

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

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 720/JPR/2023
निर्धारण वर्ष / Assessment Years : 2017-18

Sh. Badaluram S/o Bah Ram, Fauladpur Neemrana, Alwar.	बनाम Vs.	ITO, Ward- Behror.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CBLPB2745K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing 17/01/2024
उदघोषणा की तारीख / Date of Pronouncement : 09/04/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of the ld. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC/CIT(A)"], dated 29.09.2023 for the assessment year 2017-18, which in turn arise from the order dated 11.03.2022 passed under section 147 r. w.s. 144B of the Income Tax Act (hereinafter "Act") by the AO.

2. The assessee has raised the following grounds:-

“1. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the validity of order passed by AO u/s 147 of the Act ignoring that notice u/s 148 was not served on assessee.

2.The Ld. CIT(A), NFAC has erred on facts and in law in treating the return filed by assessee as non- est ignoring that return was filed late as the alleged notice u/s 148 did not come to his notice and there were technical glitches in filing the return.

3. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.80 lacs u/s 69 of the Act being amount paid to Sh. Shyam Builders & others on 07.05.2016 from the bank account by incorrectly holding that assessee failed to prove the source of same ignoring that the same is out of the opening bank balance of Rs.70,95,968/- and repayment of outstanding loan credited in the bank account between 02.04.2016 to 06.05.2016.

4.The appellant craves to alter, amend & modify any ground of appeal.

5. Necessary cost be awarded to the assessee.”

3. The brief facts of the case are that the assessee has filed return of income on 29.03.2018 declaring total income at Rs. 3,94,820/- and agricultural income of Rs. 4,69,750/- for the year under consideration. The ITO, Ward-1, Sikar has intimated that the assessee has made payment of Rs. 80,00,000/- as advance to M/s Shree Shyam Buildstructure Pvt. Ltd. on 07.05.2018 through RTGS and informed to examine the source of advance and credit entries shown in the bank account of the assessee. The credit entries shown in the copy of bank account statement of the assessee (No. 7811619865) maintained with Kotak Mahindra Bank and advance amount of Rs. 80,00,000/- given by the assessee are not found reasonable

in view of income shown by the assessee in his return of income filed for the year under consideration. In view of above, the case was reopened u/s 147 of the I.T. Act after recording the reasons for reopening of the assessment and after obtaining the approval of the appropriate authority for reopening of assessment u/s 147 of the Act.

3.1 Notice u/s 148 of the I.T. Act dated 30.03.2021 was issued and duly served upon the assessee by email and also shared with assessee's e-proceedings account on department website. Assessee did not file any return against the same. Subsequently, notice u/s 142(1) of the I.T. Act dated 27.10.2021. was issued and duly served upon the assessee by email and also shared with assessee's e proceedings account on department website.

3.2 Thereafter, assessee in his reply dated 18.01.2022 stated that he has filed return of income for AY 2017-18 declaring total income at Rs.3,94,820/- against the notice u/s 148 which was beyond the due date. In this case, notice under section 148 of the Income-tax Act, 1961 (hereinafter, the Act) was issued 30.03.2021. In terms of the said notice, the assessee was required to file a return of income on or before 30.04.2021 as was explicitly specified therein. However, the assessee failed to file the requisite return within the aforementioned time.

Subsequently, notices under section 142(1) of the Act were issued on 27.10.2021 calling the assessee to give details in respect of which the assessee is assessable under the Act for the assessment year under consideration. As per the provisions of said section, the assessee was required to furnish the return of income as on or before 30.04.2021. Yet, no return of income was filed within the stipulated time.

3.3 A return of income for the A.Y. 2014.15 was filed by the assessee on 07-12.2021. It is apparent that the said return has been filed much later than the time permitted for doing so. As mentioned earlier, the assessee was required to file the return of income latest by 30.04.2021. Having failed to do so, there is no option but to treat the said return as non est and proceed with passing the order as contemplated in section 144 of the Act. As a consequence, there would be no requirement to issue a notice under section 143(2) of the Act in respect of an invalid return. Still reasons recorded for reopening of the case were communicated to the assessee vide Notice u/s 143(2) issued on date 01.02.2022.

3.4 However, it may also be mentioned that there is no bar in law in considering the invalid return as a source of information for completing a best judgment assessment in terms of section 144 read with section 147 of the Act. Still Notice u/s 143(2) was served on the assessee along with

reasons for reopening communicated to him vide the same Notice dated 01.02.2022. Herein, the assessee was further asked to submit documents in support of his claims declared in ITR.

3.5 In addition to this assessee again filed various details on 18.01.2022 along with copy of ITR. computation of income. On verification of ITR and computation it is found that assessee has not declared income with respect to the transfer of Rs. 80,00,000/-into the A/c of M/s Shree Shyam Buildstructure Pvt. Ltd. Further, the assessee in his reply dated 09.02.2022, stated that reasons recorded for reopening may be communicated to him. But the same had already been communicated vide notice issued u/s 143(2) dated 01.02.2022. Hence, this reply of assessee is not found tenable.

3.6 He submitted the land agreement dated 27.12.2015 between Bhupinder Singh Yadav and Mis Shree Shyam Buld structure Pvt Ltd. At Rs 17,00,00,000/- The transaction done by Badaluram to Shree Shyam Buildstructure Pvt. Ltd is about Rs. 80,00,000/- on 07.05.2016. However, the assessee's income is not commensurate with the amount of transaction entered into by the assessee. The assessee says that he has paid the amount on behalf of grandson Bhupinder Yadav. However, nowhere in the bank account statement produced in this case by assessee with Kotak

Bank A/c, there exists any entry of amount being received from Bhupinder Yadav - the alleged grandson of the assessee. The assessee submitted ledger account of the Bank and other documents which had little relevance to reasons for reopening. The assessee vide his reply dated 12.03.2022 and 14.03.2022 stated simply that all documents have already been provided in the case.

3.7 Now, the assessee's income is a meagre income at Rs. 3,94,820/- and agricultural income of Rs. 4,69,750/- for the year which doesn't corroborate with the huge transaction amount of Rs 1 crore being debited from the account as shown above in figure. Further, the assessee claims that the case Bhupimnder Singh was opened in Central Circle Alwar for the same reopening reason and assessee also produced the assessment order passed in the case of Sh Bhupinder Singh. However, nowhere in the order is it being said that the source of income to a tune of Rs 80,00,000/- has been sufficiently explained by the grandson as well. Further, the assessee has not produced to this office any evidence to show the income sources of Bhupender Singh nor has he produced anything in support of the claim that the amount was transferred from Bhupinder Singh's account or that the disclosed income sources of Bhupinder Singh match with the quantum amount being transferred. Considering the fact that, the returned

income of Bhpinder Singh is only Rs 1,63,370/-i.e. even less than what has been declared by the assessee, it is important to reconcile as to where was this huge amount of Rs 80,00,000/- earned and why was it not disclosed in the ITR which is much above the Basic exemption limit.

3.8 In view of these facts, it is clear that the assessee is not able to explain the source of his income to a tune of Rs 80,00,000/-. By not producing sufficient details, the assessee has failed to discharge the primary onus cast upon him by law and therefore, it is very much proved that the assessee is not in a position to explain the source of this investment. Thus, it can be concluded that the source of investment to a tune of Rs 80,00,000/- has not been sufficiently proved by the assessee. Since the assessee did not explain the sources of income for purchasing the above mentioned property. Therefore this income of Rs.80,00,000/- is treated as unexplained investment u/s 69 and added back to the assessee's computation under the head of "Income from Other sources".

4. Aggrieved from the order of the assessing officer, the assessee preferred an appeal before the ld. CIT(A). A propos to the grounds of the appeal so raised by the assessee, the relevant finding of the ld. CIT(A) is reiterated here in below:-

“4. DETERMINATION AND DECISION

4.1 Ground of Appeal No. 1 pertains to the contention of the appellant that notice u/s 148 of the Act was issued without any basis. The appellant further submitted that the amount of Rs.80,00,000/- as advance paid to M/s. Shree Shyam Buildstructure Pvt. Ltd on 07.05.2016 is made through 'RTGS and entry is reflected in his Bank Account, which cannot be the basis of initiating the proceedings of 148/147 of the Act.

On the other hand, the Ld. AO gave his finding in para 2 of his assessment order, which is reproduced as under:

“ 2. The ITO, Ward-1, Sikar has intimated that the assessee has made payment of Rs. 80,00,000/- as advance to M/s Shree Shyam Buildstructure Pvt. Ltd. on 07.05.2016 through RTGS and informed to examine the source of advance and credit entries shown in the bank account of the assessee. The credit entries shown in the copy of bank account statement of the assessee (No. 7811619865) maintained with Kotak Mahindra Bank and advance amount of Rs 80,00,000/- given by the assessee are not found reasonable in view of income shown by the assessee in his return of income filed for the year under consideration.”

4.1.1 However, from the above, it could not be determined whether the appellant has challenged the jurisdiction of the AO at the time of assessment proceedings. The appellant in his Return of Income dated 30.05.2023 (in the appellate proceedings) has reiterated his view that reasons were wrongly recorded and further said that the notice was also not issued to him Whereas, para 2.2 of the AO's order clearly mentioned the manner in which the notice was served on the assessee. The appellant accordingly, respondent to the AO which is also a establish fact.

Keeping in view of the facts and circumstances of the case, it is established that contention taken by the appellant is not correct either on facts or on law. Hence, this ground of appeal is rejected.

4.2 Ground of Appeal No. 2 pertains to the contentions made by the appellant that the AO cannot issued notice u/s 148 and cannot asked to file the revised Return of Income. This is legal ground take by the appellant but without any basis and further elaboration. It is established procedure that once notice u/s 147/148 is issued, the concerned person has to either filed the return or to file reply in response to that notice. Even if, the return is not filed. the proceedings cannot be stated as invalid. This ground of appeal filed by the appellant is dismissed.

4.3 Ground of Appeal No. 3 pertains to the contention of the appellant is that the Ld AO has given finding for treating the Income Tax Return filed u/s 148 of the Act as non-est, this issue is an outcome of certain technical issues being faced by Income Tax Department in its ITBA application, as the Return is filed in response to the notice u/s 148 of the Act are not taken into consideration by the system and the notice u/s 148 of the Act is automatically generated with the remarks that "return is not filed. This mistake is arisen of the technical glitch but not any part of the AO. This issue was elaborately discussed by the AO in his order and also discussed that even if. Return is not valid, the assessment proceedings can be completed u/s 144/147 of the Act. The view taken by the AD is as per the Act. It is further noticed that the Ld. AO also discussed the filing of the Writ Petition by the appellant before the Hon'ble Rajasthan High Court. The appellant failed to submit any documents regarding the stay on assessment proceedings, which he otherwise claimed. Even, during the appellate proceedings, the appellant has not furnished any documents regarding stay of any proceedings (assessment or penalty). Hence, the ground of the appeal filed by the appellant is dismissed.

4.4 Ground of Appeal No. 4 pertains to the addition of Rs. 80,00,000/- u/s 69 of the Act The Ld. AO in para 3 of his assessment order has furnished the facts related to this issue

3. Assessee vide his reply dated 12.03.2022 and 14.03.2022 stated simply that all documents have already been provided in the case. The assessee has furnished the following information

5. Asad above Grand son Mr. Bhupendra Singh Executed the Agreement as said in your information dated 27.12.2015 in which payment is made to Seller but till date this agreement is in dispute so payment made of Rs. 1.00 crores as under:

.....

3.1. Now, the assessee's income is a meagre income at Rs. 3,94,820/- and agricultural income of Rs. 4,69,750/- for the year which doesn't corroborate with the huge transaction amount of Rs 1 crore being debited from the account as shown above in figure.

32 Further, the assessee claims that the case Bhupinder Singh was opened in Conral Circle Alwar for the same reopening reason and assessee also produced the assessment order passed in the case of Sh. Bhupinder Singh. However, nowhere in the order is it being said that the source of income to a

tune of Rs 80,00,000/- has been sufficiently explained by the grandson as well. Further, the assessee has not produced to this office any evidence to show the income sources of Bhupinder Singh. Nor has he produced anything in support of the claim that the amount was transferred from Bhupinder Singh's account or that the disclosed income sources of Bhupinder Singh match with the quantum amount being transferred. Considering the fact that the returned income of Bhupinder Singh is only Rs 1,63,370/-ie even less than what has been declared by the assessee, it is important to reconcile as to where was this huge amount of Rs 80,00,000/- earned and why was it not disclosed in the ITR which is much above the Basic exemption limit.

3.3 In view of these facts, it is clear that the assessee is not able to explain the source of his income to a tune of Rs 80,00,000/- By not producing sufficient details, the assessee has failed to discharge the primary onus cast upon him by law and therefore, it is very much proved that the assessee is not in a position to explain the source of this investment. Thus, it can be concluded that the source of investment to a tune of Rs 80,00,000/- has not been sufficiently proved by the assessee. Since the assessee did not explain the sources of income for purchasing the above mentioned property. Therefore, this income of Rs.80,00,000/- is treated as unexplained investment w/s 69 and added back to the assessee's computation under the head of "Income from Other sources."

4.4.1 As can be seen from the above, the L.d AO has observed that the source of Rs. 80 Lakhs was not furnished by the appellant and he is having meagre income. The appellant in his submission has submitted the ledger account of Kotak Bank for the relevant period. The amount of Rs. 80 lakhs has been shown paid on 07.05.2016. After the examination of this account, I have noticed that the appellant has received huge amounts (more than Rs 1 crore) between 11.04.2016 to 03.05.2016. The appellant claimed that the sources of such credits were explained to the AO during the assessment proceedings, but the AO did not consider the same. These details were also furnished during the course of appellate proceedings. I have gone through such creditors namely Narindra, Salveer Chaudhry Neelam, Aarti etc. But, the documents produced are only either PAN card or any other identity card and ledger accounts. The appellant has not furnished the bank accounts and ITR's of these persons, without that it is difficult to establish the credit worthiness of these creditors. Hence, the appellant has failed to prove the sources related to the amount of Rs 80 lakhs. The appellant also claimed that the same amount was discussed in the assessment of his grandson namely Sh. Bhupinder Singh vide order passed on 10.02.2022 for the AY 2016-17. The appellant contended that the Assessing

Officer of Sh. Bhupinder Singh has accepted the entry for Rs. 80 lakhs which is a subject matter of this appeal.

4.4.2 I have gone through the order of Sh. Bhupinder Singh and noticed that the Assessing Officer also left a office note alongwith the assessment order where he toed to justify the amount of Rs. 20 lakhs in the case of Sh. Bhupinder Singh for which the case (Bhupinder Singh) was reopened. The basis of justification of his (AO of Bhupinder Singh) justification that the amount of Rs. 20 lakhs was paid by Sh. Badluram (appellant in this case) from his bank account with the Kotak Bank. It means the case of Sh. Bhupinder Singh has no bearing in the appellant's case. Keeping in view of these discussion, the addition made by the AO for Rs. 80 lakhs are confirmed in the hands of Sh. Badluram. Hence, this ground of appeal is dismissed.

4.5 Grounds of appeal No. 5 & 6 are consequential/general in nature, hence no specific findings are required.

5. In the result, the appeal filed by the appellant is dismissed.”

5. As the assessee did not receive any favour from the appeal filed before Id. NFAC/ CIT(A). The present appeal filed against the said order of the Id. NFAC before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

“ **Facts:-**

1. The assessee filed the return of income on 29.03.2018 declaring total income of Rs.3,94,820/- and agricultural income of Rs.4,69,750/- **(PB 9)**.
2. The AO on the basis of information received from ITO, Ward-1, Sikar that assessee has made payment of Rs.80 lacs as advance to M/s Shree Shyam Buildstructure Pvt. Ltd. on 07.05.2016 through RTGS issued notice u/s 148 dt.

30.03.2021(**PB 10**) and at Pg 2 of the assessment order observed that notice u/s 148 dt. 30.03.2021 was issued and served upon the assessee by e-mail and also shared with assessee's e-proceeding account. Thereafter notice u/s 142(1) dt. 27.10.2021 & 18.01.2022 was served through e-mail/e-proceeding account in response to which assessee filed the reply on 07.12.2021 (**PB 14**)& 25.01.2022 (**PB 15**) stating that in response to notice u/s 148 return was filed on 07.12.2021(**PB 11-13**) as the notice was shown in e-proceeding after 30.06.2021 and the income tax portal was not working enabling to file ITR in due time. The AO, however, held that since the assessee has not filed the return on or before 30.04.2021 in response to notice u/s 148, the same is non-est and accordingly completed the assessment u/s 144 r.w.s. 147 of the Act.

3. The Ld. CIT(A), NFAC at Para 4.1 to 4.3 uphold the order of AO without controverting the submission of assessee.

Submission:-

1. The reasons recorded for reopening the assessment is at **PB 18-20**. From the reasons recorded it can be noted that ITO, Ward-1, Sikar intimated the AO that assessee has made payment of Rs.80 lakhs on 07.05.2016 through RTGS and informed to examine the source of advance and credit entries shown in the bank account. Thereafter the AO has recorded in Para 5 that amount advanced of Rs.80 lakhs are not found reasonable in view of income shown by assessee and therefore there is a reason to believe that amount of Rs.80 lacs has escaped assessment. From the reasons recorded it can be noted that AO has nowhere examined the source of amount advanced of Rs.80 lakhs and simply issued the notice on the basis of information received by him. Thus the reopening of assessment is only on borrowed satisfaction and therefore reopening is bad in law as held in following cases:-

Sunil Agarwal Vs. ITO ITA No.988/Del/2018 order dt.24.05.2018 (Del.) (Trib.)

If the AO reopens on the basis of information received from another AO without further inquiry, it means he has proceeded "mechanically" and "without application of mind". Further, section 151 of the Act clearly stipulates that the CIT(A) who is the competent authority to authorize the reassessment notice has to apply his mind and form an opinion. In the present case, approval granted by the competent authority is a mechanical approval and action has been taken mechanically because on perusing the reasons recorded it demonstrates that Joint CIT has written "Yes, in view of reasons recorded by the AO, I am satisfied that this is fit case for issue of notice u/s 148 and similarly, the Ld. CIT, Dehradun has mentioned Yes, I am satisfied" which establishes that both the authorities have not recorded proper satisfaction/ approval before issue of notice u/s 148 of the IT Act. Thereafter, the AO has mechanically issued notice u/s 148 of the Act on the basis of information allegedly received by him from the DCIT, Central Circle,

Dehradun. Thus, the reopening in the case of the assessee for the AY in dispute is bad in law and deserves to be quashed.

Sri Laxmi Narayan Agency Vs. ITO (2023) 292 Taxman 192 (Orissa) (HC)

Where AO reopened assessment in case of assessee company on basis of report received from DDIT that assessee had made unaccounted purchases of gold bullions, since reasons for reopening merely repeated language of said DDIT report without any independent application of mind and there was no other vital documents on record based on which reasons to believe were formed, impugned reopening order and consequential demand notices issued were bad in law and thus liable to be set aside.

2. It is further submitted that according to AO he issued notice u/s 148 on 30.03.2021. However, this notice was not served upon the assessee and it was reflected in assessee's e-proceeding account after 30.06.2021. In response to the said notice assessee filed the return on 07.12.2021 as the income tax portal was not working. Thus the action of lower authorities in treating the return filed by the assessee as non-est is incorrect. **Hon'ble Kerala High Court in case of Chirakkal Service Co-operative Bank Ltd. &Ors. Vs. CIT (2016) 384 ITR 490** at para 21 of the order held as under:-

21. When a notice under s. 142(1) is issued, the person may furnish the return and while doing so, could also make claim for deduction referable to s. 80P. Not much different is the situation when pre-assessment enquiry is carried forward by issuance of notice under s. 142(1) or when notice is issued on the premise of escaped assessment referable to s. 148 of the IT Act. This position notwithstanding, when an assessment is subjected to first appeal or further appeals under the IT Act or all questions germane for concluding the assessment would be relevant and claims which may result in modification of the returns already filed could also be entertained, particularly when it relates to claims for exemptions. This is so because the finality of assessment would not be achieved in all such cases, until the termination of all such appellate remedies. Under such circumstances, the Tribunal was not justified in denying exemption under s. 80P of the IT Act on the mere ground of belated filing of return by the assessee concerned. A return filed by the assessee beyond the period stipulated under s. 139(1) or 139(4) or under s. 142(1) or s. 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est in law and invalid for the purpose of deciding exemption under s. 80P of the IT Act. We thus answer substantial questions of law B and C formulated and enumerated above.

Hence the AO be directed to accept the return filed by the assessee as valid return.

Ground No.3

The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.80 lacs u/s 69 of the Act being amount paid to Sh. Shyam Builders & others on 07.05.2016 from the bank account by incorrectly holding that assessee failed to prove the source of same ignoring that the same is out of the opening bank balance of Rs.70,95,968/- and repayment of outstanding loan credited in the bank account between 02.04.2016 to 06.05.2016.

Facts:-

1. In course of assessment proceedings the assessee vide letter dt. 10.02.2022 (**PB 21-22**) submitted that his grandson Sh. Bhupendra Singh has entered into an agreement with M/s Shree Shyam Buildstructure Pvt. Ltd. on 27.12.2015 for purchase of land (**PB 31-35**). The assessee has made payment of Rs.20 lacs on 09.12.2015 and Rs.80 lacs on 07.05.2016 on behalf of his grandson to M/s Shree Shyam Buildstructure Pvt. Ltd. Thereafter vide letter dt. 27.03.2022 (**PB 23-30**) assessee submitted that the source of payment of Rs.80 lacs is opening bank balance and repayment of outstanding loan in support of which ledger account of parties was also filed.
2. The AO, however, held that in the submission dt. 27.03.2022 the assessee simply stated what was earlier submitted by him and nothing new was submitted in support of his claims. Further in the reply dt. 29.03.2022 assessee filed incomplete ledger accounts of some loans without any explanation or evidence as to why the loans were taken, from whom they were taken, the rate of interest being paid or any documents in support to justify his case satisfactorily. Accordingly he made addition of Rs.80 lacs u/s 69 of the Act by treating it as unexplained investment.
3. The Ld. CIT(A), NFAC held that the assessee has received huge amounts (more than Rs.1 crore) between 11.04.2016 to 03.05.2016. The assessee claimed that the source of such credits were amount received from creditors namely Narindra, Satveer Chaudhry, Neelam, Aarti etc. but the documents produced are only either PAN card or any other identity card and ledger accounts. The assessee has not furnished the bank accounts and ITR's of these persons without that it is difficult to establish the creditworthiness of these creditors. Hence, the assessee has failed to prove the sources related to the amount of Rs.80 lakhs. Accordingly, he confirmed the addition made by AO.

Submission:-

1. It is submitted that the source of payment of Rs.80 lacs on 07.05.2016 was out of opening bank balance of Rs.70,95,968/- and receipt of outstanding loan of Rs.1.01 crore credited in the bank account between 11.04.2016 to 03.05.2016 (**PB 36-38**). The details of receipt of outstanding loan of Rs.1.01 crore is as under:-

S.No.	Name of party	Date of receipt	Amount (inRs.)	Remarks
1.	Narendra	11.04.2016	10,00,000/-	The assessee has given loan of Rs.25 lacs in FY 2015-16 out of which Rs.15 lacs was repaid in that year only. Remaining amount of Rs.10 lacs was repaid in the current year. Copy of ledger account of Narendra along with his Aadhar card and PAN card is at PB 44-45 . Thus when it is a repayment of loan given to him, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant.
2.	SatveerChoudhary	11.04.2016 21.04.2016	8,00,000/- 7,00,000/-	The assessee has given loan of Rs.20 lacs in FY 2015-16 out of which Rs.5 lacs was repaid in that year only. Remaining Rs.15 lacs was repaid in the current year. Copy of ledger account of Satveer Choudhary along with his Aadhar card and PAN card is at PB 48-50 . Thus when it is a repayment of loan given to him, the finding of

				CIT(A) as to the creditworthiness of creditors is irrelevant.
3.	Suresh Thekedar	12.04.2016	9,00,000/-	The assessee has given loan of Rs.10 lacs in FY 2015-16 out of which Rs.9 lacs was repaid in the year under consideration. Copy of ledger account of Suresh Thekedaris at PB 51 . Thus when it is a repayment of loan given to him, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant.
4.	Rakesh Yadav	12.04.2016	10,00,000/-	The assessee has given loan of Rs.10 lacs in FY 2015-16 which was repaid in the year under consideration. Copy of ledger account of Rakesh Yadav along with his PAN card is at PB 46-47 . Thus when it is a repayment of loan given to him, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant.
5.	Aarti	12.04.2016	30,00,000/-	The assessee has given loan of Rs.64 lacs in FY 2015-16 out of which Rs.30 lacs was repaid in the year under consideration. Copy of ledger account of Aarti

				along with herAadhar card and PAN card is at PB 41-43 . Thus when it is a repayment of loan given to him, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant.
6.	NeelamRajmahalHotal	03.05.2016	27,00,000/-	The assessee has given loan of Rs.35 lacs on 12.04.2016 out of which Rs.27 lacs was repaid on 03.05.2016. Thereafter assessee has again given loan of Rs.13 lacs on 09.05.2016. Copy of ledger account of NeelamRajmahalHotal along with PAN card of Neelam is at PB 39-40 . Thus when the amount advanced during the year and thereafter received back also, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant.
Total			1,01,00,000/-	

2. From the above it can be noted that the source of Rs.80 lacs paid to M/s Shree Shyam Buildstructure Pvt. Ltd. on 07.05.2016 is fully verifiable from the bank account of assessee. Therefore, addition made by the AO and confirmed by Ld. CIT(A) u/s 69 of the Act is incorrect and the same be directed to be deleted.

6. The ld. AR of the assessee also filed a detailed paper book in support of the contentions so raised. The index of the document submitted by the ld. AR of the assessee reads as under:-

PAPER-BOOK			
S. No.	Particulars	Pg No.	Filed before AO/ CIT(A)
1.	Copy of submission filed before Ld. CIT(A)	1-8	CIT(A)
2.	Copy of original acknowledgment of return dt. 29.03.2018	9	Both
3.	Copy of notice dt. 30.03.2021 issued u/s 148 of IT Act	10	Both
4.	Copy of return dt. 07.12.2021 filed in response to notice issued u/s 148 along with computation of total income	11-13	Both
5.	Copy of reply dt. 07.12.2021 filed during the course of assessment proceedings	14	Both
6.	Copy of reply dt. 25.01.2022 filed during the course of assessment proceedings	15	Both
7.	Copy of notice dt. 01.02.2022 issued u/s 143(2) r.w.s. 147 of IT Act	16-20	Both
8.	Copy of assessee's reply dt. 10.02.2022 in response to above notice	21-22	Both
9.	Copy of reply dt. 27.03.2022 filed during the course of assessment proceedings	23-30	Both
10.	Copy of sale agreement dt. 27.12.2015 between M/s Shree Shyam Buildstructure Pvt. Ltd. and Bhupendra Singh	31-35	Both
11.	Copy of bank statement of assessee along with the ledger account	36-38	Both
12.	Copy of ledger account of Neelam Rajmahal Hotel in assessee's books of accounts along with PAN card of Neelam	39-40	Both
13.	Copy of ledger account of Arti in assessee's books of accounts along with her Aadhar card and PAN card	41-43	Both
14.	Copy of ledger account of Narendra in assessee's books of accounts along with his Aadhar card and PAN card	44-45	Both
15.	Copy of ledger account of Rakesh Yadav in assessee's books of accounts along with his PAN card	46-47	Both
16.	Copy of ledger account of Satveer Choudhary in assessee's books of accounts along with his Aadhar card and PAN card	48-50	Both
17.	Copy of ledger account of Suresh Thekedar in assessee's books of accounts	51	Both
18.	Copy of reasons recorded for issuance of notice u/s 148 of IT Act in case of Sh. Bhupender Singh	52-54	Both
19.	Copy of assessment order dt. 09.02.2022 passed u/s 147 of IT Act in case of Sh. Bhupender Singh	55-57	Both

7. The ld. AR of the assessee in addition to the written submission vehemently argued that on receipt of the information the ld. AO should have sought information from the assessee u/s. 133(6) of the Act. Without doing that simply for verification of the fact he has issued the notice u/s. 148 of the Act which is not correct. There is no material to conclude that income has really escaped. To drive home to this contention, he has relied upon the judgment cited in his written submission. Not only that the notice issued u/s. 148 of the Act dated 30.03.2021 was not served to the assessee and it was reflected in the eproceeding portal only on 30.06.2021. The ld. CIT(A) has rejected his technical ground raised before him which was rejected without dealing with the facts of the case. As regards the merits of the case he has relied upon the written submission. Thus, ld. AR of the assessee submitted that on both the grounds of technical as well as on factual aspect of the matter he has matter and therefore, the appeal be decided accordingly.

8. On the other hand, ld. Sr. DR supported the order of the ld. CIT(A). The ld. DR Submitted that the objection to re-opening has been dealt with. The ld. AO has upon verification of the bank statement rightly invoked the provision of section 148 and there is no mistake in

recording the reasons. The assessee has not filed the return in time though belatedly. The notice issued was already serviced to eproceeding portal. The assessee has purchased the land and made the source of the said payment was not proved from the bank statement and therefore, 148 issued was correct and consequently the addition made is also correct based on the reasoning given in the order of the lower authority. As regards the loan obtained by the assessee, he has not justified the source correctly and therefore the addition made is required to be sustained based on the reasoning given by the ld. AO and ld. CIT(A).

9. We have heard both the parties, perused materials available on record. The assessee filed the return of income on 29.03.2018 declaring total income of Rs.3,94,820/- and agricultural income of Rs.4,69,750/-. Based on the information received from ITO, Ward-1, Sikar wherein it is noted that assessee has made payment of Rs.80 lacs as advance to M/s Shree Shyam Buildstructure Pvt. Ltd. on 07.05.2016 through RTGS and as the income does not commensurate with the payment made the ld. AO issued notice u/s 148 dt. 30.03.2021[though assessee claim on 30.06.2021] was issued and served upon the assessee by e-mail and also shared with assessee's e-proceeding account. Thereafter, notice u/s 142(1) dt. 27.10.2021 & 18.01.2022 was served through e-mail/e-

proceeding account in response to which assessee filed the reply on 07.12.2021 & 25.01.2022 stating that in response to notice u/s 148 return was filed on 07.12.2021 as the notice was shown in e-proceeding after 30.06.2021 and the income tax portal was not working enabling to file ITR in due time. The AO, however, held that since the assessee has not filed the return on or before 30.04.2021 in response to notice u/s 148, the same is non-est. Accordingly completed the assessment u/s 144 r.w.s. 147 of the Act. The Ld. CIT(A), NFAC at Para 4.1 to 4.3 uphold the order of AO without controverting the submission of assessee. Aggrieved from the order of the Id. CIT(A) the assessee has preferred the present appeal on technical ground as well as on the merits of the case. We do not intend to go into the technicality of the issue as that period was on account of covid.

9.1 On merits of the case the bench noted that the source of payment of Rs.80 lacs on 07.05.2016 was out of opening bank balance of Rs.70,95,968/-. The assessee is in receipt of outstanding loan of Rs.1.01 crore credited in the bank account between 11.04.2016 to 03.05.2016 **(PB 36-38)**. The details of receipt of outstanding loan of Rs.1.01 crore is given in the written submission and based on that we note that the assessee has given loan of Rs.25 lacs in FY 2015-16 to Shri Narendra.

Out of that amount so given a sum of Rs.15 lacs was repaid in that year only. The remaining amount of Rs.10 lacs was repaid in the current year. Copy of ledger account of Narendra along with his Aadhar card and PAN card is at **PB 44-45**. Thus, when it is a repayment of loan given to him, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant and therefore, we see no reason to confirm that amount as income of the assessee u/s. 69 of the Act. Similarly we note that the assessee has given loan of Rs.20 lacs in FY 2015-16 to Shri Satveer Choudhary out of which Rs.5 lacs was repaid in that year only. The remaining amount of Rs.15 lacs was repaid in the current year. Copy of ledger account of Satveer Choudhary along with his Aadhar card and PAN card is at **PB 48-50** placed on record. Thus, the assessee received the repayment of loan which he has given the finding of CIT(A) as to the creditworthiness of creditors is irrelevant as the assessee has not received the money, but they have paid the loan and the said loan was received back. As regards the money received from Shri Suresh Thekedar the assessee has also given a loan of Rs.10 lacs in FY 2015-16 out of which Rs.9 lacs was repaid in the year under consideration. Copy of ledger account of Suresh Thekedar is at **PB 51**. Thus, when it is a repayment of loan given to him, the finding of CIT(A) as to the creditworthiness of creditors is while

assessing the income is not correct. The assessee has given loan of Rs.10 lacs in FY 2015-16 to Rakesh Yadav which was repaid in the year under consideration. Copy of ledger account of Rakesh Yadav along with his PAN card is at **PB 46-47**. Thus, when it is a repayment of loan given to him, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant while assessing the income of the assessee. The assessee has given loan of Rs.64 lacs in FY 2015-16 to Ms. Aarti out of which Rs.30 lacs was repaid in the year under consideration. Copy of ledger account of Aarti along with her Aadhar card and PAN card is at **PB 41-43**. Thus, when it is a repayment of loan given by the assessee, we do not see how the finding of Id. CIT(A) as to the creditworthiness of that payee at the time of repayment of the loan given by the assessee will again relevant. The assessee has given loan of Rs.35 lacs to M/s. Neelam Rajmahal Hotel on 12.04.2016 out of which Rs.27 lacs was repaid on 03.05.2016. Thereafter assessee has again given loan of Rs.13 lacs on 09.05.2016. Copy of ledger account of Neelam Rajmahal Hotel along with PAN card of Neelam is at **PB 39-40**. Thus when the amount advanced during the year and thereafter received back also, the finding of CIT(A) as to the creditworthiness of creditors is irrelevant and the addition made without considering the fact of the case available on record. Even at the time of

hearing of this appeal the ld. AO through the ld. DR did not controvert these important facts of the case available on record. Even the assessee has claimed that out of 80 lac he is having opening balance of Rs. 70,95,968/- in his bank account. Even otherwise the opening balance cannot be added in the assessee's hand in the year under consideration. Thus, considering the overall aspect of the matter as discussed herein above. We do not see any reason to sustain the addition of Rs. 80,00,000 made in the hands of the assessee and the same is directed to be deleted. Since we have considered the case of the assessee on merits the technical ground raised by the assessee becomes educative in nature. Based on these observation the appeal of the assessee is allowed.

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

Order pronounced in the open Court on 09 /04/2023.

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09/04/2023.

***Santosh**

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

1. अपीलार्थी / The Appellant- Sh. Badaluram, Alwar.

2. प्रत्यर्थी / The Respondent- ITO, Ward, Behror.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 720/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar