

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.103/JP/2023
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Brijendra Garg E-103, Ist Floor, Ganpati Plaza Bhiwadi	बनाम Vs.	The ITO Ward- Bhiwadi Bhiwadi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABBPG 6885F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Rohan Sogani, CA
राजस्व की ओर से / Revenue by: Shri Gautam Singh Choudhary, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 25/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 30 /09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 11-01-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 raising therein following grounds of appeal.

“1. In the facts and circumstances of the case and in law the Id.CIT(A) has erred in confirming the action of the AO in reopening the case of the assessee u/s 147 of the Act. The action of the Id.CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted quashing the entire reassessment proceedings being illegal and void ab initio.

2. In the facts and circumstances of the case and in law the Id.CIT(A) has erred in confirming the action of the AO in treating the sale of listed equity shares

as bogus transaction, thereby disallowing the exemptions of LTCG of Rs.2,75,650/- and making addition to the income of the assessee. The action of the Id.CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by considering the gain on sale of listed equity shares as long term capital gains and allowing consequential relief by deleting the entire addition of Rs.2,75,650/-

3. In the facts and circumstances of the case and in law the Id.CIT(A) has erred in confirming the action of the AO in making addition of Rs.5,513/- as undisclosed expenditure on account of alleged commission paid on obtaining long term capital gain. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs.5,513/-.

4. In the facts and circumstances of the case and in law the Id.CIT(A) has erred in confirming the action of the AO in making additions of Rs.1,80,000/- on account of cash deposited by the assessee. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 1,80,000/-.

2.1 The assessment proceedings under section 147 of the Income Tax Act were initiated and assessment was completed under section 147 read with section 143(3) of the Income Tax Act, thereby making additions in the case of the assessee

2.2 Aggrieved by the order of assessment, assessee preferred before Id.CIT(A) but the same was dismissed and the additions made by the AO were upheld.

2.3 Further aggrieved by the order of Id CIT(A), the assessee has preferred the present appeal before me on the grounds mentioned here in above

3.1 Ground No. 1 raised by the assessee is not pressed during the course of arguments. Therefore, this ground raised by the assessee stands dismissed as not pressed.

4.1 Ground No. 2 and 3 raised by the assessee are interrelated and interconnected and relates to upholding of additions by Id. CIT(A) of Rs.2,75,650/- and Rs.5,513/- on account of disclosed expenditure. Since both the grounds are interrelated and interconnected, therefore I have thought it fit to dispose of both the grounds through the present consolidated order.

4.2 In order to substantiate this ground, AR retreated the same arguments as were raised by him before the lower authorities and also relied upon his written submissions. The contents of the written submissions filed by the assessee with regard to Ground No. 2 & 3 are reproduced below.

“GROUND NO. 2 & 3-ADDITION OF RS. 2,81,163

Assessee is a regular trader engaged in the purchase and sale of shares on a recognized stock exchange. Assessee is also a registered sub-broker, having been granted a Certificate of Registration by the Securities and Exchange Board of India (SEBI) in 2006.

During the year under consideration, assessee purchased and sold shares of DMC Vaults Ltd., incurring a loss of Rs. 42,097. During the course of the assessment proceedings, the Id. AO, based on information received from the Investigation Wing, concluded that the assessee had earned a gain of Rs 2,75,650 on the sale of shares of DMC Education Ltd. (AO Order Page No.2), which was considered to be bogus.

However, during the assessment proceedings, all relevant evidence related to the transactions undertaken in the said script was duly submitted to the Id. AO. Despite this, the Id. AO disregarded the submissions, citing that the assessee had provided details pertaining to M/s DMC Vaults Ltd., while the information received from the Investigation Wing referred to M/s DMC Education Ltd.

It is pertinent to note that the company in which the assessee traded during the relevant year had undergone a name change from M/s DMC Vaults Ltd to M/s

DMC Education Ltd. A snapshot of the relevant corporate events, as obtained from the Moneycontrol.com website, is provided hereunder

The Company has issued Bonus Shares in the Ratio of 11 Company has changed its name from DMC Vaults Ltd to DMC International Ltd

2008

DMC International Ltd. Director appointed Mr. Ravi Santani as independent Director

Company name has been changed from DMC Vaults Ltd DMC International Ltd.

2010

DMC International Ltd. has informed that management of the Company has appointed Mr Gaurav Mittal as CEO for the education division of the Company

Company has changed its name from DMC International Ltd. to DMC Education Ltd

2011

DMC Vaults - Acquisition of 51% Stake of LIFELONG Finishing

Academy & Delhi based Training Institute

DMC Education Ltd has Takeover of PLANSTEPS 14 Years Education Consulting and Carter Counseling Firm for INR 45 million

Both the Id. AO and the Id. CIT(A) disregarded the documentary evidence submitted and relied solely on the information provided by the investigation Wing. The fact that the assessee incurred a loss of Rs. 42,097 on the purchase and sale of shares of DMC Education Ltd is undisputed.

In light of the above, it is submitted that no gain, as alleged by the Ld.AO and CIT(A), arose from the trading in the shares of DMC Education Ltd. On the contrary, the assessee has only incurred a loss in respect of the said transactions. Therefore, the entire addition of Rs.2,81,163 made to the assessee's income is unwarranted and deserves to be deleted.”

4.3 On the other hand, ld. DR relied upon the orders passed by the revenue authorities

4.4 I have heard the counsel for both the parties, perused the material placed to record, judgements cited before me, and also the orders passed by revenue authorities. I noticed from the record that assessee is a regular trader engaged in the purchase and sale of shares on a recognised stock exchange and is also a registered sub broker having been granted certificate of registration by the securities and exchange board of India in 2006, During the year and consideration, the assessee had purchased and sold shares of DMC vaults Ltd, thereby incurring a loss of Rs.42,097/-. I further noticed that during the course of assessment proceedings, the AO proceeded on the premise based on the information received from the investigation being that the assessee had earned gain of Rs.2,75,650/- on the sale of shares of DMC education Ltd. However, on the contrary, as per the factual position, assessee has never earned gain rather asses, he has incurred loss of Rs. 42,097/-. I have further noticed that though during the assessment proceedings, all the relevant evidences relating to the transactions undertaken in the said script were duly submitted to the AO, despite this fact, the AO disregarded the submissions citing that assessee had provided details pertaining to M/s DMC vault Ltd while the information received from the investigation wing referred to M/s. DMC education Ltd. Considering these facts, I am of the view that AO was under

some confusion or misconception about the facts of the case as the company in which the assessee traded during the relevant year had under gone a name change from DMC Vaults Ltd to M/s. DMC Education Ltd, snapshot of the relevant corporate events as obtained by the assessee is reproduced herein below.

The Company has issued Bonus Shares in the Ratio of 11 Company has changed its name from DMC Vaults Ltd to DMC International Ltd

2008

DMC International Ltd. Director appointed Mr. Ravi Santani as independent Director

Company name has been changed from DMC Vaults Ltd DMC International Ltd.

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DMC Vaults - Acquisition of 51% Stake of LIFELONG Finishing Academy & Delhi based Training Institute

DMC Education Ltd has Takeover of PLANSTEPS 14 Years Education Consulting and Carter Counseling Firm for INR 45 million

Both the revenue authorities disregarded the documentary evidences submitted by the assessee but solely relied on the information provided by the investigation wing the fact that the assessee incurred loss of Rs. 42,097/- on the purchases and sale of shares of DMC education Ltd is an undisputed fact on record moreover, the assessee has not got the said loss adjusted anywhere. Therefore, now under the circumstances the question arises as to how and in what manner the assessee is a

beneficiary of any alleged accommodation entries in the form of exempted capital gain/ loss. It is also pertinent to mention that nothing has been placed on record by the revenue authorities to demonstrate that there was live link between the assessee and M/S DMC Education Ltd and it is not the case of the revenue or the allegations that assessee's name was pointed out by any of the directors of M/S DMC Education in the statements recorded-during investigation, therefore by no stretch of imagination, it can be assumed that assessee is a beneficiary in any manner whatsoever, in my considered view, no addition can be made on the basis of suspicion or assumptions or presumptions. Therefore, the entire addition of Rs.2,81,163/- made to the assessee's Income is unwarranted and deserves to be deleted and thus I direct the AO to delete the said additions, therefore, this ground raised by the assessee stands allowed.

5.1 The Ground No. 4 raised by the assessee relates to challenging the order of Ld CIT appeal in confirming the action of AO in making additions of Rs. 1,80,000/- on account of cash deposited by the assessee.

5.2 The ld AR reiterated the same arguments as were raised by him before the lower authorities and also relied upon written submissions filed by him and the same are reproduced below

‘GROUND NO.4- ADDITION OF RS. 1,80,000

During the year under consideration, assessee deposited Rs. 1,80,000 in cash into his bank account. The source of this cash, as explained to the lower authorities,

was the amount received by assessee from his wife. The assessee's wife had accumulated this amount from her personal savings over time.

It is important to highlight that the deposited amount of Rs. 1,80,000 is a modest sum, which is reasonably expected to be present in any Indian household. In this context, reference is made to CBDT Instruction No. 03/2017 dt. 21.02.2017, issued post-demonetization, wherein it was explicitly accepted that Indian households may possess cash holdings up to Rs. 2,50,000. Relevant screenshot of the guidelines issued by the CBDT are set out hereunder

Annexure

‘Source Specific General Verification Guidelines

1 Cash out of earlier Income or savings

1.1 in case of an individual (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to Rs 2.5 lakh. In case of taxpayers above 70 years of age, the limit is Rs. 50 lakh per person. The source of such amount can be either household savings/ savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filling of ROI and income shown therein, cash withdrawals made from accounts etc’’

This clearly demonstrates that the cash deposited by assessee originated from genuine sources and falls within the acceptable threshold for cash holdings in an Indian household.

Accordingly, the addition made by the Id. AO, and subsequently confirmed by the Id. CIT(A), is unwarranted and deserves to be deleted.

5.3 On the other hand, learn DR relied upon the orders passed by the revenue authorities

5.4 I have heard the counsel for both the parties and have also perused The material placed on record, and also the orders passed by the revenue authorities. From the records, I noticed that during the year under consideration as he had

deposited a sum of Rs. 1,80,000 in cash into his bank account and in order to explain the source of this cash, it was specifically and categorically submitted by AR that the amount received by the assessee is from his wife as the wife of the assessee had accumulated this amount from her personal savings over the years. This explanation put forth by Ld AR. appears to be quite reasonable, keeping in view the modest sum of Rs.1,80,000, which is reasonably expected to be present in any Indian household. In this context, I make reference to. CBT instructions No.3/2017 dated 21 February 2017 issued post demonetisation wherein it has been explicitly accepted by the CBT that Indian households may possess cash holdings up to 2,50,000 and in this regard the relevant screenshot of the guidelines issued by the CBDT are reproduced here and below.

‘Source Specific General Verification Guidelines

1 Cash out of earlier Income or savings

1.1 in case of an individual (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to Rs 2.5 lakh In case of taxpayers above 70 years of age, the limit is Rs. 50 lakh per person. The source of such amount can be either household savings/ savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filling of ROI and income shown therein, cash withdrawals made from accounts etc’’

After having considered the facts of the case, coupled with instructions of CBDT, I am of the view that from the facts it is clearly demonstrated that the cash deposited by the assessee originated from genuine sources and falls within the acceptable

threshold for cash holdings in an Indian household accordingly, the additions made by the AO and confirmed by the Id. CIT(A) are unwarranted and deserves to be deleted and is thus ordered accordingly, consequently, this ground raised by the assessee stands allowed

6.0 In the result, the appeal filed by the assessee stands partly allowed with no order is to cost

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

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30 /09/2024

*Mishra

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

1. The Appellant- Shri Brijendra Garg, Bhiwadi
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Bhiwadi,
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 103/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar

