

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 151/Jodh/2022

Assessment Year: 2017-18

Sh.Rajendra Kothari Prop. M/s Kothari H.P. Gas Centre Ratlam Road, Arnod Rajasthan [PAN:ADAPK9872B] (Appellant)	Vs.	ACIT, Circle-Chittorgarh Rajasthan. (Respondent)
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Appellant by	Sh. Arun Padliya & Sh. Abhinav Jain, CA
Respondent by	Sh. Laxman Singh Gurjar, Sr. DR

Date of Hearing	21.11.2023
Date of Pronouncement	06.12.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals) NFAC, Delhi, [in brevity the 'CIT (A)'], order passed u/s 250 of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y.

2017-18. The impugned order was emanated from the order of the Id. ACIT, Circle, Chittor, [in brevity 'the AO'] order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“1. Whether on the facts and in the circumstances of the case learned CIT(A) was not justified in confirming the addition of Rs. 700000/- by treating the income u/s. 68 of the I.T. Act, 1961 which is not correct and rejecting the explanations offered by the appellant is regarding cash credit. On the basis of surmises on conjectures without any evidence or material on record is unsustainable both in law and on facts. Addition so made and confirmed by the learned CIT(A) may kindly be deleted.

2. Learned AO and CIT(A) has erred in addition on account of rent from agricultural land Rs. 124000/- treated undisclosed income of the appellant which is not correct and not required to be taxes u/s. 115BBE of the Act which is shown by the appellant as an agricultural income. On the basis of surmises on conjectures without any evidence or material on record is unsustainable both in law and on facts.

3. The assessee seeks leave to raise any other ground which the facts and law applicable to this case may require for just and proper decision of the case.”

3. Also, the assessee has taken the additional grounds:

“03. It is submitted that the appellant be permitted to take the following additional grounds of appeals:-

i. Appellant file additional evidence by way of affidavit duly confirmed by her on oath by Smt. Rukmani Bai that “my son Shri Manohar S/o. Late Vardichand Malviya got married with Dimple Malviya D/o. Labhchand Malviya R/o. Arnod (Raj.) on 29/04/1994. There is difference of opinion and no mental satisfaction between husband-and-wife divorce on 10/05/2010 and compensation money Rs. 8,00,000/- given in cash to Dimple Malviya by me”.

Learned AO doubted regarding cash deposit with lender’s bank account and confirmed by the learned CIT(A) on the basis of surmises on conjectures with any basis or evidence or matter on record.

ii. Appellant file additional evidence by way of affidavit duly confirmed by Shri Satyanarayan Sharma S/o. Ram Nath Sharma R/o. Village Gotemeshwar (Raj.) on oath that “I have taken various agricultural lands as per affidavit from Shri Rajendra Kothari R/o. Arnod (Raj.) on rent for F.Y. 2016-17 for Rs. 1,24,000/- for which payment made in cash Rs. 59,000/- on 23/05/2016 and Rs. 65,000/- on 05/11/2016” alongwith AADHAR CARD.

Learned AO has doubted about the identity of tenant Shri Satyanarayan Sharma and CIT(A) are de hors of any credible evidence/material on records without looking to previous records of the assessee regarding agricultural income of the assessee.”

4. The brief fact of the case is that the assessee is a businessman and carrying business in the trade name of Kothari H.P. Gas Ratlam Road Arnod, Pratapgarh. During impugned assessment year, the assessee achieved the turnover Rs.5.7 crore and had taken non-interest bearing loan from his employee Smt. Dimple Malviya amount of Rs.7 lacs. As well as the assessee earned agricultural income amount of Rs.1,24,000/-. During the assessment the addition was made Rs.1,98,655/- u/s 145 but which is not the point of grievance of the appeal before the ITAT. During assessment the ld. AO completed verification related to loan from Smt. Dimple Malviya amount to Rs.7 lac. But the credentialism of the loaner was not proved. Although the assessee was not able to submit proper evidence related to credential of the loan creditor. Accordingly, the amount of Rs.7 lac was added back u/s 68 with the total income of the assessee. Related to agricultural income Rs. 1,24,000/-, the assessee submitted alleged rent agreement for agricultural land. But there is a lot of defects were found by the ld. AO in the agreement i.e. no signature of

assessee and it was made in plain paper. The show cause was issued to the assessee, but the issue was not explained before the Id. AO by the assessee. Thereafter the Id. AO added back the amount of Rs.1,24,000/- u/s 68 with the total income of the assessee. Being aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the assessment order passed by the Id. AO. Being aggrieved on the appeal order, the assessee filed an appeal before us with the ground of appeal and additional evidence.

5. The Id. AR submitted the written submission which is kept in the record. The Id. AR first invited our attention in additional ground and additional evidence. The Id. AR placed that the assessee was unable to submit the additional evidence before the Id. CIT(A) under Rule 46A of the Income Tax Rule, 1963 (in short Rule). The details discussion was made on the documents which are filed with written submission i.e. bank statement with **Bank of Baroda APB page 28 to 33** where the source of loan payment is mentioned. The assessee is claiming that the evidence supported with also by affidavit duly endorsed dated 28.12.2022 by Smt. Rukmani Bai Malviya regarding compensation money (divorce) Rs.8 lac in cash is received which is the source of payment of loan **APB page 34 to 35**. The Id. AR further argued that related to source of agricultural income the affidavit of Mr. Satya Narayan S/o Ramnath Sharma is duly executed and filed before the bench

APB page 36 to 38. The Id. AR claimed that all the documents are related to the evidence and explanation about the source of loan creditor and the explanation of agricultural income. But it is fact that all the documents are not submitted before any of the revenue authorities. Although, the document should be adjudicated by the revenue for taking cognizance of the matter.

6. The Id. DR vehemently argued and fully relied on the order of the revenue authorities. The Id. DR invited our attention in appeal order page nos. 9 to 10 which are reproduced as below:

“4.4 Creditworthiness of Smt. Dimple Malviya and genuineness of the transaction: It is noted that in the confirmation filed by the appellant of Smt. Dimple Malviya, the source of the fund of amounting to Rs.7,00,000/- is mentioned as the share in pension received by her father and mother. However, while giving statement on oath before the AO, Smt. Dimple Malviya stated the source of fund to be amount received as compensation from her husband of amounting to Rs.8,00,000/-. Thus, Smt. Dimple Malviya is found to be contradicting herself on both occasions. Further, it is noted that the Smt. Dimple Malviya has claimed that she had kept the compensation money received with her brother and she used to take it from her brother and then deposited it in the bank account as and when needed. However, no proof in this regard has been furnished by neither the appellant nor Smt. Dimple Malviya. Further, during

the course of assessment proceedings the AO had observed that no explanation for the purpose and the compulsion for taking non-interest bearing loan from one of his employees had been furnished by the appellant. The reason and compulsion as discussed by the AO in his assessment order, has remained unexplained till date. On perusal of the bank statement of Smt. Dimple Malviya, it was noted by the AO that there were no other transactions in her bank account except deposit of cash and subsequent transfer to other entities as loan. Neither interest nor principal amount of loan was received back in the bank account during the entire period i.e. from September 2012 to July 2016. The AO has analyzed the bank account statement of Smt. Dimple Malviya in details and it was noted that Rs.14,29,500/- had been deposited as cash in the bank account of the lender from 12.07.2012 till 31.05.2016. There was cash withdrawal of Rs.4,00,000/- during this period. Thus, it transpires that the lender i.e. Smt. Dimple Malviya did not have cash to deposit further Rs.3,50,000/- out of her alleged Rs.8,00,000/- received as compensation money. During the course of appellate proceedings, the appellant has reiterated the submission furnished by him during the course of assessment proceedings. The appellant has not been able to answer as to why Smt. Dimple Malviya had quoted 2 different reason? as regards to the source of fund of unsecured loan and has chosen to remain silent even during the appellate

proceedings. In this regard, I draw support from various courts/Tribunals which have while dealing with such cases rendered the judgments, some of which are discussed in the upcoming para.”

7. We heard the rival submission and considered the documents available in the record. During assessment and appeal proceeding, the assessee was unable to explain the creditworthiness of the loan creditor and also the explanation of source of agricultural income. The assessee taken the ground no. 1 that the addition u/s 68 is beyond jurisdiction and the assessment order is void ab initio but factually described that the assessee is a businessman and maintained the books of account related to his huge turnover 5.7 crore during impugned assessment year. But the ground no. 1 was not taken before the Id. CIT(A). Therefore, we are not adjudicating the same and remitting back the ground of appeal to the file of the Id. CIT(A). The Id. DR had not made any strong objection about the additional evidence and additional ground duly filed by the assessee during hearing. Hence, the additional evidence and ground are accepted by the bench, considering the order of Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. [1998] 97 Taxman 358/229 ITR 383*. So, the assessee's ground and the additional ground are remitting back to the file of the Id. CIT(A) for further adjudication. Needless to say, the assessee should get a reasonable opportunity of

hearing in set aside proceeding and get the opportunity to file any evidence required during the time of hearing as per the law.

8. In the result, the appeal of the assessee bearing no. **ITA 151/Jodh/2022** is allowed for statistical purposes.

Order pronounced on 06.12.2023 at Amritsar, Punjab in accordance with Rule 34(4) of the Income tax (Appellate Tribunal) Rules, 1963.

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order