

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 719/JP/2023
निर्धारणवर्ष / Assessment Years : 2012-13

Shri Babu Lal Sharma Plot No.18, Sudamapuri – Ist, Jodala Power, Sikar Road, Jaipur 302013	बनाम Vs.	The ITO Ward 4(2) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AGBPS 3541 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 10/01/2024
उदघोषणा की तारीख / Date of Pronouncement: 13/02/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 19-10-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“1. The ld. CIT(A) has erred on facts and in law in upholding the validity of order passed by AO u/s 147 of the Act.

2. The ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.50 lacs by treating the source of investment in purchase of land to this extent as unexplained.”

2.1 During the course of hearing, the ld. AR has not pressed the Ground No. 1. Hence, the same is dismissed being not pressed.

2.2 As regards the Ground No. 2 of the assessee, brief facts of the case are that the assessee is individual and engaged in the business of retail trade and also in truck hire business. He filed the return of income on 30-03-2013 declaring total income of Rs.2,44,320/- u/s 44AD/44AE of the Act. The ld. AO issued notice u/s 148 on the basis of information that assessee has entered into an agreement dt. 03.10.2011 for purchase of land for Rs.2.81 crore out of which Rs.48 lacs was paid on 02.11.2010 and Rs.1.53 crore was paid on 03.10.2011. In response to the notice, assessee filed the return declaring same income as declared in the original return **(PB 13-15)**. During the course of assessment proceedings, the assessee explained that out of Rs.1.53 crore paid in the year under consideration, an amount of Rs.87.50 lacs was received from his father out of sale proceeds of immovable property, Rs.14 lacs was received as compensation from Government of Rajasthan, Rs.1.50 lacs was invested out of the business income and Rs.50 lacs was received as advance from 10 customers against agreement to sale the land. The AO, however, did not accept the explanation of assessee and made addition of Rs.1.53 crore.

2.3 In first appeal, the Ld. CIT(A) after considering the explanation of assessee and the documentary evidences, at Para 4.4 accepted the claim of assessee that Rs.87.50 lacs was received from father and Rs.13,90,491/- from State Government and thus accepted the source to the extent of Rs.101.50 lacs. Further at Para 4.7 he accepted the source of Rs.1.50 lacs from business income. However, at Para 4.6 he did not accept the source of Rs.50 lacs stated to be out of advance received from customers by holding that assessee has not proved beyond doubt that cash was actually received, and the payers had ability to pay and thus the creditworthiness of creditors is not proved. Accordingly, he confirmed the addition of Rs.50 lacs. The relevant para 4.7 as to sustaining the addition of Rs.50 lacs by the ld.CIT(A) is reproduced as under:-

‘‘4.7 Regarding drawings from the business income of Rs.1.5 lakhs, it is seen that during the year the assessee had disclosed business income of Rs.3.4 lacs in the return of income. The appellant claims that out of this Rs.1.5 lakhs was utilized for making the payment for purchase of land. Considering the preponderance of possibility, this explanation is also acceptable. From the discussion above, it is evident that the appellant could only prove the source of cash payment of Rs.103 lakhs – Rs.1.01.50 lakhs from father and Rs.1.5 lakhs business income. Addition of balance of Rs.50 lakhs is sustained. As a result ground No. 2 is partly allowed.’’

2.4 During the course of hearing, the ld. AR of the assessee by filing the following written submission submitted that the assessee had proved the source of Rs.50 lacs and hence the addition confirmed by the ld. CIT(A) should be deleted.

‘Submission:-

1. It is submitted that assessee has entered into an agreement to purchase a land from Sh. Shrawan Lal Sharma on 02.11.2010 for Rs.2.41 crore against which Rs.48 lacs was paid on that date. However, since the entire amount was not paid on due date, a fresh agreement dt. 03.10.2011 (**PB 131-132**) was entered according to which assessee was to pay Rs.2.81 crore out of which Rs.48 lacs was already paid, Rs.1.53 crore was paid on 03.10.2011 and the balance Rs.80 lacs was to be paid by 15.10.2011. Since Sh. Shrawan Lal Sharma for one reason or another was delaying the execution of sale deed, assessee filed a FIR on 02.11.2010 (**PB 133-135**) but the police department after recording the statement of Sh. Shrawan Lal Sharma closed the FIR stating that it is of civil nature (**PB 140-143**). Presently, the civil suit is pending before the court on this issue.

2. In course of assessment proceedings assessee explained the source of payment of Rs.1.53 crore made to Sh. Shrawan Lal Sharma on 03.10.2011. The NFAC accepted the source to the extent of Rs.1.03 crore but has not accepted the source of Rs.50 lacs claimed to have been received as advance from 10 customers against sale of land ignoring that from these persons Rs.30 lacs received in the last year was accepted. The complete name & address of these persons, amount received in last year, amount received during the year and date of receipt is tabulated as under:-

S. No.	Name and address of party	Amount (in Rs.)	Date of receipt	Amount (in Rs.)	Date of receipt
1.	Suresh Kumar S/o Bhaghirath Mal Chaudhary Ghandawa, Tehsil Jhunjhunu (PB 42-48)	5,00,000/-	21.09.2011	3,00,000/-	02.11.2010
2.	Satpal S/o Umrav Singh Jamunapuri Colony, Sikar Road, Jaipur (PB 49-56)	5,00,000/-	21.09.2011	3,00,000/-	02.11.2010
3.	Surendra Kothari S/o Daya Ram Kothari 176, Shiv Nagar, Murlipura, Sikar Road, Jaipur (PB 57-64)	5,00,000/-	15.09.2011	3,00,000/-	02.11.2010

4.	Bhagirath Mal Yadav S/o Hanuman Sahai Yadav Khora Shyamdas, Tehsil Amer (PB 65-71)	5,00,000/-	21.09.2011	3,00,000/-	02.11.2010
5.	Virendra Singh Rathi S/o Sultan Singh Rathi Gram Ghandawa, District Jhunjhunu (PB 72-78)	5,00,000/-	15.09.2011	3,00,000/-	02.11.2010
6.	Phulchand Yadav S/o Bodu Ram Yadav Guhala, Tehsil Neem Ka Thana, District Sikar (PB 79-85)	5,00,000/-	30.09.2011	3,00,000/-	02.11.2010
7.	Pawan Kothari S/o Goru Ram Kothari Gram Ghandawa, District Jhunjhunu (PB 86-92)	5,00,000/-	30.09.2011	3,00,000/-	02.11.2010
8.	Lakshmi Narayan Sharma S/o Om Prakash Sharma Gram Badarna, Tehsil Amer (PB 93-99)	5,00,000/-	21.09.2011	3,00,000/-	02.11.2010
9.	Rameshwar Prasad Yadav S/o Bodu Ram Yadav Gram Chapoli, Jhunjhunu (PB 100-106)	5,00,000/-	15.09.2011	3,00,000/-	02.11.2010
10.	Suresh Kumar S/o Om Prakash Gram Ghandawa, District Jhunjhunu (PB 107-114)	5,00,000/-	30.09.2011	3,00,000/-	02.11.2010

3. In support of the creditworthiness of these persons, assessee has filed KhasraGirdawari placed at **PB 115-130**. From the sale agreement, affidavit and KhasraGirdawari of these persons it is evident that these persons have creditworthiness to give advance to the assessee. The lower authorities inspite of these evidences available before them have not made any direct enquiry from these persons. In fact these persons have given the advance against the land which the assessee has entered into an agreement to purchase from Sh. Shrawan Lal Sharma but since the matter went into litigation, the sale deed could not be executed in favour of these persons and this fact has also been confirmed by them in their affidavit. Further Rs.30 lacs received from these persons in the last year has been accepted by the AO. Thus assessee has proved the source of Rs.50 lacs and hence the addition confirmed by Ld. CIT(A) be directed to be deleted.”

2.5 On the other hand, the ld. DR supported the order of the ld.CIT(A) and vehemently argued that it is surprisingly that 10 person came to give advance from different locations. Not only that all these person came and executed vikrai ikrarnama. These documents itself create doubt about the source and the consistent writing made on these stereotypes documents. All these personal have acquired small peace of land out of the major part of the land it is also creating questions and thus the source of the cash of Rs. 50 lacs denied because the assessee failed to prove the bank statement, ITR and credit worthiness of these persons. How a person can conduct agricultural activity on 200 sq. mt. land. The assessee had given the documents wherein the language is same, even the signature of buyer is not obtained on all the pages and have only been obtained only at the last page of the agreement. Witness on some documents two and in some one witness. All the documents were notarized. Stamp paper generally purchased by the buyer whereas in this case the same has been purchased by the seller. On the affidavit submitted there is no date mentioned and so the content of the affidavit is also not specific.

2.6 We have heard the rival submissions and perused the material available on record. The apple of discord in this case is that the assessee explained before the ld. AO that he received Rs.50 lacs in cash as advanced from 10 customers as mentioned against agreement to sale for which he filed affidavits of all the 10

persons. From these persons Rs.30 lacs was received in cash in the last year which was accepted and the revenue is not disputed that amount in earlier year. The ld. AO, however, held that above sum is paid in cash which are not verifiable. Only an affidavit has been furnished and no agreement of sale or receipt seems to be drawn in this regard. The ld. AO required the assessee to produce the buyers to establish their creditworthiness and to furnish ITR/bank statement on or before 18.10.2019. The assessee sought adjournment and accordingly the case was fixed for 04.11.2019 but assessee did not file any further written explanation/supporting evidences, the ld. AO vide order dated 14.11.2019 confirmed the addition of Rs.50 lacs. In first appeal, the Ld. CIT(A) by relying on the observation of AO and referring to the decision of Hon'ble Supreme Court in case of NRA Iron & Steels Pvt. Ltd. held that assessee has not proved the creditworthiness of these persons and accordingly upheld the addition. We also find from the available records that assessee has entered into an agreement to purchase a land from Sh. Shrawan Lal Sharma on 02.11.2010 for Rs.2.41 crore against which Rs.48 lacs was paid on that date (PBP 131-132). However, the entire amount was not paid on due date, a fresh agreement dated 03.10.2011 was entered according to which assessee was to pay Rs.2.81 crore out of which Rs.48 lacs was already paid in last year and Rs.1.53 crore was paid on 03.10.2011. The AO made addition for the entire amount of Rs.1.53 crore but after considering the explanation of assessee, the Ld. CIT(A),

NFAC accepted the source of Rs.103 lacs (para 4.4 and para 4.7) but has not accepted the source of Rs.50 lacs claimed to have been received as advance from 10 customers against sale of land as it is mentioned at para 4.6 in ld. CIT(A)'s order. We find that in support of the amount received from these persons assessee has furnished complete name & address, copy of sale agreement entered with them and copy of Khasra Girdawari of 6 persons to prove their creditworthiness. In spite of furnishing these evidences, no direct enquiry is made from them. The assessee has received the advance from these persons against the land for which he has entered into an agreement of purchase from Sh. Shrawan Lal Sharma but since the matter went into litigation, the assessee could not execute the sale deed and received the balance amount as per agreement to sale. We also note that Rs.30 lacs received from these 10 persons in the last year on 02-11-2010 has been accepted by the department which is also mentioned at written submission of the assessee and also in the affidavit. Considering all these facts, we are of the considered view that assessee has discharged his burden u/s 68 of the Act and the same is not disputed by the revenue in the earlier year and therefore, the addition confirmed by Ld. CIT(A), NFAC amounting to Rs.50 lacs is deleted. Hence, this ground is allowed.

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

Order pronounced in the open court on 13 /02/2024.

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-
(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 13/02/2024

***Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Babu Lal Sharma, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward- 4(2), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 719/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar