

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 666/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18.

Dilip Maheshwari Partanion Ka Mandir, Partanion Ka Rasta, Johari Bazar, Jaipur.	बनाम Vs.	Assistant Commissioner of Income-tax, Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADDPM 3904D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &
Shri R.K. Bhatra, CA

राजस्व की ओर से / Revenue by : Shri Ajey Malik, Ld. CIT

सुनवाई की तारीख / Date of Hearing : 13/08/2024
उदघोषणा की तारीख / Date of Pronouncement: 30/09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 22.03.2024 of Id. CIT (Appeals)-4, Jaipur passed under section 250 of the Income Tax Act, 1961 for the assessment year 2017-18. The grounds raised in the appeal are reproduced as under :-

1. (a) That on the facts and in the circumstances of the case the Ld. CIT(A) is wrong, unjust and has erred in law in upholding finding recorded by the Ld. AO that cash deposit of Rs. 1,45,00,000/- in bank account of the appellant allegedly

remained unverified after rejecting submission of the appellant that the said deposits were out of cash and advances aggregating to Rs. 23890000/- offered to tax by the appellant is A.Y. 2016-17 during course of search u/s 132 and duly accepted in assessment made u/s 153A r/w sec.143(3).

(b) The Ld. CIT(A) is further wrong and has erred in law in confirming addition of said amount of Rs 1,45,00,000/- made to the income of the appellant by the Ld. AO as unexplained cash credit u/s 68 of the IT Act, 1961 chargeable to tax @60% u/s 115BBE.

2. The appellant craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.

2. The brief facts of the case are that the assessee is a partner in firm M/s Maheshwari Associates from which remuneration and profits were received and also have income from other sources like SB A/c interest etc. The assessee filed his return of income for the year under consideration on 28-11-2017 declaring total income of Rs. 33,09,400/-. The case was selected in scrutiny by issue of notice u/s 143(2)/142(1) which assessee complied. The A.O. in the course of assessment proceedings noticed that assessee has deposited total cash amounting to Rs. 1,45,00,000/- in his Bank A/c during the financial year 2016-17 i.e. Rs. 1,25,00,000/- between 01.04.2016 to 8.11.2016 and Rs. 20,00,000/- between 09.11.2016 to 30.12.2016 i.e. demonetization period. The assessee was asked to explain source of cash deposits during the above period, to which the assessee filed his written submissions, which the AO held as unacceptable and observing that the said cash deposits made by the assessee in his bank account remains unexplained and treated them as out of his undisclosed source and accordingly taxed as per provisions of section 68 of I. T. Act, 1961 and included the

same in the total income of assessee and taxed @ 60% as per provisions of section 68 read with section 115BE (1) (a) of I. T. Act, 1961. Aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT (A). The Ld. CIT(A)-4, Jaipur vide his order dated 22-03-2024 upheld the additions

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee reiterated his submissions as made before the Id. CIT (A) and has further submitted his written submissions as under :-

" It is submitted that in case of assessee a search u/s 132 was took place on 07-1-2016 at his office premises as well as at his residence. In search cash amounting to Rs. 29,08,950/- was found at the residence of assessee. The assessee claimed that Rs. 1,08,950/- found in cash is out of savings of his family which was considered reasonable and so balance cash of Rs. 28,00,000/- was seized and in office premises cash amounting to Rs. 6,45,000/- and cash advance slips of Rs. 1,70,00,000/- were found. These cash slips of Rs. 1,70,00,000/- and cash found of Rs. 34,45,000/- (6,45,000/- + 28,00,000/-) total Rs. 2,04,45,000/- were inventorised as cash found/seized as can be seen in inventory of cash found/seized prepared in course of search. The assessee in the statement u/s 132 recorded in course of search surrendered said cash/slips found totaling to Rs. 2,04,45,000/- as its current years business income.

1.2 The assessee in his books of accounts recorded Rs. 2,04,45,000/- as current years income declared during the search by debiting Rs. 28,00,000/- to Income Tax Department being cash seized by department, by debiting Rs. 1,70,00,000/- to sundry debtors being amount of cash slips seized in course of search and balance Rs. 6,45,000/- being cash not seized was included in cash in hand on 07-01-2016. In the financial year 2015-16 assessee on 05-03-2016 realised cash of Rs. 25,00,000/- from cash advances found noted in cash advances slips seized in course of search and deposited Rs. 30,00,000/- on 15-03-2016 towards income tax payable for A.Y. 2016-17 (balance of Rs. 5,00,000/- was out of said cash of Rs. 6,45,000/- not seized by department) . These all entries are recorded in books of accounts i.e. Cash Book and Ledger maintained by assessee. In the Balance Sheet of assessee as on 31-3-2016 sundry debtors representing cash advance slips was clearly shown at Rs. 1,45,00,000/- (Rs. 1,70,00,000 – Rs. 25,00,000/- realized as stated above). The assessee thereafter filed his income tax

return for A.Y. 2016-17 on 15-10-2016 declaring an income of Rs. 2,31,46,620/- (which included the surrendered income of Rs. 2,04,45,000/- as 'current year business income offered to tax during course of search') and paid due tax thereon.

In support of above stated facts we submit for your perusal following:-

1.	Panchnama of search, inventory of cash seized, inventory of seized A/c books etc. seized and slips of advances.	Page 1 to 8
2.	Copy of statement recorded u/s 132 in course of search.	Page 8-22
3.	Copy of Return of income for A.Y. 2016-17, Computation of Income, Balance sheets on 31-3-2016, copy of Bank Pass Book (HDFC Bank A/c No. 50100015502562 in the name of assessee for period 1-4-15 to 31-3-2016) with details giving narration of entries, copy of cash book of assessee for 1-4-15 to 31-3-2016, copy of A/c of assessee in firm M/s Maheshwari Associates for 1-4-15 to 31-3-2016 with details of summary of cash transactions.	Page 23-39

1.3 Thereafter the assessment of assessee for A.Y. 2016-17 was completed by DCIT, Central Circle – 3, Jaipur u/s 143 (3) r.w.s. 153B (1) (b) vide order dated 30-12-2017 after examining relevant details the declared income including surrendered income was accepted but making additions on account of cash found Rs. 1,08,950/- (Rs. 29,08,950/- cash found less surrendered Rs. 28,00,000/-) and for Rs. 2,84,736/- holding that silver items found in excess. In appeal against assessment order, CIT (A) deleted addition of Rs. 1,08,950/- made on account of cash found. The copy of Assessment Order and Appeal Order is submitted for your perusal being Paper Book Page 40-50.

1.4 In financial year 2016-17 (A.Y. 2017-18) the assessee realized in cash the remaining sundry debtors representing cash advance slips of Rs. 1,45,00,000/- on different dates and deposited the same cash amount in his Bank Account as can be seen from copy of cash book submitted herewith (Page 51-53). Thus the cash of Rs. 1,45,00,000/- deposited in Bank A/c of assessee in F.Y. 2016-17 (Rs.1,25,00,000/- before demonetization and Rs. 20,00,000/- in demonetization period of 09-11-2016 to 31-12-

2016) is the amount realized from cash advances which were surrendered as income of A.Y. 2016-17 which has already been subjected to tax under the Act. In reply to show cause notice issued by A.O. asking to explain the source of said cash deposits assessee filed the same explanation which Ld. A.O. not examined from the assessment record/search record of A.Y. 2016-17. The Ld. A.O. by examining the return of income of assessee for A.Y. 2017-18 held '*On perusal of the return filed for this year, the assessee has shown income from business at Rs. 34,88,000/- and Rs. 41,903/- from interest and misc. income. However, the cash amounting to Rs. 1.70 Cr. was deposited which clearly prove that this cash was deposited out of his undisclosed income from unexplained sources*'. The Ld. A.O. while giving this finding referring to IT Return filed by assessee for A.Y. 2017-18 while the issue is arising from the search proceedings took place in 07-01-2016 and dealt by assessee in return filed for A.Y. 2016-17 and assessment completed thereon. The Ld. A.O. is wrong in holding that regarding cash received from parties complete details not filed. It is submitted that cash was received for the same cash advance slips found in course of search which were unexplained and, therefore, the same was surrendered as income of that year. **The Hon'ble ITAT Delhi Bench, Delhi in case of Racmann Springs Pvt. Ltd. Vs DCIT (1995) 55 ITD 159 held that :**

"On having found that several drafts had been deposited in bank without mentioning names of parties in corresponding vouchers except name of stations like Calcutta, etc., in some cases, Assessing Officer observed in his original order that assessee was asked to give names and explain nature and source of those deposits but he had failed to do - Assessee filed a reconciliation statement of sundry debtors for a number of years which, inter alia, showed realisations for assessment years 1981-82 to 1984-85 - Assessing Officer in his subsequent order observed that while realisations in any of years 1982-83 to 1984- 85 did not exceed Rs. 5 lakhs, it was unlikely that in current year assessee suddenly had a realisation from sundry debtors amounting to Rs. 18,00,763 - He, therefore, held that drafts deposited in bank accounts were actually undisclosed sales of assessee and, accordingly, treated same as assessee's income under section 68 - Whether Assessing Officer, having accepted figure of sundry debtors as on 30-6-1981 to 30-6-1985, could not find fault with figure of sundry debtors as on 30-6-1980 because then he should have enhanced figure of sundry debtors as on 30-5-1980 by Rs. 18,00,763 and adopted same in later years - Held, yes -

Whether realisations from sundry debtors could be treated as cash credits under section 68 - Held, no".

It is further submitted that cash was realized for the same cash advance slips found in course of search which were unexplained and, therefore, the same was surrendered as income of that year. It is thus realization of income which was already taxed in A.Y. 2016-17. The realization of Rs. 25,00,000/- of cash advance slips was made in F.Y. 2015-16 (A.Y. 2016-17) which stand accepted in A.Y. 2016-17 and, therefore no other view can be taken on same set of facts in subsequent year. The taxing of same income twice is not warranted by law. The Supreme Court in case of *State of UP Vs. Raza Buland 118 ITR 50 (SC)* held that – “*The income tax law is to charge tax on income but in the hands of same person only once. There could be no double taxation of the same income in the hands of same person (See also Ghisa Lal Vs. CIT 248 ITR 506)*. In the case of *Laxmi Pat Singhania Vs. CIT (1969) 72 ITR 291 (SC)* at 294 where Hon'ble Supreme Court has observed that “*It is fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice (See also Jain Brothers Vs. Union of India (1970) 77 ITR 107 (SC)*. The amount of Rs. 1,25,00,000/- was deposited in Bank A/c in the period prior to demonetization and in demonetization period only Rs. 20,00,000/- was deposited which was not undisclosed income but out of income already disclosed by assessee in A.Y. 2016-17 and thus there is no reason to hold by A.O. that if the demonetization was not declared then the above undisclosed income was never be disclosed and assessee would have remained out of tax net. The assessee had discharged his onus to explain the credits being deposit in his Bank A/c. The Ld. A.O. did not examined the facts of case and explanation of assessee properly and arbitrarily held the said amount of Rs. 1,45,00,000/- being cash deposited in Bank as undisclosed as source of it remains unexplained and thereby treating it unexplained credit u/s 68 of the Act and adding the same to declared income of assessee which deserves to be deleted.

4. On the other hand, the Id. D/R relied on the orders of the Revenue authorities.
5. We have heard the rival submissions and perused the material available on record. On perusal of the record, we find that the assessee during the course of search on 07.01.2016 the appellant surrendered a sum of Rs. 2,04,45,000/- (Rs. 1,70,00,000/- on account of unaccounted loans and Rs. 34,45,000/- on account of excess cash found) as his additional income and the same was accepted by the AO in the assessment. In

the assessment for the Assessment Year 2016-17 the AO also made certain other additions besides the returned income which comprised of the surrendered amount of Rs. 2,04,45,000/- and such other additions were deleted by the Id. CIT (A). The argument of the appellant is that he had deposited Rs. 1,45,00,000/- in his bank account during the relevant previous year out of realization made by him from matching amount of debtors which were taxed as unexplained income in course of search/assessment. As against this, the AO has not accepted the claim of the assessee on the reasoning that the appellant failed to give details i.e. name, address, PAN etc. of such debtors from whom the assessee realized Rs. 1,45,00,000/-. The LD. CIT (A) also rejected the contention of the appellant and sustained the addition meaning thereby that both the lower authorities are of the view that a sum of Rs. 1,45,00,000/- deposited in the bank account of the appellant was from undisclosed income of the appellant and there was no recovery from the debtors found recorded at the time of search. The main contention of the lower authorities is that recovery of the amount from the debtors also partake the character of cash credit whereas as per the appellant the same is not cash credit in terms of section 68 of the IT Act, 1961 and no burden lies on the appellant to prove ingredients of section 68 on such recoveries received from loan/debtors. On perusal of the statement of the assessee recorded during the course of search (APB 18), it is seen that a query was raised from the assessee to explain Annexure A-57 found in his premises which related to advances or Rs. 1.70 crores for which the assessee explained that this was the money advanced by him out of his earning from real estate transactions/business. This statement of the assessee was

accepted by the Department and was taxed. At that time, no query was raised by the Department from the assessee about the name, address and PAN of the parties to whom the advances had been given and now when the said advanced money came back to the assessee, the AO asks for details i.e. name, address and PAN which is not justified. Moreover, we find that no adverse material has been brought on record by the AO to prove that the appellant did not make recoveries from old loans but this sum was out of his unaccounted money for the year under consideration. In this regard we rely on the judgment of Coordinate Bench of the Delhi Tribunal in the case of Singhal Exim Pvt. Ltd. vs. ITO in ITA No. 6520/Del/2018 dated 12th April, 2019 wherein the issue was regarding cash deposit in the bank account for Rs. 59.11 crores which was claimed by the assessee to be out of cash sales. The AO in that case added a sum of Rs. 59.11 crores as unexplained cash credit under section 68 of the IT Act, 1961, which action was sustained by the LD. CIT (A). On appeal, the Coordinate Bench of Delhi Tribunal (supra) allowed the appeal of the assessee by holding that sale consideration received in cash cannot be subject matter of section 68 because after sale of goods the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realization of such debt and, therefore, section 68 cannot be applied. The Coordinate Bench of the Tribunal Delhi also held that the realization from the sundry debtors cannot be treated as cash or credits. Cash credits always appear as a liability in the balance sheet of the assessee. Realization from the sundry debtors would reduce the sundry debts appearing on the assets side of the balance sheet. As in the case of appellant the AO during the course of assessment proceedings of the searched year

1916-17 has accepted the above said amount as sundry loan debtors and accordingly the Id. AO has confirmed that the above referred amount is an asset and not a liability. Further, the AO has also taxed the entire loan amount as an income in the above searched year assessment. In the present case, the claim of the appellant that he had realized Rs. 1.45 crores from the debtors and the lower authorities raised doubt thereon. In our opinion, in absence of any adverse material made available by the AO, the contention of the appellant deserves to be accepted. In view of the above discussion, we delete the addition of Rs. 1,45,00,000/-.

Ground No. 2.

6. Since we have deleted the addition, this ground has become infructuous and requires no adjudication.
7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30/09/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 30/09/2024.

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

1. अपीलार्थी / The Appellant- Shri Dilip Maheshwari, Jaipur.

2. प्रत्यर्धी / The Respondent- The DCIT, Central Circle-3, Jaipur.
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. 666/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar