

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 549/JP/2023
निर्धारण वर्ष/Assessment Year : 2019-20.

Gupta Prime Resorts Pvt. Ltd., 201, Aakar Marg, Pink City Apartment, Near Pital Factory, Bani Park, Jaipur.	बनाम Vs.	The DCIT Central Circle, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AADCG 9810 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C.M. Agarwal, CA

राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 02/11/2023

उदघोषणा की तारीख / Date of Pronouncement: 30/11/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 23.08.2023 of Id. CIT (A), Jaipur-5 passed under section 250 of the IT Act, 1961 for the assessment year 2019-20. The assessee has raised the following grounds :-

1. On the facts and in the circumstances of the case the Id. CIT (A) has erred in sustaining additions and also erred in invoking provisions of section 69 on account of alleged investment of Rs. 13,00,000/- as mentioned in para 7(c) of the assessment order.
2. Ld. CIT (A) has erred in not allowing this ground because the approval given by the Addl. CIT u/s 153D of the Act to the order passed u/s 153A is without application of mind, purely in a mechanical manner, without appreciating the facts and not following the provisions/mandate of the

section, which makes the order passed u/s 153A nonest, void abinitio, bad in law, the same deserves to be quashed.

3. On the facts and in the circumstances of the case the Id. CIT (A) has erred in not deciding regarding charging of interest u/s 234B.
4. On the facts and in the circumstances of the case the Id. CIT (A) has erred in not deciding the issue of penalty proceedings u/s 271AAC of the Act.

The appellant craves leave to add, amend or withdraw any of the grounds of the appeal during the course appellate proceedings.

All the grounds of appeal are independent and without prejudice to each other.

2. The brief facts of the case are that during the year under consideration the assessee is having income/loss from Hotel cum Restaurant business run under the name and style of M/s. Gupta Prime Resort Pvt. Ltd. The assessee has filed its original return of income for the assessment year 2019-20. A search and seizure action under section 132 of the IT Act, 1961 was carried out on 13.02.2020 at the residential and business premises of the assessee group and family members of i.e. Saini-Gupta-Jain-Malpani-Somani Group of Ajmer. Various assets had been found at the time of search and some of them were also seized at various places of the group at the time of action under section 132 of IT Act. Certain incriminating documents/Loose papers/Books of accounts etc. were also found, inventorized and some of them also seized or impounded at the time of search/survey under section 132/133A of the IT Act. Subsequently, a notice under section 153A was issued on 06.03.2021 which was duly served upon the assessee through E-mail. In response to the notice u/s 153A, the assessee company furnished return of income on 05.04.2021 declaring Nil Income after claiming current year's loss of Rs.69,12,879/-. Query letters along with notices under section 142(1) were issued on 07.08.2021

and 25.08.2021. In response to these notices the assessee furnished the details called for which were examined and placed on record. The AO considered the documents/details furnished by the assessee but could not find it acceptable and accordingly completed the assessment by making certain additions and assessed the total income at Rs. 24,78,428/-. Aggrieved by the order of assessment, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) after considering the matter in detail, partly allowed the relief to the assessee.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee submitted his ground-wise written submissions as under :-

In respect of **Ground No. 1**, the Id. A/R submitted -

“ That page no. 17 of exhibit 5 of the annexure A-25 is in respect of transaction of Rs. 15,36,000/- and Id. AO has considered only Rs. 2,36,000/- as verifiable and made addition of Rs. 13,00,000/-. During the course of hearing it was submitted and reply of same is again enclosed herewith.

In reference to Exhibit no. 5 page 17 of A-25 – This page contains estimate for business planning regarding major payment such as salary, bank term loan interest and vendor's payment in coming week/fortnight at Grant Xenia Hotel (A unit of Gupta Prime Resorts Private Limited PAN AADCG 9810 G). These planning included estimated fund arrangements from booking amounts of customer, estimated fund to be arranged from director of the company, available bank balance in company account etc.

Regarding Rs. 2,36,000/-, this amount was received vide RTGS transfer in BRGB OD 04/241 from Bimal Kumar Jain on 05.01.2019 duly recorded in

books of accounts in Gupta Prime Resorts Private Limited. This amount is recorded in the Ledger a/c of Bimal Kumar Jain. It is also submitted that this amount of Rs. 2,36,000/- is appearing twice on this page 17 once on left side mentioned as (BRKGB) 2,36,000/- and on other side (right) mentioned as 2,36,000/- RTGS. Hence counted twice in the amount of Rs. 15,36,000/-.

As regards Rs. 5,00,000/- this amount was estimated/approximate fund available from bank balance in BRGB OD 04/241 on 05.01.2019. Balance as on 05.01.2019 was Rs. 5,42,306.71 (OD limit – 1,50,00,000 – utilized OD limit 1,44,57,693.29. Copy of ledger account of BRGB OD 04/241 in Gupta Prime Resorts Private Limited is placed on record.

As regards Rs. 5,000/- this amount was estimated/approximate fund available from bank balance in PNB CA 872 on 05.01.2019. Balance as on 05.01.2019 was Rs. 9,349.80. Copy of ledger account of PNB CA 872 in Gupta Prime Resorts Private Limited is placed on record.

As regards Rs. 3,50,000/- this amount was estimated fund required from Director of the Company Shri Anoop Kumar Gupta. Cash balance available in Shri Gupta Electricals (Anoop Kumar Gupta) on 07.01.2019 was Rs. 6,95,347.31. Ledger of cash account in Shri Gupta Electricals (Prop Anoop Kumar Gupta) is placed on record.

As regards Rs. 2,09,000/- it was estimated balance fund to be arranged after considering the course of funds of Rs. 10,91,000/- (2,36,000 + 5,00,000 + 5,000 + 3,50,000). Total fund/estimate was Rs. 13,00,000/- hence balance of Rs. 2,09,000/- (13,00,000 – 10,91,000) was noted as due from Rahul i.e. to be arranged by the accountant of the hotel at the time.

Further, as stated in earlier paragraph that section 69 of the Income Tax Act is related to unexplained investment not recorded in books and thus the AO had wrongly taxed this income u/s 115BBE. Thus, the above upheld addition of Rs. 13,00,000/- is hereby treated as unrecorded business income and taxed the same under normal rate.

Thus, Id. CIT (A) has confirmed the addition ignoring all the facts and evidences submitted by appellant.

Further the applicability of provision of section 69 was not accepted by Id. CIT (A) then how the normal business income can be taxed without bringing on record the corroborative evidences in support of addition.

The Hon'ble High Court of Delhi in the case of CIT vs. Naresh Khattar HUF reported in 261 ITR 664 has held that burden to establish that an investment has been made onus is on the revenue.

Further no evidence has been brought on record to substantiate the allegation that the investment is from unexplained sources and rather as per assessment order passed by Id. AO it is expenditure.

Accordingly plea of Id. D/R that section 292B may cure the defect of wrong invocation of section 68 can't be accepted being jurisdictional error and same is the view of Hon'ble Delhi High Court in case of JCB India Ltd. vs. DCIT (2017) 398 ITR 189 wherein it is held that :-

"19. As already noted, the final assessment order of the AO stood vitiated not on account of mere irregularity but since it was an incurable illegality. Section 292B of the Act would not protect such an order. This has been explained by this Court in its decision dated 17th July 2015 passed in ITA No. 275/2015

(Pr. Commissioner of Income Tax, Delhi-2, and New Delhi v. CITI Financial Consumer Finance India Pvt. Ltd.) where it was held :

" Section 292B of the Act cannot be read to confer jurisdiction on the AO where none exists. The said Section only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income, assessment notices, summons or other proceedings, provided the same are in substance and in effect in conformity with the intent of purposes of the Act."

20. The Court further observed that Section 292B of the Act cannot save an order not passed in accordance with the provisions of the Act. As the Court explained, "the issue involved is not about a mistake in the said order but the power of the AO to pass the order."

The Id. A/R relied on the following decisions :

- 1) Babbal Bhatia in ITA Nos. 5430 & 5432/Del/2011 dated 08.06.2018.
- 2) Zaheer Abdulhamid in ITA No. 862/Pune/2017 dated 31.08.2018.
- 3) Latif Ebrahim Patel in ITA No. 7097/Mum/2013 dated 23.03.2018.
- 4) Shamsheer Singh Gill in ITA No. 2987/Del/2015 dated 28.02.2017.
- 5) Danveer Singh in ITA No. 4036/Del/2017 dated 14.12.2017.
- 6) Om Prakash in ITA No. 1325/Del/2011 dated 11.08.2016.
- 7) Sunil Vaid in ITA No. 2414/Del/2016 dated 30.12.2016.
- 8) Vijay Kumar in ITA No. 2483/Del/2015 dated 27.11.2018.
- 9) Inder Singh in ITA No. 1931/Del/2016 dated 05,12,2018.

In respect of Ground No. 2, the Id. A/R has submitted as under :-

“ It is submitted that approval was given in mechanical manner and supervising authority has not applied his mind and as held by different courts such as Hon’ble Jurisdictional ITAT, Jodhpur Bench in the case of Indra Bansal & Ors. vs. ACIT reported in (2018) 192 TTJ (Jd.)968, and as these approval are in accordance with procedure and law and deserves to be deleted.”

In respect of Ground No. 3, the Id. A/R submitted that the Interest is to be charged on returned income.

In respect of **Ground No. 4,** the Id. A/R submitted that Looking to facts of case no penalty is attracted.”

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard the rival contentions and perused the material on record, judgments cited by the parties and also the orders passed by the revenue authorities. From the totality of facts, we noticed that a search and seizure operation under section 132 of the IT Act, 1961 was carried out at the business and residential premises of the assessee. During search, certain documents were seized and out of it, one paper page no. 17 of Exhibit 5 of Annexure 25 was found which was considered by the Revenue Authorities in respect of transaction of Rs. 15,36,000/- and in this regard the AO after seeking explanation from the assessee considered that only a sum of Rs. 2,36,000/- was verifiable and accordingly made addition of remaining amount of Rs. 13,00,000/-. Although it was categorically pleaded and argued by Id. A/R at the very state of litigation that Exhibit 5 page 17 is a page

which contains estimate for business planning regarding major payment such as salary, bank term loan interest and vendor's payment in coming week/fortnight at Grand Xenia Hotel (A unit of Gupta Prime Resorts Private Limited – PAN AADCGL 9810 G). As per the Id. A/R this planning included estimated fund arrangements from booking amounts from customers, estimated fund to be arranged from Director of the company, available bank balance in company account etc. With regard to a sum of Rs. 2,36,000/- is concerned, the said amount was received vide RTGS transfer in BRGB OD 04/241 from Bimal Kumar Jain on 05.01.2019 duly recorded in books of accounts in Gupta Prime Resorts Private Limited. In this regard our attention is drawn to the ledger account of Bimal Kumar Jain. It was also the case of the assessee that a sum of Rs. 2,36,000/- is appearing twice in the page no. 17 i.e. once on left side and other is on right side. Therefore, this amount of Rs. 2,36,000/- was counted twice in the amount of Rs. 15,36,000/-, although RTGS amount of Rs. 2,36,000/- was considered by the AO and was given relief but the another amount was wrongly added. The Id. A/R further categorically submitted that as regards Rs. 5,00,000/- this amount was estimated/approximate fund available from bank balance in BRGB OD 04/241 on 05.01.2019. Balance as on 05.01.2019 was Rs. 5,42,306.71 (OD limit – 1,50,00,000 – utilized OD limit 1,44,57,693.29. Copy of ledger account of BRGB OD 04/241 in Gupta Prime Resorts Private Limited is placed on record.

As regards Rs. 5,000/- this amount was estimated/approximate fund available from bank balance in PNB CA 872 on 05.01.2019. Balance as on 05.01.2019 was Rs. 9,349.80. Copy of ledger account of PNB CA 872 in Gupta Prime Resorts Private Limited is placed on record.

As regards Rs. 3,50,000/- this amount was estimated fund required from Director of the Company Shri Anoop Kumar Gupta. Cash balance available in Shri Gupta Electricals (Anoop Kumar Gupta) on 07.01.2019 was Rs. 6,95,347.31. Ledger of cash account in Shri Gupta Electricals (Prop Anoop Kumar Gupta) is placed on record.

As regards Rs. 2,09,000/- it was estimated balance fund to be arranged after considering the course of funds of Rs. 10,91,000/- (2,36,000 + 5,00,000 + 5,000 + 3,50,000). Total fund/estimate was Rs. 13,00,000/- hence balance of Rs. 209000/- (13,00,000 – 10,91,000) was noted as due from Rahul i.e. to be arranged by the accountant of the hotel at the time.

However, the Id. D/R on the contrary, submitted that explanation of the assessee that figures written on this page is just fund arrangement planning does not hold any water and seems to be an after-thought explanation and, therefore, relied upon the order passed by the Id. CIT (A).

After analyzing the facts of the present case and documentary evidences, we also noticed that the addition in the present case was made by the AO under section 69 of the Act which relates to unexplained investment not recorded in the books of accounts and taxed the same as Income under section 115BBE. However, the Id. CIT (A) admitted that the applicability of provisions of section 69 by the AO is wrong but upheld the addition of Rs. 13,00,000/-. In this regard we stand fortified with specific argument raised by the Id. A/R that when the applicability of provision of section 69 was not accepted by the Id. CIT (A), then in that eventuality the normal business income cannot be taxed by the revenue without bringing on record the independent corroborative evidences in support of the addition. In this regard our

attention was drawn to the decision of Hon'ble Delhi High Court in the case of CIT vs. Naresh Khatter HUF reported in 261 ITR 664 (Delhi) wherein it was categorically held that burden to establish that an investment has been made, onus is on the revenue. While applying the principles laid down by Hon'ble Delhi High Court in the case of CIT vs. Naresh Khatter HUF (supra), we find that in the facts of the present case the revenue has not brought anything on record either direct, indirect or indirect corroborative evidence in support of the additions made by them. Thus, we are of the view that when no evidence has been brought on record to substantiate the allegation that the investment is from unexplained sources and rather as per the assessment order passed by the AO, the same has been considered as an expenditure. Therefore, no addition could have been made in the absence of an independent, corroborative evidence. Even otherwise, as held by Hon'ble Delhi High Court (supra) that section 292B of the Act cannot save an order not passed in accordance with the provisions of the Act. We, therefore, find no force in the order of the Id. CIT (A) and the same is quashed. The addition is deleted.

6. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 30/11/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/11/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Gupta Prime Resorts P. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle, Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 549/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar