

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर, जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
JODHPUR BENCH :: JODHPUR

BEFORE SHRI PAVAN KUMAR GADALE,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.199 & 200/JODH/2018
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

M/s.Rasik Priya Resorts Pvt. Ltd., 11, Mangal Complex, Saifan Choraha, Bedla Road, Udaipur. PAN: AAFCR 5546 N	V s.	The Deputy Commissioner of Income Tax, Central Circle-2, Udaipur.
Appellant/ Assessee		Respondent/ Revenue

Assessee by	Shri Rakesh Lodha – CA
Revenue by	Smt. Alka Rajvanshi Jain – CIT(DR)
Date of hearing	10/08/2023
Date of pronouncement	30/10/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These two appeals filed by the assessee against the separate orders of ld.CIT(A)-2, Udaipur both dated 16.02.2018 emanating from assessment order under section 153A r.w.s143(3) of the Income Tax Act, 1961 both dated 25.03.2015 for A.Y.2012-13 & 2013-14 respectively. The assessee in ITA No.199/JODH/2018 has raised the following grounds of appeal :

“1. The Ld. CIT(A-2) has erred in upholding the order passed by the Ld. AO which was bad in law bad on facts and contrary to all cannons of natural justice

2. *The Ld. CIT(A-2) has erred in sustaining addition of share application money of Rs. 4,00,000/- during the year under consideration.*

3 *The Ld. CIT(A-2) also erred in rejecting the ground challenging issue of notice u/s 153A of the Act.*

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

Findings & Analysis :

2. We have heard both the parties and perused the records.

2.1 Assessee is a private limited company. As on 31.03.2012, authorized share capital of the company was only Rs.5 lakhs, whereas, assessee had shown Rs.9 lakhs as share application money pending allotment.

2.2 First, we will take up Ground No.2 of the assessee related to addition of Rs.4 lakhs.

2. The Ld. CIT(A-2) has erred in sustaining addition of share application money of Rs. 4,00,000/- during the year under consideration.

2.3 The ld.CIT(A) has discussed the addition of Rs.4 lakhs in para 4.3.2, 4.3.3 and 4.3.4. These paragraphs are reproduced here as under :

“4.3.2 Coming to the merit of the addition, first the decision on the addition of Rs. 4 lacs as unexplained share application money. The amount of Rs. 2 lacs each have been received in cash from Shri Mangilal Gurjar, elder brother of a director of the appellant company and from Shri Naresh Trivedi, a friend of the director of the appellant company. The appellant company has filed

confirmation from these two persons along with PAN and other details necessary for explaining the money received by the company. However, there is no immediate source in the hands of these two persons as discussed below.

4.3.3 From the supporting documents furnished for Mangi Lai Gurjar it is found that he has gross salary of Rs. 1,80,168/- as per form No. 16 for A.Y. 2011-12 and Rs. 1,93,572/- for A.Y. 2012-13. However, he is under several debts. His first debt A/c with Union Bank of India begins with debit balance of Rs. 23,500/- as on 01.04.2011 rises to Rs. 1,16,250/- as on 01.04.2012 further rises to Rs. 1,24,875/- as on 01.04.2013 inspite of monthly repayment of Rs. 2,350/- till May 2011, Rs. 3,750/- till Aug 2012, Rs. 5,375/- till July 2013 and it rises to Rs. 8,375/- & Rs. 9,625/- during F.Y. 2013-14. His second debt A/c with UBI begins with Rs. 54,400/- as on 01.04.2011 rises to Rs. 76,800/- as on 01.04.2012 and comes down to Rs. 38,400/- as on 01.04.2011, inspite of monthly payment of Rs. 3,200/- throughout the F.Y. 2011-12, 2012.13 & 2013-14. Therefore when a person need Rs. 7,000/- per month for repayment from monthly salary of about Rs. 15,000/- how he could invest Rs. 2,00,000/- in cash with appellant company. Moreover on none of the date of borrowing by Mangi Lai Gurjar Rs. 1,50,000/- on 28.06.2011, Rs. 65,000/- on 21.09.2012 Rs.50,000/- on 07.12.2013 and Rs.80,000/- on 02.03.2012 come closer to date of cash deposit Rs. 2,00,000/- on A/c of Ire application on 10.02.2012. Shri Mangilal Gurjar do have PAN Card, however he is not assessed to tax as income is below taxable limit. Therefore, the appellant explanation for share application by Shri Mangi Lai Gurjar is non-believable and hence held as non-genuine.

4.3.4 Similarly in case of Naresh Trivedi who has once upon a time filed return of income for A.Y. 2006-07 showing merely income of Rs. 1,08,274/- does not have any immediate sources to pay share application of Rs. 2,00,000/- in cash on 08.11.2011 by Naresh Trivedi to the appellant company. In fact one sale deed filed by appellant company is 01.04.2013, one and half year after the cash deposit of Rs. 2,00,000/- and claiming of said money received in piece meal is no justification for cash deposit of Rs. 2,00,000/-. Therefore, the share capital from Naresh Trivedi Rs. 2,00,000/- is also held to be non-genuine. In view of no immediate source for cash deposit of Rs. 2,00,000/- each by above two persons as share application money, the same is held as non-genuine and addition made by AO is confirmed.”

3. In this case, cash has been deposited by the company and claimed as share application money from Mr.Mangilal Gurjar and Mr.Naresh Trivedi. During the hearing, specific question

was asked to Id.Authorised Representative(ld.AR) regarding Return of Income filed by Mr.Mangilal Gurjar and Mr.Naresh Trivedi. The ld.AR explained that Mr.Mangilal Gurjar and Mr.Naresh Trivedi had not maintained any books of accounts and do not have any balance sheet. It is claimed by assessee that Rs.2 lakhs was paid in cash by Mr.Mangilal Gurjar as share application money. However, it will not be irrelevant to mention here that in the Return of Income filed under section 139(1) of the Act, these amounts were shown as unsecured loan but, in the returns, filed after search it is shown as share application money. Thus, the assessee himself has shown these amounts as unsecured loan and then claimed it as share application money. Be it as it may be, one can understand from the elaborate discussion made by the ld.CIT(A) that Mr.Mangilal Gurjar does not have creditworthiness to give share application money to assessee. Mr.Mangilal Gurjar have not filed Return of Income. Mr.Mangilal Gurjar is a salaried employee earning a gross salary of Rs.1,80,168/- in A.Y.2011-12 and Rs.1,93,592/- for A.Y.2012-13. He has heavy borrowings. The ld.AR has not filed any details before usto prove creditworthiness of Mr.Mangilar Gurjar. The ld.AR has not filed any documents to rebut findings of ld.CIT(A).

3.1 Mr.Naresh Trivedi has also not filed any Return of Income, has not explained source of Rs.2 lakh. The ld.AR has not filed any document to prove creditworthiness of Mr.Naresh Trivedi.

3.2 In these facts and circumstances of the case, we agree with ld.CIT(A) that assessee has failed to prove creditworthiness and genuineness of the so-called share application money claimed to have been given by Mr.Mangilal Gurjar and Mr.Naresh Trivedi.

3.3 In this context, we would like to reproduce the Hon'ble Supreme Court's observation in the case of PCIT Vs. NRA Iron & Steel Pvt. Ltd., [2019] 103 taxmann.com 48(SC) in para 11 has held as under :

“11. The principles which emerge where sums of money are credited as Share Capital/Premium are :

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

3.4 Thus, in this case, since the assessee has failed to prove creditworthiness of Mr.Mangilal Gurjar and Mr.Naresh Trivedi, inter-alia failed to prove genuineness of the transaction respectfully following the Hon'ble Supreme Court (supra) we uphold the addition of Rs.4 lakhs. Accordingly, Ground No.2 of the assessee is dismissed.

4. Ground No.1 :

1. The Ld. CIT(A-2) has erred in upholding the order passed by the Ld. AO which was bad in law bad on facts and contrary to all cannons of natural justice

4.1 The ld.CIT(A) has at length discussed the issue. The ld.CIT(A) has given proper opportunity to the assessee, therefore, we do not find any merit in Ground No.1 and hence, Ground No.1 is dismissed.

5. Ground No.3 :

3 The Ld. CIT(A-2) also erred in rejecting the ground challenging issue of notice u/s 153A of the Act.

5.1 In this case, there was a search on 05.12.2012 at the business premises of the assessee. The Assessing Officer(AO) issued notice under section 153A dated 16.09.2013, which was duly served on assessee. Assessee had filed Return of Income

on 22.10.2013 in response to notice under section 153A of the Act. This is an abated assessment. Assessee claimed that there was no incriminating material, hence, assessment under section 153A is bad in law. However, since it is an abated assessment, the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell P. Ltd., in Civil Appeal No.6580 of 2021 dated 24.04.2023 has held as under :

“11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the ‘total income’ in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to subsection (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the ‘total income’ for the entire six years period/block assessment period.”

5.2 Thus, as held by Hon'ble Supreme Court (supra), in the case of Abated assessment, AO has power to make addition even in absence of incriminating material based on other facts,

documents. Therefore, we do not find any merit in Ground No.3.

Accordingly, Ground No.3 is dismissed.

6. Ground No.4 :

4. The appellant craves liberty to add, amend, alter, and modify any of the ground of appeal on or before its hearing before your honour.

6.1 Assessee has not amended, added any ground, therefore, Ground No.4 is dismissed.

7. In the result, appeal of the assessee in ITA No.199/JODH/2018 is dismissed.

ITA No.200/JODH/2018 for A.Y.2013-14 :

8. The assessee in ITA No.200/JODH/2018 grounds of appeal are as under :

“1. The Ld. CIT(A-2) has erred in upholding the orders passed by the Ld. AO which was bad in law bad on facts and contrary to all cannons of natural justice.

2. The ld. CIT(A-2) has erred in sustaining addition of share application money of Rs.6,00,000/- during the year under consideration.

3. The appellant craves liberty to add, amend, alter, and modify any of the ground of appeal on or before its hearing before your honour.”

8.1 In this case for A.Y.2013-14 assessment order was passed under section 153Ar.w.s 143(3) on 25.03.2015. The ld.CIT(A)

has discussed the issue in para 4.3.4 and 4.5.5. The same is reproduced here as under:

“4.3.4 Out of above 12.5 Lac, Rs. 2,00,000/- each is received from Shri Mangi Lai Gurjar and Shri Naresh Trivedi for which I have made detailed finding in appellant’s appeal for A.Y. 2012-13 vide ITA No. 64/2015-16 of even date and held the share application of Rs.2,00,000/- in cash from both of them as non-genuine. My said finding do apply for this year also as no immediate sources are available with these two person and their credit worthiness as well as genuineness of transaction is not proven. Hence, addition of Rs. 4,00,000/- on account of share capital from Mangi Lai Gurjar and Naresh Trivedi is confirmed.

4.5.5 Moreover, in case of share application of Rs.2,00,000/- from Bhanwari Bai Gurjar and Rs.1,00,000/- from Hira Lai Gurjar no supporting documents for credit worthiness i.e. the return of income or bank A/c or for genuine-ness of transaction i.e. immediate source of depositing cash have been submitted, except in case of Bhanwari Bai Gurjar, who is claimed to be agriculturist and aged above 75 years henceRs.1,00,000/- share application money from her is treated as explained. However, rest of the Rs.1,00,000/- share application money from her as well as Rs.1,00,000/- from Hira Lai Gurjar is held to be non genuine and accordingly further addition of Rs. 2,00,000/- is confirmed.”

9. We have already held that share application money received from Mr.Mangilal Gurjar and Mr.Naresh Trivedi are not genuine in ITA No.199/JODH/2018, the same shall apply mutatis-mutandis to this appeal also in ITA No.200/JODH/2018 with reference to share application money of Mr.Mangilal Gurjar and Mr.Naresh Trivedi. Accordingly, addition of Rs.4 lakhs on account of share application money from Mr.Mangilal Gurjar and Mr.Naresh Trivedi is confirmed.

10. As far as share application money of Rs.2,00,000/- claimed to have been received from BHANWARI BAI GURJAR and Rs.1,00,000/- from Mr.HIRALAL GURJAR are concerned, no document has been filed to prove genuineness of the same.It is an admitted fact that cash was deposited. The initial onus is on assessee to prove genuineness and creditworthiness. Assessee failed to prove genuineness and creditworthiness. Therefore, the addition of Rs.3,00,000/- is confirmed.

10.1 Accordingly, Ground No.2 of the assessee is dismissed.

Ground No.1 :

11. Since we have decided the issue above, the same shall apply mutatis-mutandis to this Ground No.1 also, therefore, Ground No.1 raised by the assessee is dismissed

Ground No.3 :

12. This ground is general in nature needs no adjudication, hence, dismissed not adjudicated.

13. In the result, appeal of the assessee in ITA No.200/JODH/2018 is dismissed.

13. To sum up, both appeals of the assessee i.e. ITA No.199/JODH/2018 & ITA No.200/JODH/2018 are dismissed.

Order pronounced in the open Court on 30th October, 2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th Oct, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि,आयकर अपीलीय अधिकरण, जोधपुर बेंच,
जोधपुर/ DR, ITAT, Bench, Jodhpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.