

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

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

ITA Nos. 580/Jodh/2018
(ASSESSMENT YEAR- 2009-10)

Ranjeet Sharma Village- Poharka, Tahsil-Rawatsar	Vs	Income Tax Officer Ward-Nohar, Hanumangarh.
(Appellant)		(Respondent)
PAN NO. BZTPR 8146 K		

Assessee By	Shri Jinendra Kocher –C.A.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	04/07/2023
Date of Pronouncement	15 /09/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax (Appeals), Bikaner [herein after “Ld.CIT(A)”] dated 28.09.2018 for the assessment year 2009-10.

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

“1. When name, address and PAN of concerned factories were submitted along with the copy of account (duly confirmed) for

payment of labour which was routed through assessee's bank account, whether onus to prove on the part of the assessee complied or not?

2. Whether section 68 of the I.T. Act (addition by ITO was made by invoking of the same) is applicable on the present case because there were not a single entry of cash credit during the year. The transactions (labour payment) were in the nature of trade creditors?

3. Whether notice u/s 148 by recording reasons to verify the suspicious transactions (cash deposits in bank account) & also by not specifically mentioning the quantum of tax which has escaped assessment is legally valid or not?"

2.1 Brief facts of the case are that the assessee is doing the job as supplier of Labour to various Gypsum Grinding factories at Rawatsar Tahsil. Besides he had also done sale and purchase of agricultural waste on casual basis during the under consideration i.e. A.Y. 2009-10. It is noted that during the year under consideration, the total income of the assessee was only Rs.1,44,430/- plus agricultural income of Rs.70,000/-. Therefore, the assessee had not filed the Income Tax Return. Subsequently, the AO issued notice u/s. 148 on 17-03-2016. In response to notice u/s. 148 of the Act, the assessee filed his return of income on 30-08-2016, declaring the total income at Rs. 1,44,430/- and agricultural income of Rs. 70,000/-. The AO made addition of Rs. 16,02,814/- Conclusively, the AO made addition in the hands of the assessee by holding as under:-

उक्त मजदूरी/कमीशन खातों के सत्यापन के लिए आप अपनी लेखा-बहियां अथवा कोई रजिस्टर हो तो उससे सत्यापन करवाएं एवम् साथ ही मजदूरों को भूगतान की गई मजदूरी के संबंध में आप द्वारा संधारित कोई रजिस्टर या बिल वाउचर आदि जारी किए गए हैं तो उनसे भी इन राशियों का सत्यापन करवाएं। इन कमीशन राशियों के सत्यापन के अभाव में ये राशियां आपकी कर योग्य आय में जोड़ दी जाएंगी। इस नोटिस के तहत दी गई तारीख 17.11.2016 को करदाता की तरफ से कोई जवाब नहीं आया।

करदाता द्वारा मजदूरी/कमीशन पेटे प्राप्त राशि रूपये 16,02,814/- का सत्यापन नहीं करवाया गया है, अतः आयकर अधिनियम, 1961 की धारा-68 के तहत उक्त राशि रूपये 16,02,814/- करदाता की आय मानते हुए, करदाता की करयोग्य आय में जोड़ी जाती है।

2.2 Aggrieved, from the said order of assessment, the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“ I have considered the facts of the case and appellant's submissions. The AO observed that there were various cash deposits in assessee's bank account, totaling to Rs. 44,91,000/-. The assessee claimed before the AO that he earned commission income from supply of labours to Gypsum Factories and all the payments routed through his bank account. Besides, the assessee claimed before the AO that he also earned income from sale and purchase of agricultural waste. The appellant also stated that he had kept/maintained separate receipts for both the businesses, however, payments for both the business routed through / deposited in the same bank account. The factories/their owner or any person failed to appear before the AO so as to confirm the fact of making payment against labour supply. Further, since the assessee failed to explain the labour payment by way of producing any documentary evidence, therefore, the AO treated Rs. 16,02,814/- (being amount received from four factories as detailed in the assessment order) as unexplained credit entry appearing in his bank account u/s. 68 of the Act. The appellant contended that the AO erroneously invoked the provisions of sec. 68 in respect of deposits appearing in his bank account as the same represented the routine trade creditors/ debtors accounts. However, I do find any force in appellant's this contention. According to section 68 of Income Tax Act 1961, where any sum is

found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source of the same or the explanation offered by him is not satisfactory in the opinion of A.O., the sum so credited may be charged to income tax as the income of the assessee of that previous year. In the instant case, the AO after appellant's failure in establishing that the bank deposits were receipts from these four factories against supply of labour, treated the bank deposits as unexplained and applied the provisions of sec. 68 of the Act. Though the appellant claimed that it had furnished every details to prove the bank account, however, the fact remained that it failed to produce any authorized persons of these four factories to prove that any payments were made by these factories to the assessee. Even notice sent u/s. 131 by the AO also were not complied by these factories. Prima facie onus is always on the assessee to prove the cash credit entry found in the books of account of the assessee. In landmark cases like *Kale Khan Mohammad Hanif v CIT*[1963] 50 ITR 1 (SC), *Roshan Di Hatti v CIT* [1977] 107 ITR (SC) it has been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him. Where the nature and source thereof cannot be explained satisfactorily, it is open to the revenue to hold that it is the income of the assessee and no further burden is on the revenue to show that the income is from any particular source.

An assessee can discharge his onus of proof by proving three things: Identity of the creditor, capacity of the creditor and the genuineness of the transaction in question. Once the assessee proves all three things his onus is discharged. However, facts as discussed above, clearly establish that the appellant has not proved all three ingredients of sec. 68 of the Act. Hence, the addition made by the AO at Rs. 16,02,814/- is upheld. The ground of appeal is dismissed.

Vide ground no. 2, the appellant has contended that the AO had recorded reason by misinterpretation and the notice issued was also time barred. I have gone through the appellant's submissions and I find that the AO issued notice u/s. 148 so as to examine the substantial bank deposits in assessee's bank account. It may be noted that the assessee had not filed return of income for the year under consideration. The important fact is that if the Assessing Officer has reason to believe that any income chargeable to tax has been under assessed, it would be within his legitimate power to invoke sec. 147. It has been held by the Hon'ble Supreme Court that although for re assessment of income there must exist reasons to believe that income has escaped assessment, the question whether the reason was adequate or otherwise is not for the Court to decide (*Phool Chand Bajrang Lal vs. ITO*, reported in 203 ITR 456). Further in the case of *Raymond Woolen Mills Ltd. vs. ITO*, reported in 236 ITR 34, the Hon'ble Supreme Court held that to determine

whether the commencement of re assessment proceeding was valid, it has only to be seen whether there is prima facie some material on the basis of which the Department could re-open the case. The sufficiency of the correctness of the material is nothing to be considered at this stage. In the instant case, reasons have been duly recorded by the Assessing Officer for arriving at the belief that income chargeable to tax had escaped assessment. Even otherwise, it is seen from the assessment order, the appellant had not raised any such objections before the AO. In view of the above, it is observed that there was no infirmity in issuing notice u/s. 148 of the Act. The ground no. 2 is dismissed.”

2.3 Feeling aggrieved from the order of the Id. CIT(A), the Id. AR for the assessee has filed an appeal as per grounds so raised (supra) and to this effect also repeated the following written submissions as placed before the Id. CIT(A)

“1) The assessee was doing the job as supplier of labour to various gypsum factories at Rawatsar Tahsil. Besides he was also doing the sale - purchase of agricultural waste (used as fuel) on casual basis. During the year under consideration his total income was only Rs. 144432/- plus agricultural income Rs. 70000/-, so he had not filed his ITR. But after receiving the notice u/s 148 from the ITO Nohar, Hanumangarh he submitted the ITR. During the assessment proceedings the books of accounts were submitted which were examined by the ITO.

The reason for issuance of notice u/s 148 was the cash deposit in assessee's bank account during the year under consideration. By submitting the books of accounts alongwith the bank statement during the assessment proceedings each and every entry of cash deposit in bank account was fully explained by the assessee. The ITO after verification of the same accepted as reflected in the order itself. In other words the root cause of issuance of notice u/s 148 was fully explained.

2) Bombay High Court in the case of Dulraj U Jain v/s ACIT held that," If the recorded reasons do not specify prima facie, the QUANTUM OF TAX which has escaped assessment but merely state that it would be at least Rs. 100000/- and if the reopening is to VERIFY suspicious transactions, prima facie, the reasons do not indicate reasonable belief of the AO and the notice is without jurisdiction."

In the instant case also The ITO had recorded the reason to issue notice u/s 148 to verify the cash deposit into Bank and also by not specifying the quantum of tax which has

escaped assessment, so in terms of the decision of Bombay High Court in the case of Dulraj U Jain v/s ACIT, the notice was without jurisdiction.

3) During the year under consideration the assessee has received commission from labour Rs. 54861/- for obtaining Gypsum Grinding labour work from following factories:-

Ambika Plaster Udhyog	150000/-
Jai Bhawani Plaster Industries	755814/-
Bajrang Bali Plaster Industries	285000/-
Jagdamba Plaster Industries	<u>412000/-</u>
	<u>16,02,814/-</u>

As submitted during the assessment proceedings that the assessee was the supplier of labour to various factories for Gypsum Grinding labour work. The procedure of the commission income from labours includes collection of labour charges from various factories at fixed rate of gypsum grinding and distribution of the same among the labours. Some time the labours were given advances which were adjusted from their labour payments. The assessee charges commission from labour for effectively management. He was not getting the commission from these factories.

During the assessment proceedings the copy of accounts of above factories (duly confirmed) as appeared in the books of the assessee were submitted. But the ITO did not gave weightage to them and treated the said labour payments as income of the assessee.

4) The ITO had given a letter (dated 7.11.2016) to assesses thereby fixing the date of hearing 17.11.2016 which was received by him on 17.11.2016 itself, so it was not possible for the assesses to produce the required documents on 17.11.2016. The assessee had dispatched reply to above letter on the next date (19.11.2016) which was also not taken Into consideration by the ITO while framing the order. The copy of the same in also enclosed herewith.

When name, address of the factories were given, the confirmed copy of account were submitted and all the factories are situated in the ITO's jurisdiction, On the part of the assessee the sufficient compliance of law was performed. The assesses should not be penalised for non reply of the letter by these factories. There may be a chance of not reaching the post to concerned factory in time.

Further as per order the ITO issued letter to only three factories out of four (of which confirmation submitted), It means he had accepted the labour payment of one factory. In spite of that the labour payment by all the four factories were treated as income of the assessee. This proceedings of the 170 wan against the law and facts and also arbitrary.

5) The ITO has invoked the provision of section 68 for making the addition of Rs. 1602814/- to the total income. But the Section 68 in relevant to Cash Credit accounts as

found in the books of the assessee. This section does not relate to the routine trade creditor/ debtors accounts.

In the instant case the labour payments by these factories were routed through assessee's account, so all the four factories account come under the category of routine trade creditor/ debtors and not cash credit accounts. So the provisions of section 68 was not applicable. And the addition of Rs. 1602814/- by wrong application of law deserves to be deleted.

6) The assessee had complied each and every notice/ letter issued by the ITO as and when the same reached to him. If the letter reached after the fixed date of hearing, the compliance was done late. In spite of that the ITO initiated the penalty proceedings u/s 271 (1) (b) which was against the facts and also against the law. Your honour is requested to order for cancellation of said initiation of penalty and oblize.

Keeping in view of the above submission your honour is requested to delete both the additions and oblize

2.3.1 Further, it is noted that the ld. AR of the assessee has filed a written submission before us with the prayer to delete the addition confirmed by the

ld. CIT(A) which is reproduced as under:-

“3 The assessee was engaged in supply of labour to various factories for Gypsum Grinding. The payment to labour were made by these factories at pre- determined rates through the assessee who in turn made the payment to labours according to work done by each labour. The assessee charged commission from labours for procuring the said grinding work. During the year under consideration the assessee had received commission of Rs. 54861/= from labours for obtaining Gypsum Grinding Labour Work from following Factories:-

Ambika Plaster Udhyog, Sardarsahar Road, Rawatsar (PAN ADQPJ 8960K)	150000/-
Jai Bhawani Plaster Industries, Dhannasar (PAN BABPS 1912F)	755814/-
Bajrang Bali Plaster Industries Baramsar (PAN ANXPC 9980F)	285000/-
Jagdamba Plaster Industries, Dhannasar (PAN ABFPJ 0380C)	<u>412000/-</u>
	<u>16,02,814/-</u>

The assessee had submitted the copy of accounts as appeared in the books of accounts of above factories duly mentioning therein PAN and Address as confirmation of all date wise entries. Further Owners of all factories gave their affidavits stating the above facts (copies already submitted along with appeal Form 36A). Hence The assessee had genuinely proved all the receipts of labour payments from above factories.

4) All the factory owners categorically stated in their affidavits that they had not received any notice from Income Tax Office, Nohar (Hanumangarh) regarding verification of labour payments through Ranjeet sharma. Although they admitted the payment of labour for Gypsum Grinding Wark and they had given the copy of accounts duly confirmed by them for submission to ITO. Out of the four, Only One Factory Owner shri Vijay Raj Jain Proprietor of Jagdamba Plaster Industries, Dhannasar was given summon dated 25.07.2016 under section 131 by the ITO, (The copies enclosed). Mr. Vijay Raj Jain appeared before the ITO on stipulated date 01.08.2016. Further Shri Vijay Raj Jain submitted the required documents and the ITO recorded his statement on 11.08.2016. It again showed that the ITO had hide the facts in order to justify his workings. In spite of the above facts the ITO intentionally coloured the routine trading transaction as cash credit transactions and made the additions by invoking the provisions of section 68 of the Income Tax Act.

5) The reason for issuance of notice u/s 148 was the cash deposit in assessee's bank account during the year under consideration. By submitting the books of accounts along with the bank statement during the assessment proceedings each and every entry of cash deposit in bank account was fully explained by the assessee. The ITO after verification of the same accepted as reflected in the order itself. In other words the root cause of issuance of notice u/s 148 was fully explained. Recently ITAT, Jaipur in the case of Shri Badri Narayan Choudhary v/s ITO (ITA No. 283/JP/2019) held that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him to independently assess some other income and if he intends to do so, a fresh notice u/s 148 would be necessary, we are of the considered view that the addition made by the AO towards unexplained cash deposit in assessee's bank account cannot be sustained as the very reasons for reopening the assessment has not been made the subject matter of assessment in the hands of the assessee. The ITAT, Jaipur followed the decisions of Bombay High Court's decision in the case of CIT v/s Jet Airways 331 ITR 236 and Jurisdictional Rajasthan High Court in the case of CIT v/s Shri Ram Singh 306 ITR 343.

6) Bombay High Court in the case of Dul raj U Jain v/s ACIT had held that, "If the recorded reasons do not specify prima facie, the QUANTUM OF TAX which has escaped assessment but merely state that it would be at least Rs. 100000/= and if the reopening is TO VERIFY suspicious transactions, prima facie, the reasons do not indicate reasonable belief of the AO and the notice is without jurisdiction."

In the instant case also The ITO had recorded the reason to issue notice u/s 148 to verify the cash deposit into Bank and also by not specifying the quantum of tax which has escaped assessment, so in terms of the decision of Bombay High Court in the case of Dulraj U Jain v/s ACIT, the notice was without jurisdiction.

Keeping in view of the above submission your honour is requested to delete the additions and oblige.”

2.4 Per contra, the ld. DR relied upon the orders of the ld. CIT(A).

2.5 We have heard the both parties and perused the materials available on record. In this case, it is noted that the AO made an addition of Rs.16,02,814/- with following observations.

उक्त मजदूरी/कमीशन खातों के सत्यापन के लिए आप अपनी लेखा-बहियां अथवा कोई रजिस्टर हो तो उससे सत्यापन करवाएं एवम् साथ ही मजदूरों को भूगतान की गई मजदूरी के संबंध में आप द्वारा संधारित कोई रजिस्टर या बिल वाउचर आदि जारी किए गए हैं तो उनसे भी इन राशियों का सत्यापन करवाएं। इन कमीशन राशियों के सत्यापन के अभाव में ये राशियां आपकी कर योग्य आय में जोड़ दी जाएंगी। इस नोटिस के तहत दी गई तारीख 17.11.2016 को करदाता की तरफ से कोई जवाब नहीं आया।

करदाता द्वारा मजदूरी/कमीशन पेटे प्राप्त राशि रूपये 16,02,814/- का सत्यापन नहीं करवाया गया है, अतः आयकर अधिनियम, 1961 की धारा-68 के तहत उक्त राशि रूपये 16,02,814/- करदाता की आय मानते हुए, करदाता की करयोग्य आय में जोड़ी जाती है।

In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee by

holding as under:-

....An assessee can discharge his onus of proof by proving three things: Identity of the creditor, capacity of the creditor and the genuineness of the transaction in question. Once the assessee proves all three things his onus is discharged. However, facts as discussed above, clearly establish that the appellant has not proved all three ingredients of sec. 68 of the Act. Hence, the addition made by the AO at Rs. 16,02,814/- is upheld. The ground of appeal is dismissed.

Vide ground no. 2, the appellant has contended that the AO had recorded reason by misinterpretation and the notice issued was also time barred. I have gone

through the appellant's submissions and I find that the AO issued notice u/s. 148 so as to examine the substantial bank deposits in assessee's bank account. It may be noted that the assessee had not filed return of income for the year under consideration. The important fact is that if the Assessing Officer has reason to believe that any income chargeable to tax has been under assessed, it would be within his legitimate power to invoke sec. 147. It has been held by the Hon'ble Supreme Court that although for re assessment of income there must exist reasons to believe that income has escaped assessment, the question whether the reason was adequate or otherwise is not for the Court to decide (Phool Chand Bajrang Lal vs. ITO, reported in 203 ITR 456). Further in the case of Raymond Woolen Mills Ltd. vs. ITO, reported in 236 ITR 34, the Hon'ble Supreme Court held that to determine whether the commencement of re assessment proceeding was valid, it has only to be seen whether there is prima facie some material on the basis of which the Department could re-open the case. The sufficiency of the correctness of the material is nothing to be considered at this stage. In the instant case, reasons have been duly recorded by the Assessing Officer for arriving at the belief that income chargeable to tax had escaped assessment. Even otherwise, it is seen from the assessment order, the appellant had not raised any such objections before the AO.

In view of the above, it is observed that there was no infirmity in issuing notice u/s. 148 of the Act. The ground no. 2 is dismissed.”

It is noted from the records that the assessee submitted the books of accounts, copy of bank statements, confirmed copy of labour payments from concerned factories. It is also noted that affidavits of concerned factory owners in support of his entries in bank accounts and tried to prove each and every entry. These documents and explanation clearly proves that the assessee had offered proper explanations in regard to labour payments of Rs.16,02,814/- routed through the bank account of the assessee for which the AO did not opine his views. It is also noted that during the year under consideration, the

assessee had received commission of Rs.54,861/- from labourers for obtaining Gypsum Grinding Labour Work from following factories .

Ambika Plaster Udhog (PAN ADQPJ 8960K)	150000/-
Jai Bhawani Plaster Industries (PAN BABPS 1912F)	755814/-
Bajrang Bali Plaster Industries (PAN ANXPC 9980F)	285000/-
Jagdamba Plaster Industries (PAN ABFPJ 0380C)	<u>412000/-</u>
	<u>16,02,814/-</u>

It is also noted that all the factory owners categorically stated in their affidavit that they have not received any notice from Income Tax Officer, Nohar (Hanumangarh) regarding verification of labour payments through Ranjeet Sharma. Although they admitted the payment of labour for Gypsum Grinding Work and they had given the copy of accounts duly confirmed by them for submission to ITO. It is also noted that the reason for issuance of notice u/s 148 was the cash deposit in assessee's bank account during the year under consideration which had been submitted by the assessee along with bank account during the course of assessment proceedings and every entry of cash deposit in bank account appears fully explained by the assessee. The AO after verification of the same accepted it which reflects in the assessment order and thus root cause of issuance of notice u/s 148 is explained. The Bench has taken into consideration all the aspects of the case including the affidavits of the above parties and does not find any infirmity in the submissions of the assessee. In view of the above facts and circumstances

of the case, we do not concur with the findings of the ld. CIT(A) and the appeal of the assessee is allowed and the addition made are vacated.

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

Order pronounced in the open court on 15/09/2023.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 15/09/2023

**Mishra*

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