideration :

a. Punjab National Bank	:	Rs.46,92,000/-
b. Federal Bank	:	Rs.16,54,000/-
c. ICICI		
Prop. Shyam Arts & Crafts	:	Rs. 25,000/-
d. ICICI Bank	:	Rs. 5,000/-
e. Federal Bank		
f. Prop. Shyam Arts & Crafts	:	Rs. 15,000/-
 Total	:	 Rs. 63,91,000/-

## 2. It was submitted that the aforesaid deposit was made out of withdrawals made from the bank account, and copies of the all the bank statements was submitted before the ld. AO as well as before the ld. CIT(A) and the same is annexed at page 15-29 of the paper book submitted. A summary of the cash fund available and cash deposit was also submitted at page 40 of the paper book, and the same is summarized hereunder :

Date	Bank	Withdrawal	Deposit	Balance
Opening		90,110		90,110
18.4.12	Federal Bank(FB)	10,000		1,00,110

23.4.12	FB	10,000		1,10,110
23.4.12	FB	5,000		1,15,110

9.5.12	FB		50,000	65,110
11.5.12	FB		10,000	55,110
18.5.12	FB	1,50,000		2,05,110
23.5.12	FB	10,000		2,15,110
28.5.12	FB	10,000		2,25,110
29.5.12			45,000	1,80,110

29.6.12	FB		30,000	1,50,100
29.6.12			8,000	1,42,110
2.7.12	FB	85,000		2,27,110
4.7.12	FB		31,000	1,96,110
7.7.12	FB	11,00,000		12,96,110
9.7.12.	FB	10,000		13,06,110
9.7.12	FB	3,00,000		16,06,110
26.7.12	PNB		5,000	16,01,110
31.7.12	FB		32,000	15,69,110
3.8.12	PNB		5,00,000	10,69,110
7.8.12	FB	5,00,000		15,69,110
13.8.12	PNB	10,00,000		25,69,110
18.8.12	PNB		3,65,000	22,04,110
24.8.12	PNB		18,000	21,86,110
27.8.12	PNB		1,50,000	20,36,110
6.9.12	ICICI Bank		5,000	20,31,110
10.9.12	FB	15,00,000		35,31,110
20.9.12	ICICI Bank		25,000	35,06,110
21.9.12	Federal Bank		15,000	34,91,110
30.10.12	FB	10,00,000	3,00,000	41,91,110

9.11.12	PNB	4,00,000		45,91,110
9.11.12	PNB	3,00,000		48,91,110
10.11.12	PNB	5,00,000		53,91,110
12.11.12	FB	2,50,000	8,00,000	48,41,110
22.11.12	PNB	1,00,000		49,41,110
1.12.12	PNB		6,00,000	43,41,110
3.12.12	PNB		7,00,000	36,41,110
4.12.12			8,00,000	28,41,110
11.12.12			3,00,000	25,41,110
24.12.12	PNB	80,000		26,21,110
18.1.13	PNB		4,75,000	21,46,110
25.1.13	PNB		12,000	21,34,110
2.3.13	PNB		1,50,000	19,84,110
5.3.13	PNB		3,00,000	16,84,110
9.3.13	PNB		2,00,000	14,84,110
9.3.13	PNB		1,15,000	13,69,110
25.3.13	PNB		3,50,000	10,19,110
	Total	74,10,110	63,91,000	10,19,110

3. As regards the second addition of Rs. 30,92,536/- is concerned your kind attention is invited towards page 2 of the paper book and page 33 of the paper book wherein the complete details of these amounts deposited in the bank was submitted before the authorities below :

Date	Amount	Particulars
1.9.12	8,697/-	Bank Interest credited by bank
8.9.12	5,00,000/-	Ch. No. 614349 received from John Abrham
10.9.12	10,00,000/-	Ch. No. 0459397 received from John Abrham
7.11.12	5,00,000/-	Ch. No.119339 received from John

		Abrham
22.11.12	10,00,000/-	Ch. No. 01105868 received from John Abrham
14.12.12	29,000/-	Loan from LIC of India
14.12.12	22,000/-	Loan from LIC of India
14.12.12	25,000/-	Loan from LIC of India
1.3.13	7,847/-	Bank Interest credited by bank
Total	30,92,536/-	

4. All the above payments were by account payee cheques or drafts and some are loan from LIC which is also evident from the copy of the bank statement submitted (paper book page 21 bank statement), some are bank interest, which hardly warranted any suspicion or disbelief. The addition on this account was uncalled for and may kindly be deleted.
5. The third addition related to addition of Rs. 76,96,568/- being deposited in Punjab National Bank. The complete details of these deposits was also submitted to Id. AO vide letter dated 6.8.2018 at paper book pages 33, the complete details of these deposits was submitted and the details of the same are as under :

Date	Amount	Particulars
5.4.12	45,761/-	R.D. Account Closure amount
5.4.12	13,282/-	R.D. Account Closure amount
5.4.12	13,282/-	R.D. Account Closure amount
5.4.12	13,282/-	R.D. Account Closure amount
5.4.12	13,282/-	R.D. Account Closure amount
5.4.12	13,282/-	R.D. Account Closure amount
5.4.12	11,228/-	R.D. Account Closure amount
5.4.12	11,228/-	R.D. Account Closure amount
5.4.12	11,228/-	R.D. Account Closure amount
5.4.12	11,228/-	R.D. Account Closure amount

5.4.12	11,228/-	R.D. Account Closure amount
14.5.12	1,70,800/-	Shri Surendra Kumar
2.7.12	1,01,553/-	R.D. Account Closure amount
6.7.12	8,00,000/-	Ch.838095 of PNB from John Abraham
6.7.12.	7,00,000/-	Ch.147148 of PNB from John Abraham
4.8.12	25,00,000/-	Ch. From Manohar Singh (appellant own account with PNB tras.)
8.8.12	7,27,000/-	Gold Loan Taken
17.8.12	2,35,000/-	Gold Loan Taken
6.9.12	5,00,000/-	Ch. 654414 of Manohar Singh (appellant own account with SBBJ)
10.9.12	9,90,000/-	Appellant own account transfer Shyam Enterprises
10.9.12	10,00,000/-	Shyam Arts and Crafts Appellant own account transfer
29.9.12	3,964/-	Bank Interest SB Account
Total	78,96,568/-	

6. As regards the deposit of Rs. 50,00,000/- being loan taken from Shri Om Prakash Soni, and complete details were given. His PAN was ADSPS9651A and amount in question was received through ch. No. 786597 of SBBJ. The copy of cheque issued by him and the immediate source of the money received on account of repayment of earlier advance given by him to Goyal Hospital and Research Centre Private Limited, received back by him, was furnished at paper book pages 30 and 31. The deposit in question was therefore fully explained.
7. Your kind attention is also invited towards following decisions which supports the contention that the addition was not justified in the case of the appellant.

- Addl. CIT vs. Bahri Bros. P. Ltd. (1985) 154 ITR 244 (Pat)

At page 244

Held, that the assessee filed details of loans stating the nature and the mode of transactions. The creditors gave the amount in question to the assessee by account payee cheques which were encashed by the assessee through its own bank. The assessee had also submitted a copy of the certificate of the bank to the bank. The assessee had also submitted a copy of the certificate of the bank to the effect that the cheques in question, given by the creditors, were honoured in favour of the assessee. Even the brokerage amount was also paid through cheques. When the assessee disclosed the names of the creditors and the names of the banks on which the cheques were drawn, the assessee discharged the primary onus and the assessee not only disclosed the identity of the creditors but also the sources of income. Then the onus shifted on the Department to verify. The creditors were having bank accounts. Hence, they were known not only to the bank but they were introduced by a third person to the bank. It could not be said that the creditors were fictitious persons.

- CIT vs. Ram Narain Goel (1997) 224 ITR 180 (P&H)

The Tribunal found that the moneys had been advanced by account payee cheques, and had been returned by the assessee with interest by account payee cheques, that copies of bank statements had been filed, that the creditors had filed confirmation letters, had appeared before the Commissioner (Appeals) and admitted having advanced money to the assessee and had filed returns of their incomes. The Tribunal, therefore, took the view that all the cash credits stood duly explained by sufficient evidence and, therefore, there was no justification for any addition for any of the cash credit entries. The entire addition was thus deleted. On an application to direct a reference :

Held, dismissing the application, that no question of law arose from the Tribunal's order. The finding of fact given by the Tribunal was based on the material on record. The Tribunal correctly took the view that the assessee was not bound to prove the source of the loans. Suspicion, howsoever strong, could not take the place of evidence or proof."

- CIT vs. Orissa Corporation P. Ltd. (1986) 159 ITR 78 (SC)

“In the accounts of the respondent, a private company, for the accounting year ending December 31, 1961, relevant to the assessment year 1962-63, there were three cash credits aggregating to Rs.1,50,000. The three amounts were shown to have been received by way of explanation, the respondent produced before the Income-tax Officer the letter of confirmation and the discharged hundis and gave particulars of those creditors who were assesseees and whose general index numbers were with the Department. Since the respondent, after making attempts, could not produce the parties, the Income-tax Officer, on its request, issued summons under s. 131 of the Income-tax Act, 1961, to the creditors, which however were returned unserved with the remark “left”. The Tribunal further found that the creditors, while being assessed, had admitted that they had allowed their names to be lent without giving loans and also gave a list of assesseees but the respondent’s name did not figure in it. The Income-tax Officer treated the sum of rs.1,50,000 as unexplained income and added it to the respondent’s income and the Inspecting Assistant Commission also imposed a penalty of Rs. 50,000 under s. 271(1)(c). But the Tribunal held that because the respondent could not produce the parties, it did not follow automatically that an adverse inference should be drawn that the amount represented undisclosed income of the respondent and that the Revenue was not justified in drawing the adverse inference and adding the amounts of the cash credits to the income of the respondent and also deleted the imposition of penalty. Both the Tribunal and the High Court rejected the applications of the Department for reference. On appeal to the Supreme Court :

Held, that in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were

creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.

- Tolaram Daga vs. CIT (1966) 59 ITR 632 (Assam)

Where, in the accounts of a firm, a deposit is shown to have been made by a third party, the wife of a partner in the firm (the assessee), who claims the money as hers and that it was she that made the deposit, and the genuineness and regularity of the accounts have not been challenged, the accounts are relevant and are prima facie proof of the entries and the correctness thereof under s. 34 of the Evidence Act, and the entry therein is prima facie proof that the amount in question was deposit stands.

- Nemi Chand Kothari vs. CIT & Anr. (2003) 264 ITR 254 (Gau)

A person may have funds from any source and an assessee, on such information received, may take loan from such a person. It is not the business of the assessee to find out whether the source or sources from which the creditor had agreed to advance the amounts were genuine or not. If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep the same in the bank, the said amount cannot be treated as income of the assessee from undisclosed source.

-----If s. 106 (of the Evidence Act) and 68 have to survive together, the logical interpretation will be that while the assessee has to prove only his special

knowledge, i.e., the source from where he has received the credit and once he discloses the source from which he has received the money, he must also establish that so far as his transaction with his creditor is concerned, the same is genuine and his creditor had the creditworthiness to advance the loan, which the assessee had received. When the assessee discharges the burden so placed on him, the onus, then, shifts to the Assessing Officer if the Assessing Officer wishes to assess the aid loan as the income of the assessee from undisclosed source, to prove either by direct evidence or indirect / circumstantial evidence that the money, which the assessee received from the creditor actually belonged to, and was owned by, the assessee himself. If there is direct evidence to show that the loan received by the assessee actually belonged to the assessee, there will be no difficulty in assessing such amount as the income of assessee from undisclosed source; but if there is no direct evidence in this regard, then, the indirect or circumstantial evidence has to be conclusive in nature and must, in such circumstances, unerringly point to the assessee as the person from whom the money had actually flown to the hands of the sub-creditor and, then, routed through the hands of the sub-creditor to the hands of the creditor. For this purpose, the circumstantial evidence has to be not only consistent with the hypothesis that the money belonged to the assessee, but that this hypothesis must also be inconsistent with the hypothesis that none other than the assessee owned the said money. If the conclusion be that the money received, as loan, by the assessee may or may not belong to him or if the possibility exists that the money received, as loan, by the assessee may not belong to him, then, in none of such two cases, the loan amount can be conclusively treated as income from undisclosed source of the assessee inasmuch as for assessing the money as income of the assessee from undisclosed source, there must be clinching evidence to show that the money actually belonged to none but the assessee himself. If no such clinching evidence is available, the money may be treated as the income from disclosed source of the creditor or of the sub-creditor, as the case may be.

-----Once the assessee had established that he had received the said amounts from the creditors aforementioned by way of cheques, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter the burden had shifted to the Assessing Officer to prove the contrary. On mere failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, such failure, as a corollary, could not have been and ought not to have been, under the law, treated as the income from the undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee.

- Dy. CIT vs. Rohini Builders (2002) 256 ITR 360 (Guj)

The Tribunal found that the assessee had discharged the initial onus which lay on it in terms of s. 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers / permanent account numbers and the copies of assessment orders wherever readily available, that it had also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee was not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source

- *CIT vs. Smt. P.K. Noorjahan (1999) 237 ITR 570 (SC)*

In the corresponding clause of the Bill which was introduced in Parliament, while inserting s. 69 in the IT Act, 1961, the word “shall” had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word “may”. This clearly indicates that the intention of Parliament in enacting s. 69 was to confer a discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and

the Income-tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under s. 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under s. 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.

Held, dismissing the appeal, that in the instant case, the Tribunal had held that the discretion had not been properly exercised by the ITO and the Appellate Assistant Commissioner taking into account the circumstances in which the assessee was placed and the Tribunal had found that the investments could not be treated as income of the assessee. The High Court had agreed with the said view of the Tribunal. There was no error in the finding recorded by the tribunal. Sec. 69 could not be invoked in respect of the investment of the assessee.

In view of above facts and position of law the addition made may kindly be deleted.

3. Re : Gr. No. 6 : Addition of Rs. 19,421/- for LIC Commission :

This ground of appeal is not pressed.

4. Re : Gr. No. 7 : Interest charged.

The appellant pray for consequential relief.

5. Re : Gr. No 8 : Penalty proceedings

The appellant pray that additions made are not justified and the very initiation of penalty proceedings is not justified.”

6. Per contra, the ld. DR relied upon the orders of the ld. CIT(A) and submitted that the assessee is a non complainant and based on the detailed finding recorded in the order of the ld. CIT(A), the appeal of the assessee is required to be dismissed.

7. We have heard both parties and perused the materials available on record. The first ground raised by the assessee is validity of the proceeding's u/s 144 of the Act and there is no substance or material arguments placed by the assessee before us and therefore, ground No. 1 raised by the assessee stands dismissed.

7.1 So far as ground No. 2, the Bench noted that the addition for an amount of Rs. 63,91,000/- made in the order of the assessment is basically for the cash deposited by the assessee on various dates for which the Assessing Officer has jotted down the total cash deposited and added back to the income of the assessee for an amount of rupees 63,91,000/- as mentioned herein below in various bank accounts maintained by the assessee:-

<i>a. Punjab National Bank</i>	:	<i>Rs. 46,92,000/-</i>
<i>b. Federal Bank Ltd.</i>	:	<i>Rs. 16,54,000/-</i>
<i>c. ICICI bank</i>	:	<i>Rs. 25,000/-</i>

<i>(prop. Shyam Arts &amp; Crafts)</i>	
<i>d. ICICI bank</i>	<i>: Rs. 5,000/-</i>
<i>e. Federal Bank</i>	<i>: Rs. 15,000/-</i>
<i>(Prop. Shyam Arts &amp; Crafts)</i>	
<i>Total</i>	<i>: Rs. 63,91,000/-</i>

Since, the order of the Assessing Officer passed ex-parte, we find from the paper book filed by the assessee and submission made before the Id. CIT(A) that the assessee has explained the nature of cash deposited in to the bank account and source thereof in the appellate proceedings. In the remand proceedings, the Id. AO noted that the assessee himself did not appear but his Authorized Representative appeared and produced the photo copy of the documents based on which the Assessing Officer did not find it fit to accept the explanation given by the assessee. Therefore, in the remand proceedings also the AO did not appreciate the contention raised by the assessee merely on the ground that the assessee himself did not appear and did not pinpoint any defect in the submission so made which are supported with the evidence. The Assessing Officer, through Id. DR even before the proceeding before us did not controvert the material available on record. Therefore, we find no reason to disbelieve the explanation furnished by the assessee. The Bench also found from the order of the Id. CIT(A) who admitted the additional evidences filed by the assessee and were forwarded to the Id. AO. The

relevant observation of the Id. CIT(A) is mentioned in para 4.2 of his order and the relevant part of the observation made in this regard is reproduced hereinbelow: -

“In support of his contention, he produced confirmation of Sh. Om Prakash Soni back statements, copy of sale deed and various other evidences and requested to entertain the same as additional evidence under Rule 46A of the I.T. rules, 1962. Following the principles of natural justice, additional evidences were admitted and forward to the AO calling for his report after making verifications/inquiry. AO’s report has been reproduced at Sl. 4.1.1, above which is self-explicit.”

Thus, based on this additional evidences, the Id. AR appearing on behalf of the assessee demonstrated before us that similar chart as represent in submission point no. 2 which explains the deposit of cash and its source of particularly the earlier withdrawal made by the assessee and the same are not disputed. Since this additional evidence has already been admitted and sent back to the AO, the Id. AR of the assessee argued that it is non disputed fact that the Id. CIT(A) admitted the additional evidence and both the lower authorities have not challenged the contention raised by the assessee which is supported with the evidence showing the source of cash . Hence, instead of again remanding back the matter to the file of the Id. CIT(A) or that the AO, based on the prayer of the assessee the bench proceeded to decide the issue based on the material available on record. We find from the records the

remand report of the Assessing Officer in the proceedings before the Id.

CIT(A). The relevant part of the remand report is reiterated herein below:-

निर्धारती श्री मनोहर सिंह राजपूत, 7/55, के के. कॉलोनी, जोधपुर की आय विवरणी की धारा 143(3) में निर्धारण करते समय सामने आया की निर्धारती के विभिन्न बैंकों के खातों में नकद जमा की गई है। पंजाब नेशनल बैंक, मधुबन कॉलोनी, जोधपुर सेविंग संख्या 88600010015868 में रु.46,92,000/- फेडरल बैंक लि. जोधपुर के खाते संख्या 15540100015823 में रूपये 16,54,000/- आईसीआईसीआई बैंक लि. जोधपुर के खाते संख्या 080005500259 में रु.25,000/- और मै. श्याम आर्ट एण्ड काफटस प्रो. मनोहर सिंह के बैंक आईसीआईसीआई बैंक लि. जोधपुर के खाते संख्या 016701528294 में रु. 5000/- और फेडरल बैंक लि., जोधपुर के खाते संख्या 15540200001004 में रु. 15,000/- इसी प्रकार पंजाब नेशनल बैंक, जोधपुर के खाते संख्या 3886000100105868 में रूपये 30,92,536/- फेडरल बैंक लि. जोधपुर के खाते संख्या 15540100015823 में रु.78,96,568/- फेडरल बैंक लि. जोधपुर के खाते संख्या 15540100015823 में रु.78,96,568/- स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर, जोधपुर के खाते संख्या 6103809828 में रु.50,00,000/- जमा है।

मूल्यांकन की कार्यवाही के दौरान यह देखा गया है कि कुल जमा रूपये अस्पष्टीकृत जमा के रूप में है। निर्धारती ने अपनी आय के बदले में उपरोक्त प्रविष्टियों के संबंध में कोई आय नहीं दिखाई है व निर्धारती ने उपरोक्त बैंकों में जमा राशि के बारे में कोई स्पष्ट प्रतिक्रिया व्यक्त नहीं कि निर्धारित अधिकारी ने पूरे नकद जमा राशि के स्रोत की व्याख्या करने के लिए निर्धारती को विभिन्न अवसर दिये लेकिन निर्धारती ने जमा राशि के स्रोत की व्याख्या नहीं कर सका। निर्धारती के द्वारा अधिकृत अधिवक्ता द्वारा पेश किए गये दस्तावेज से यह स्पष्ट नहीं होता है कि विभिन्न बैंकों में जमा राशि का स्रोत निर्धारती के पास किस आधार पर आया है। इसलिये निर्धारण अधिकारी ने पूरे नकद जमा राशि को निर्धारती की आय में जोड़ दिया। निर्धारती की कुल आय 2,23,99,525/- पर निर्धारण किया गया।

आयकर आयुक्त (अपील)-प्रथम, के पत्र क्रमांक 634 दिनांक 24.07.2018 द्वारा निर्धारती की चाही गई रिमाण्ड रिपोर्ट के लिए निर्धारती को दिनांक 27.07.2018 को बैंक में जमा राशि के साक्ष्य प्रस्तुत करने के संबंध में पत्र लिखा गया। लेकिन निर्धारती स्वयं हाजिर नहीं होकर अपने अधिकृत अधिवक्ता द्वारा जो दस्तावेज निर्धारण के पूर्व में प्रस्तुत किये थे उनकी छाया प्रति पुनः प्रस्तुत की है जिससे आज भी बैंक में जमा राशि के साक्ष्यों की स्पष्टता नहीं है। अतः निर्धारती के अधिवक्ता द्वारा प्रस्तुत किये गये दस्तावेज को पत्र के साथ संलग्न कर आवश्यक कार्यवाही हेतु प्रेषित है।

The contention of the Assessing Officer in the remand proceedings is that the assessee has not justified the source of cash deposit even in remand proceedings but at the same time the ld. AR of the assessee demonstrated with the written submission filed before the ld. CIT(A) wherein the assessee has by way of chart explained that the cash deposit is the source from the earlier withdrawal made by the assessee. Since these details are already filed and the Bench noted that the assessee has deposited the cash into 3 bank accounts maintained by the assessee i.e. Punjab National Bank, Federal Bank Limited and ICICI Bank only based on the perusal day to day deposit and withdrawal of chart given by the assessee, we are of the considered view that the withdrawal is to the extent of Rs. 74,10,110/- whereas the assessee has deposited cash to the extent of Rs. 63,91,000/-. Hence, the cash deposited into bank account is fully covered by the earlier withdrawal made by the assessee. Looking to the facts already available on record, we do not find any justification in the finding of the lower authorities that the deposit of cash is not sourced from the earlier withdrawal. The only contention of the lower authorities that the assessee has not offered any income to justify the deposit of cash in the bank account whereas we find from the day to day withdrawal and deposited chart made by the assessee, the assessee has sufficient withdrawal so as to justify the deposit of Rs. 63,91,000/- and

therefore, on this issue that there is no reason to sustain the addition and therefore, the same is deleted.

7.2 In ground No. 3 raised by the assessee is in relation to sustain the addition of Rs. 30,92,536/- on account of deposit in Punjab National Bank for other than cash deposit transaction for which the Id. AR of the assessee filed a detailed date wise giving source of the said money so received in the bank account of the assessee. For this amount it is submitted that amount of Rs. 8,697/- and Rs. 7,847/- totaling to of Rs. 16,494/- is on account of bank interest and making addition for this amount as unexplained credit in the bank account was not justified. Further as it is evident from the bank statement that Rs. 29,000/-, Rs. 22,000/- and Rs. 25,000/- totaling to Rs. 76,000/- was payment received from LIC as loan against policy which cannot be termed as income. In the remand proceeding the assessee has clearly submitted that two cheques of Rs. 10,00,000/- each and two cheque of Rs. 5,00,000/- each were received from Mr. John Abrham. This fact is verifiable from the bank statement and the same is annexed in the paper book page 16 & 17. It is also placed on record that the assessee as power of attorney sold the property to the tune of Rs. 2.70 cr. To St. Annes Senior Secondary School, which is also submitted in the assessment proceeding and in the remand proceeding. The assessee also submitted that Mr. Abrham is

one of the trustee. The ld. AO in the remand proceeding submitted on the issue that

मूल्यांकन की कार्यवाही के दौरान यह देखा गया है कि कुल जमा रूपये अस्पष्टीकृत जमा के रूप में है। निर्धारती ने अपनी आय के बदले में उपरोक्त प्रविष्टियों के संबंध में कोई आय नहीं दिखाई है

Thus, the bench noted that even in the remand proceeding the ld. AO based on the details so submitted failed to prove that the amount received by the cheque is the undisclosed income of the assessee. Even though the details available on record the ld. AO did not deem it fit to verify the veracity of the submission made by the assessee by invoking the provision of section 133(6) of the Act and did not bring on record anything contrary that the credit represent the income of the assessee. Thus, when the assessee by way of evidence proved source of the amount credited in the bank account the same merely the assessee has not shown sufficient income cannot be added as income when the assessee has placed relevant evidence on record and the same has not been controverted by the revenue to the contention raised by the assessee. Thus, the finding of the lower authority ignoring the evidence placed on record cannot be added a sum of Rs. 30,92,536/- as income of the assessee. However, from the order of the lower authority it is not clear as to whether the income bank interest of Rs. 16,544/- is duly offered or not in the returned income of the assessee or not and if not then the same can be added

as income of the assessee after making necessary affirmation from the assessee. With this remark the ground no. 3 raised by the assessee is partly allowed.

7.3 The ground no. 4 raised by the assessee is in relation to addition of Rs. 76,96,598/-. The bench noted from the submission made before the Id. CIT(A) that Rs. 3,15,625/- ( five entries of Rs. 13,282/- and five entries of Rs. 11,228/- and one entry of Rs. 45,761/- on 05.04.2012 and Rs. 1,01,553/- on 02.07.2012) is on account of R. D. Account closure and relevant details placed on record vide page 22 and 23 of the paper book filed by the assessee. This details were submitted by the assessee in the remand proceeding but in the regard of the matter is concerned the Id. AO did not comment on submission made by the assessee but has made the reply is not but avoiding the specific comment on the issue raised. The relevant reply of the Id. AO in the remand proceeding is reproduced here in below:

आयकर आयुक्त (अपील)–प्रथम, के पत्र क्रमांक 634 दिनांक 24.07.2018 द्वारा निर्धारिती की चाही गई रिमाण्ड रिपोर्ट के लिए निर्धारिती को दिनांक 27.07.2018 को बैंक में जमा राशि के साक्ष्य प्रस्तुत करने के संबंध में पत्र लिखा गया। लेकिन निर्धारिती स्वयं हाजिर नहीं होकर अपने अधिकृत अधिवक्ता द्वारा जो दस्तावेज निर्धारण के पूर्व में प्रस्तुत किये थे उनकी छाया प्रति पुनः प्रस्तुत की है जिससे आज भी बैंक में जमा राशि के साक्ष्यों की स्पष्टता नहीं है। अतः निर्धारिती के अधिवक्ता द्वारा प्रस्तुत किये गये दस्तावेज को पत्र के साथ संलग्न कर आवश्यक कार्यवाही हेतु प्रेषित है।

Thus, on careful perusal of the above version of the ld. AO it is not disputed fact that the assessee has submitted all the relevant details. The ld. AO based on the bank statement did not find it appropriate to call for and confirm the statement of the assessee by calling the confirmation from the bank u/s. 133(6) of the Act but simply submitted that the assessee did not appear and his AR appeared and the considered that the photocopy of the document submitted is not proper. This statement of the ld. AO is not sufficient to ignore the third party evidence placed on record. Thus, the addition made on account of the amount credited on account of closure of RD account can not be considered as income of the assessee. As regards the amount of Rs. 49,90,000/- the assessee contended before the ld. AO that Rs. 25,00,000/- on 04.08.2012, Rs. 5,00,000/- on 06.09.2012, Rs. 9,90,000/- on 10.09.2012 and Rs. 10,00,000/- on 10.09.2012 is nothing but transfer from one bank account to another bank account of the assessee. The relevant evidence has been placed on record vide page no. 15,24,25 and 29 of the paper book filed by the assessee. There is no specific finding of the ld. AO in the remand proceeding and in the appellate proceeding controverting through ld. DR the statement supported with the evidence in the form of bank statement. In the absence of these we do not see any reason to sustain that addition of Rs.49,90,000/-. Further the assessee also submitted that Rs. 7,27,000/- on

08.08.2012 and Rs. 2,35,000/- on 17.08.2012 totaling to Rs. 9,62,000/- is disbursement of gold loan taken which is also specifically mentioned in the bank statement. These details were placed before the ld. AO in the remand proceeding and the ld. AO as stated here in above submitted that the assessee himself did not appear and the ld. AR appeared and therefore, the same was not considered. Once the assessee proved from the bank statement the amount credited in the bank statement is loan amount same cannot be added as income of the assessee. Thus, we see no reasons to sustain the addition of Rs. 9,62,000/- and the same is deleted. As regards the amount of Rs. 7,00,000/- and Rs. 8,00,000/- received from Abraham Family which is also stated to be loan obtained by the assessee from cheque there is no material placed on record stating this represents the income of the assessee. Thus, when the assessee proved the identity of the person by placing the details on record it is then the duty of the assessing officer to bring the contrary material on record and thus on this on account also, we see no reason to sustain the addition and the same is directed to be deleted. As regards the bank interest form the RD account saving bank account as there is no clarity in the remand report or in the submission advanced before us whether the same is offered or not and thus, to that extent the ld. AO is directed to verify this aspect of the matter and if required make the separate addition if the

amount is not already offered by the assessee. Based on these observations ground no. 4 is partly allowed.

7.4 Ground no. 5 raised by the assessee is on account of Rs. 50,00,000/- received from Shri Om Prakash Soni. For this credit he has furnished the PAN no. of Shri Om Prakash Soni (ADSPS9651A). The copy of the cash issued and the details of the immediate source of the money received on account of repayment of earlier advance given by Mr. Soni to Goyal Hospital was immediate source of the amount advanced. All these details were submitted to the Id. CIT(A) and to the Id. AO in remand proceeding. Even though these details placed on record in the paper book page 30 & 31 Id. AO through the Id. DR did not controvert the statement of the assessee and thus, once it is proved by the assessee that he has received the loan by an account payee cheque as loan and the he has proved the identity and creditworthiness of the person the addition made devoid of merit and therefore, the same is deleted.

7.5 Ground no. 6 raised by the assessee is for relating to the addition of Rs. 19,421/- for the amount credited in the bank account for LIC commission. As there is no specific submission filed by the assessee controverting the finding of the lower authority and thus the same is sustained and the ground no. 6 raised by the assessee is dismissed.

7.6 Ground no. 7 raised by the assessee is for levy of interest. The same being mandatory and consequential in nature the same is also dismissed.

7.7 Ground no. 8 raised by the assessee is initiation of the penalty by the ld. AO, as at this stage there is no information as to whether the penalty is levied or not and the said order levying the penalty is not disputed before us the ground raised being premature at this stage and thus, stands dismissed.

7.8 Ground no. 9 being general ground it does not require any adjudication and the same is not required to be adjudicated.

In the result, the appeal of the assessee is partly allowed.

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

Sd/-

(RATHOD KAMLESH JAYANTBHAI)  
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 04/10/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT

4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench