

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 717/JP/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Madan Lal Jain C-402, Old Vidhyadhar Nagar Opp Bus Stand, Jaipur	बनाम Vs.	Income Tax Officer, Ward 4(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABJPJ 2905 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 19/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 03/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 03/10/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2017-18 which in turn arise from the order dated 05.11.2019 passed under section 144(3) of the Income Tax Act, by ITO, Ward-4(2), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. In the facts and circumstances of the case and in law, the Id. CIT(A)/ National Faceless Appeal Centre (NFAC) has erred in confirming the action of Id. AO in making addition of Rs. 56,13,990/- u/s 69C for alleged unexplained expenditure through credit cards to the total income of the assessee. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made to the income of the assessee.

2. The assessee craves his rights to add, amend or alter any of the grounds on or before the hearing.”

3. Succinctly, the fact as culled out from the records is that the assessee e-filed his return of income on 23-03-2018 declaring total income at Rs. 4,47,510/-. The case was selected for limited scrutiny assessment under CASS and accordingly, notice u/s 143(2) of the I.T. Act, 1961 was issued on 09-08-2018 fixing the hearing on 24-04-2018. The notice was duly served upon the assessee. Thereafter, notice u/s 142(1) along with specific questionnaire was issued (electronically as well as manually) on 02-05- 2019 asking the assessee to file/upload requisite information and details by 17-05-2019. However, no compliance was made by the assessee of the said notice and no written submission was filed. Since, the assessee was not complying with the notices issued, further opportunity was granted by issuing notice dated 05.06.2019 (electronically as well as manually), However, the assessee has not made any compliance of above

notice as well. Looking to the fact that the assessee has remained totally non-compliant and the case before the Id. AO being time baring, a final show cause notice before completion of assessment proceedings u/s 144 along with notice u/s 142(1) was issued on 23.09.2019 (electronically as well as manually) seeking explanation of the assessee by 03.10.2019 by the Id. AO. In response to the above show cause notice dated 23.09.2019, neither anyone attended nor was any written submission filed on 03.10.2019 or thereafter.

3.1 In the mean while enquiries have been conducted u/s 133(6) of the Income Tax Act from the Banking/Credit Card companies in respect of credit card purchases/expenditure incurred by the assessee. On the basis of enquiries conducted and information available in the ITS details of department software, it has been noticed that assessee has made following credit card purchases/expenditure.

S. No.	Name of the Banking/Credit Card Company	Amount of credit card purchases/expenditure	Remarks
1	RBL Bank Ltd	14,40,000/-	
2	Standard Chartered Bank	3,06,000/-	
3	The HSBC Ltd	19,00,500/-	It includes payments of demonetized notes amounting to Rs. 2,58,000/-
4	HDFC Bank Ltd.	24,15,000/-	

The assessee was required to explain the sources of credit cards payments amounting to Rs. 60,61,500/- in above mentioned Banks/Credit Card Companies and he has also been accorded various opportunities wherein he has failed to represent. On perusal of return of income. The Id. AO noted the assessee declared total income at Rs. 4,47,510/- which considered the source of credit card payments. Therefore, rest of the credit card payments for an amount of Rs. 56,13,990/- (Rs. 60,61,500- Rs. 4,47,510) remain unexplained in the hands of the assessee. The same was treated as unexplained investment of the assessee under the provisions of Sec. 69C of the I.T. Act.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“5. Decision: In this case, the addition has been made by the Assessing Officer worth Rs. 56,13,990/- u/s 69C of the Income Tax Act, 1961. The appellant has made credit card payments worth Rs. 60,61,500/-. On perusal of Return of Income, it was found that the appellant has declared total income of Rs. 4,47,510/-. Hence the Assessing Officer gave the appellant the credit of Rs. 4,47,510/- and made addition of Rs. 56,13,990/- u/s 69C of the Income Tax Act, 1961.

5.1 Now before me in the appellate proceedings, written submission has been filed. I have gone through the written submission. It has been stated that barring one payment of Rs. 1,75,000/-, the payment worth Rs. 58,86,500/- was made by Mr. Ram Babu Garg. The appellant has stated that notice has been sent to Mr.

Ram Babu Garg through Advocate. The contention of the appellant cannot be accepted because the credit card is in the name of the appellant and how come some other person like Mr. Ram Babu Garg can use credit card without his consent or permission. Even if it is used by Mr. Ram Babu Garg, the expenditure from credit cards has been made from the bank account of the appellant. Hence the Assessing Officer is justified in making addition u/s 69C of the Income Tax Act, 1961 of amount worth Rs. 56,13,990/-. Hence the appeal of the appellant is dismissed.”

5. Feeling dissatisfied with the order of the Id. CIT(A), the assessee has preferred this appeal on the grounds as reiterated here in above para 2. To support the various grounds so raised the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

I. The appellant is an Individual aged 57 years. The appellant was earning income by working with freight forwarding companies as freelancer.

II. Original e-return was filed on 23.03.2018 declaring a Total Income of Rs. 4,47,510. The case was selected for limited scrutiny under CASS. Notice u/s 143(2) was issued on 09.08.2018.

III. The assessment was completed u/s 143(3) *vide* order dated 05.11.2019 at a Total Income of Rs. 60,61,500, making addition for alleged unexplained credit card expenditure u/s 69C of Rs. 56,13,990.

IV. Against the order passed by Id AO, appellant preferred appeal before the Id CIT(A)/ NFAC, who *vide* order dated 03.10.2023, in Appeal No. CIT(A)-2, Jaipur/11189/2019-20, dismissed the appeal of the appellant. The present appeal has been filed by the appellant against the order of Id CIT(A)/NFAC.

GROUND OF APPEAL

GROUND NO. 1 : ADDITION OF ALLEGED UNEXPLAINED CREDIT CARD EXPENDITURE U/S 69C OF RS. 56,13,990

1. Brief Facts and Modus Operandi

1.1 The appellant is an Individual and 57 years old. The appellant was earning moderate income by working with freight forwarding companies as freelancer. In the relevant year, appellant was living in small house of 50 yards with his family consisting of himself, wife and two daughters. The address is as under:
C-402, Old Vidhyadhar Nagar,
Opp. Bus Stand
Jaipur

1.2 During the relevant year, the appellant was maintaining following bank accounts: (CIT Order Page 3)

Name of Bank Branch	Branch	Nature of Account	Account No.
Standard Chartered Bank	MI. Road, Jaipur	Savings Account	75110173432
HDFC Bank Limited	Vidyadhar Nagar, Jaipur	Savings Account	50100143631944

Copies of Bank Statement for the relevant year are placed in Paper Book. [PB: 1-15].

1.3 The appellant was not earning enough income to sustain his house hold expenses. At that time, he came in contact with a person Mr. Ram Babu Garg, who advised him to let his credit cards be used by him. Shri Ram Babu Garg assured him that all the dues of credit cards will be paid by him in due time. Mr. Ram Babu Garg also told him that using credit card by him will increase appellant's CIBIL Score, thereby increasing the limit of credit cards. In this way, the Appellant can also earn reward points, from which the appellant can buy household goods. The appellant, being in bad financial condition at that time, agreed and gave his credit cards to Mr. Ram Babu Garg for use by him.

1.4 The address of Mr. Ram Babu Garg (CIT Order Page 4) is as under:
Mr. Ram Babu Garg
Proprietor of M/s Shree Ram Trading Company
PAN AOXPG7498D
Mobile No. 93529-88800
House No. 4, Shop No. 3, Jamna Dairy,
Sodala, Jaipur

1.5 The appellant, handed over following credit cards to Mr. Ram Babu Garg for use by him: (AO Order Page 3)

Name of Bank	Credit Card Number	Amount Used (Rs.)
RBL Bank Limited	5415382308407006	14,40,000
Standard Chartered Bank	4622735450455747	3,06,000
HSBC Limited	4862698905376042	19,00,500
HSBC Limited	4862698905802336	
HDFC Bank Limited	5522605100178965	24,15,000
Total		60,61,500

Copies of Statement of Credit Cards for the relevant year are placed in Paper Book. [PB: 16-74].

1.6 Out of total credit card payments, two payments of Rs. 1,75,000 each (Standard Chartered Bank Credit Card No. 4622735450455747) were made though Saving Bank Account of appellant maintained with Standard Chartered Bank (Account No. 75110173432), for which reimbursement was made by Mr. Rambabu Garg. Details are as under:

Date of Payment	Amount (Rs.)	Details of corresponding Credit in bank			
		Date	Mode	Amount (Rs.)	Source
06.07.2016 PB -29	1,75,000	06.07.2016 PB-4	Cash	1,75,000	Cash by Mr. Rambabu Garg
06.08.2016 PB-30	1,75,000	06.08.2016 PB-4	Bank Transfer	1,55,000	Bank transfer from business concern of Mr. Rambabu Garg – Shri Ram Trading Co.
				20,000	
Total				3,50,000	

1.7 All the remaining credit card payments were directly paid by Mr. Ram Babu Garg from his bank account out of his own sources. No amount was paid by the appellant. (CIT Order Page 4)

1.8 The appellant also sent a legal notice dated 24.03.2021, through his advocate, to Mr. Ram Babu Garg vide registered AD dated 24.03.2021. (CIT Order Page 4-5) Copy of Notice by Advocate is placed in Paper Book. [PB: 75-80]

2. Proceedings before Id AO

At the time of assessment proceedings, the appellant was under financial strain. Therefore, no reply could be given. Ld AO, based on enquiries conducted u/s 133(6), came to the conclusion that the appellant made payments of Rs. 60,61,500 through various credit cards. Ld AO, after giving credit for his declared income of Rs. 4,47,510, held Rs. 56,13,990 (Rs. 60,61,500 – Rs. 4,47,510) as unexplained investment u/s 69C and added the same to total income, taxable at special rate u/s 115BBE of the Income Tax Act, 1961.

3. Proceedings before Id CIT(A)/NFAC

3.1 Detailed submissions were made to Id CIT(A) - NFAC, which are also reproduced by Id CIT(A) - NFAC in his order u/s 250 (Page 3-6).

3.2 During the course of appellant proceedings, appellant has filed following documents:

S. No.	Particulars	PB
1.	Copy of Bank Statement – Standard Chartered Bank	1-11
2.	Copy of Bank Statement – HDFC Bank Limited	12-15
3.	Copy of Credit Card Statement – RBL Bank Limited	16-25
4.	Copy of Credit Card Statement – Standard Chartered Bank	26-40
5.	Copy of Credit Card Statement – HSBC Limited- 6042	41-52
6.	Copy of Credit Card Statement – HSBC Limited- 2336	53-63
7.	Copy of Credit Card Statement- HDFC Bank Limited- 8965	64-74
8.	Copy of notice dated 24.03.2021 sent to Mr. Ram Babu Garg through Advocate and copy of Registered AD Acknowledgement	75-80

3.3 Ld CIT(A)/NFAC, observing that since the credit cards were in the name of the appellant, no other person can use credit card without his consent and the payments for credit cards have been made from the bank account of the appellant, dismissed the appeal. (CIT Order Page 6)

4. Submissions

4.1 It is submitted that submissions made before Id CIT(A), which were also reproduced by him in his order (Page 3-6) may please be appreciated in correct perspective.

4.2 It is also submitted that Section 250(4) of the Act provides that CIT(A) can also make enquiry himself. Needless to mention that all the possible details were placed on record on the basis of which complete enquiry was possible. Ld CIT(A) could make enquiries from Mr. Ram Babu Garg to know the truth and compel him to

produce desired details. For ready reference, section 250(4) is reproduced hereunder:

“The Joint Commissioner (Appeals) or the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Joint Commissioner (Appeals) or the Commissioner (Appeals).”

It was duty of Id CIT(A) to verify the facts. Not discharging his obligations and still rejecting the evidences and explanations is blatantly illegal. The appeal of the appellants deserves to be allowed by granting full relief.

4.3 The observation of NFAC/Id CIT(A) that the payments for credit cards have been made from the bank account of the appellants is incorrect. It is submitted that payments of only Rs. 3,50,000 were made through bank account of the appellants, for which reimbursement was received from Mr. Rambabu Garg as already explained in para 1.6 above.

4.4 Details of payment made to credit card from other bank/online payments as per credit card statements placed in paper book are as under:

Date	Name of Bank	Description	Amount(Rs.)	PB
05.09.2016	Standard Chartered Bank	Online Payment	10,000	31
06.09.2016		NEFT Credits	1750	31
06.09.2016		NEFT Credits	4850	31
06.09.2016		NEFT Credits 4900*16	78,400	31
06.09.2016		NEFT Credits 5000*17	85,000	31-32
05.10.2016		NEFT Credits	1,850	33
05.10.2016		NEFT Credits 4850*3	14,550	33
05.10.2016		NEFT Credits 4900*14	68,600	33
05.10.2016		NEFT Credits 5000*17	85,000	33-34
31.10.2016		Standard Chartered Bank	NEFT Credits	2,600
31.10.2016	NEFT Credits		4,800	35
31.10.2016	NEFT Credits 4850*16		77,600	35
31.10.2016	NEFT Credits 5000*18		90,000	35-36

06.12.2016		Online Payment	10,000	37
06.02.2017		Online Payment	7,500	39
18.07.2016	HSBC	Online Pym from OTH Bank GCB 14617146695	1,50,000	44
17.08.2016	HSBC	Online Pym from OTH Bank G 1624685590870	1,50,000	45
17.09.2016	HSBC	Online Pym from OTH Bank GHDF4761215522	50,000	46
17.08.2016	HSBC	Online Pym from OTH Bank GSB14761189874	1,00,000	46
17.01.2017	HSBC	RTGS INWARD	2,00,000	50
01.07.2016	HSBC	Online Pym from OTH Bank GUT14579988718	50,000	55

4.5 The above details of payments, to Credit Card companies, through banking channel, if verified, would reveal the correct user of the credit card. Without such verification by the department, allegation of payment having been made by the assessee is unjustified.

4.6 It is also relevant to note that two payments from credit card of RBL Bank were made to Shri Ram Trading Company, Jaipur on 12.05.2016. Shri Ram Trading Company is Proprietorship concern of Mr. Rambabu Garg. Details are as under:

Date	Name of Bank	Description	Amount(Rs.)	PB
12.06.2016	RBL Bank	Shri Ram Trading	62,000	18
12.06.2016		Company, Jaipur	98,000	18

4.7 It is submitted that for invoking section 69C of the Act, the assessee must have incurred that expenditure and thereafter, if the explanation offered by the assessee about the source of such expenditure is not found satisfactory by the Assessing Officer, the amount may be added to his income.

4.8 In the present case, the following facts are beyond doubt:

- The credit cards were clandestinely used by Mr. Rambabu Garg by misguiding the appellant.

- All credit card payments were directly made by Mr. Ram Babu Garg (except Rs. 3,50,000) out of his (Mr. Ram Babu Garg) own sources. The bank statements of appellant make it abundantly clear that he has not made any such payments.
- Two payments of Rs. 1,75,000 each were made through Saving Bank Account of appellant, for which reimbursement was made by Mr. Rambabu Garg as explained in para 1.6 above.
- There is nothing to show that the expenditure was incurred by the appellant. The appellant did not have that kind of money.

It is submitted that the income has to be taxed in the hands of the person to which the same belongs i.e. Mr. Rambabu Garg.

In view of above Id CIT(A) has erred in confirming the action of the Id AO in making addition of Rs. 56,13,990 u/s 69C. Relief may please be granted by set aside the case to Id AO to decide the case afresh, after making necessary enquiries from Mr. Ram Babu Garg.”

6. The Id. AR of the assessee in addition to the above written submission so filed and submitted that the assessee is a man of meager means and is acting free lancer and working in the field of freight forwarder agent, he has dealt with his consent allowed Mr. Ram Babu Garg to use the credit card for which the details of mobile number and substantially evidences to prove that the credit card payments have been used by Mr. Ram Babu Garg. The assessee after the assessment order given a legal notice to the said Ram Babu Garg and the relevant detail were not coming based on this set of facts. Ld. CIT(A) should have exercised his co-terminus power with that of the Id. AO should have placed it on record and confirmed

the averments made by the assessee. The assessee has placed on record all bank statements and credit card statements before Id. CIT(A) based on that it is clearly established that most of repeated payment and receipt is coming from Shri Ram Trading Company, Jaipur which is proprietorship concern of Shri Ram Babu Garg even most of the payment are coming from bank and any FD transactions. Therefore, the use of credit card by Shri Ram Babu Garg cannot be considered as unexplained expenditure of the assessee without bringing anything on record from Shri Ram Babu Garg. The evidence which was placed on record before Id. CIT(A) though admitted by the Id. CIT(A) but has not been commented upon only on the reasons that assessment order is ex-parte. The Id. CIT(A) should have passed a speaking order in accordance with provisions of section 250 (4) of the Act and has exercised the power vested upon him by dealing with the facts of the case. Therefore, considering the facts placed before the bench by the assessee, Id. AR of the assessee prayed for a justice of deciding those aspects of the matter by setting aside the matter before Id. AO and to charge only the correct income of the assessee.

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records:

S. No.	Particulars	PB
1.	Copy of Bank Statement – Standard Chartered Bank	1-11
2.	Copy of Bank Statement – HDFC Bank Limited	12-15
3.	Copy of Credit Card Statement – RBL Bank Limited	16-25
4.	Copy of Credit Card Statement – Standard Chartered Bank	26-40
5.	Copy of Credit Card Statement – HSBC Limited- 6042	41-52
6.	Copy of Credit Card Statement – HSBC Limited- 2336	53-63
7.	Copy of Credit Card Statement- HDFC Bank Limited- 8965	64-74
8.	Copy of notice dated 24.03.2021 sent to Mr. Ram Babu Garg	75-80

8. Per contra, the Id. DR objected to the prayer of Id. AR of the assessee submitted that it is the duty of the assessee to give complete details which the assessee failed to do so. The assessee has not placed on record. The details of how much payment has been made in cash and in by banking channels which will help the Assessing Officer to decide the issue precisely however, at the time, looking to the peculiar set of facts placed on record if the assessee came with this details of payment of cheque and cash for this credit card which will help the Id. AO to decide the matter.

9. In the rejoinder of the Id. AR of the assessee assured to submit this chart before the Id. AO and the same was also submitted on 19.06.2024 claiming that Rs. 6,20,100/- is by cash only. Thus, out of total payment of

Rs. 60,61,500/- for payment of credit card Rs. 6,20,100/- is by cash and rest all money is paid by an account payee cheque which require and extensive investigation.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee is alleging that he has allowed the use of his credit to Shri Ram Babu Garg to use the credit card for which the details of that person mobile number and substantially evidences to prove that the credit card payments have been used by Mr. Ram Babu Garg. The assessee after the assessment order given a legal notice to the said Ram Babu Garg as he was not co-operating in the investigation. The assessee has contended with all these evidence before the Id. CIT(A), we he hold the co-terminus power with that of the Id. AO. But instead of dealing with the evidence of the assessee the Id. CIT(A) confirmed the view of the Id. AO. The evidence that assessee has placed on record which covers all bank statements and credit card statements before Id. CIT(A). The Id. AR based on that evidence try to co-relate the factual aspect of the matter that most of repeated payment and receipt is coming from Shri Ram Trading Company, Jaipur which is proprietorship

concern of Shri Ram Babu Garg even most of the payment are coming from him. Therefore, the use of credit card by Shri Ram Babu Garg cannot be considered as unexplained expenditure of the assessee without bringing anything on record from Shri Ram Babu Garg. The evidence which was placed on record before Id. CIT(A) though admitted by the Id. CIT(A) but has not been commented upon only on the reasons that assessment order is ex-parte. The Id. CIT(A) should have passed a speaking order in accordance with provisions of section 250 (4) of the Act and has exercised the power vested upon him by dealing with the facts of the case. In the absence we deem it fit to set aside the matter before Id. AO to decide the issue a fresh and the correct income of the assessee be taxed in accordance with the law.

In the result, for statistical purposes, the appeal of the assessee treated as allowed.

Order pronounced in the open court on 03/07/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/07/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Madan Lal Jain, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 4(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 717/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar