

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिकसदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 800/JP/2023  
निर्धारण वर्ष / Assessment Year : 2016-17

Kavita Samtani, 082 Sindhu Nagar, Opposite Pani Ki Tanki, Bhilwara.	ब्लाम Vs.	The DCIT, Central Circle, Ajmer
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: DBDPS 4032 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya, Adv. &  
Sh. Hemang Gargieya, Adv.  
राजस्व की ओर से / Revenue by: MS. Alka Gautam, CIT

सुनवाई की तारीख / Date of Hearing : 21/10/2024  
उदघोषणा की तारीख / Date of Pronouncement: 23/10/2024

आदेश / ORDER

PER: Narinder Kumar, Judicial Member,

The above captioned appeal has been filed by Smt. Kavita Samtani while challenging order passed by Id. CIT(Appeal), relating to Assessment Year 2016-17.

2. Vide impugned order, Id. CIT(Appeal) has upheld the assessment and dismissed the appeal filed by the assessee.

3. Vide impugned assessment, total income of the assessee has been assessed at Rs. 14,89,400/- by making 2 additions i.e. one of Rs. 54,000/-,

and the other of Rs. 12,20,600/-, due to undisclosed investments u/s 69 of the Act, and undisclosed investment, in purchase of agriculture land.

4. Arguments heard. File Perused

5. The assessee had filed his original return of income on 04.08.2016 declaring therein total income of Rs.214800/-. Total income of Rs.214800/- was offered in the valid return of income filed on 21.09.2019 in compliance with notice u/s 153A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”,)

6. Assessee-appellant claims to be in the business of running a beauty parlour, namely, Sophiya Beauty Parlour. On 29.03.2018, a search and seizure action u/s 132 of the Act was carried out at the residential premises of the assessee and her husband Sh. Deepak Samtani, in addition to the business premises of the husband.

7. Search and seizure action was also carried out at the residential and business premises of the family members of Sh. Deepak Samtani. The search led to incriminating material including documents/loose papers/books of accounts. The incriminating material was entered into inventories and seized.

8. In the course of search at her residence at 29, Sindhu Nagar, Bhilwara and business premises of her husband Shri Deepak Samtani,

seized loose papers as Annexure AS-2, Page No. 15 to 20 and AS Exhibit-6, Page No. 3 to 6 & Page No. 11 to 14 were seized.

In reply to the notice, it was submitted by the assessee that the documents Exhibit AS-6, Page No. 11 to 14 were ledger accounts of M/s Mohan Broker Agency and M/s Hariom Agency, and that the same are not related to her.

However, perusal of these documents revealed that during the F.Y. 2015-16, she had credited a sum of Rs. 54,000/- in the books of M/s Mohan Broker Agency.

9. Further, as per document Annexure AS, Exhibit-2, Page No. 15 to 20, purchase deed dated 27.03.2016, the assessee had purchased immovable property situated at Suwana for Rs. 11,51,000/-.

Assessing Officer observed that the Sub-Registrar had held that DLC value was Rs. 12 lac and further that a stamp duty of Rs. 48,000/- was levied. In addition thereto, other expenses of Rs. 21,600/- were born in regard to said plot situated at Suwana, but, the assessee had not disclosed anything in her ITR or in her reply about the source of purchase of said property for an overall consideration of Rs. 12,20,600/-.

The entire payment was stated to have been made in cash to the vendors, namely, Shri Atul Kumar Surana and Smt. Kanta Devi Sadhwani.

Considering all this, Assessing Officer was of the view that the assessee had no explanation regarding the source of this investment of Rs. 12,20,600/- Accordingly, an addition u/s 69 was made to the total income of the assessee.

Further, the Assessing Officer recorded his satisfaction that the assessee had concealed her income particulars within the purview of provisions of Sec. 271AAB(1A) for A. Y. 2016-17. Notice u/s 271AAB (1A) r.w.s. 274 was accordingly directed to be issued.

10. As regards the other addition, Assessing Officer observed:

“The assessee's A/R simply brushed aside the issue by saying that this is only related to M/s Mohan Broker Agency (a concern of her husband, Shri Deepak Samtani), but ignored this issue that she has credited a sum of Rs. 54000 /- in the said account of her husband but source of which has not been explained. Hence, considering the same as her unexplained investment u/s 69 of the L, T Act, an addition of Rs. 54000 /- is made to the total income for A.Y. 2016-17.”

Assessing Officer also observed that in view of violation of provisions of Sec. 271AAB(1A) for A. Y. 2017-18, notice u/s 271AAB (1A) r.w.s. 274 was being issued.

11. As noticed above, two additions have been made due to undisclosed investments said to have been made by the assessee.

12. In the assessment order, the Assessing Officer observed that during the search of the house of the assessee and business premises of her husband, one of the documents seized was purchase deed dated 27.03.2016, vide which a plot, situated in village Suwana, was found to have been purchased by the assessee for a sale consideration of Rs. 11,51,000/-.

The Assessing Officer observed that office of the Sub Registrar took into consideration DLC value of the plot as Rs. 12,00,000/-; that stamp duty of Rs. 48,000/- was reportedly paid for registration of the said document; and in addition thereto, a sum of Rs. 21,600/- was reportedly spent by way of other expenses for said registration.

Assessing Officer went on to observe that even though the entire sale consideration is stated to have been paid in cash to the vendors namely, Sh. Atul Kumar Surana and Smt. Kanta Devi Sadhwani. the assessee did not disclose any such thing in the ITR or even in her reply to the notice u/s 153A of the Act, she did not disclose about the source for payment of the said consideration and other expenses including stamp duty.

13. As per assessment order, Ledger Account of M/s Mohan Broker Agency and M/s Hari Om Agency, said to have been seized during the search from the aforesaid premises, revealed that during the Financial Year 2015-16, the assessee had credited a sum of Rs. 54,000/- to the account of M/s Mohan Broker Agency.

As per reply of the assessee to notice u/s 153A of the Act, she had no concern with the said ledger account and that a ledger account was related to M/s Mohan Broker Agency.

Assessing Officer observed that M/s Mohan Broker Agency was a concern of husband of the assessee and that she had failed to explain credit of sum of Rs. 54,000/-.

14. On behalf of the appellant, it has been argued that the assessee had availed of loan facility of Rs. 5,30,000/- from M/s Mohan Broker Agency and the above referred to sum of Rs. 54,000/- was repaid by her on two different dates i.e. Rs. 30,000/- on 4.8.2015 and Rs. 24,000/- on 28<sup>th</sup> Jan, 2016 by way of Account payee cheque. In this regard, reliance has been placed on copy of the statement of account of the assessee with her bank.

Reliance has also been placed on copy of statement of account of M/s Mohan Broker Agency available at pages No. 48 to 50 of the paper book.

15. Available at page No. 10 to 12 of the paper book is copy of reply dated 08.12.2019 from appellant to the ACIT, in response to notice dated 07.12.2019.

In para No. 9 of the reply, the appellant claimed to have availed of unsecured loan of Rs. 4,76,000/- from M/s Mohan Broker Agency.

As per copy of Balance Sheet (page Nos. 44 and 45 of the paper book) of M/s Mohan Broker Agency, as on 31.03.2016, Smt. Kavita Samtani availed of loan facility of Rs. 4,76,000/- on 31.03.2016.

In this situation, when the appellant brought material on record, Assessing Officer was required to consider the same, but while passing the assessment order, the Assessing Officer appears to have not considered said material placed on record by the assessee in support of her version regarding repayment of Rs. 54,000/- to M/s Mohan Broker Agency. It remains unexplained as to on what basis said addition of Rs. 54,000/- was made by the Assessing Officer.

Learned CIT(A) observed in para 5.2.6 of the impugned order that just before transfer of said cash of Rs.30,000/-and Rs.24,000/-, said amount in cash was deposited in the bank account of the appellant- assessee, for which no explanation was given by the appellant as regards source of said cash.

But as noticed above, the Assessing Officer was concerned about the source as regards a sum of Rs.54,000/-credited by her in the account of her husband. The previous cash entry of Rs.30,000/-in the account of the appellant was of 15.7.2015 and not soon before the subject transaction. Bank statement of the assessee for the period from 1.4.2015 to 31.3.2016, page 29 of the Paper Book does not reveal any entry of cash deposite of Rs.24,000/-in the said account of appellant after the abovesaid cash entry of 15.7.2015 in her account.

Having regard to all this, said addition of Rs.54,000/-deserves to be set aside. We order accordingly.

16. As regards the other addition of Rs. 12,20,600/-, Id. AR for the appellant has contended that the appellant purchased said plot situated in village Suwana with financial aid of Rs. 11,40,000/- availed of by her from her mother-in-law, Smt. Yashoda Devi, Prop. of M/s Hari Om Agency.

In this regard, Learned AR for the appellant has referred to page No. 21 of the paper book, which is copy of pass book of Smt. Yodhoda Devi, as regards her Savings Bank Account with Dena Bank, Bhilwara, to point out that Smt. Yoshoda Devi had availed of housing loan facility of Rs. 6,00,000/- and Rs. 5,40,000/- from the said bank on 29.02.2016 and 31.02.2016.

Copy of the balance sheet of M/s Hari Om Agency is available at page 39 of the paper book. As per this document, as on 31.03.2016, a sum of Rs. 56,88,560/- stands recorded by way of loan and advances. Said documents depict that a sum of Rs. 11,10,065/- was advanced to Smt. Kavita Samtani.

As per case of the appellant, abovesaid loan amount is stated to have been utilized by her in making payment of the sale consideration to Sh. Atul Kumar Surana and Smt. Kanti Devi Surana for purchase of the abovesaid immovable property.

While disposing of appeal Id. CIT(A) observed that even though Smt. Yoshoda Devi had withdrawn a sum of Rs. 6,00,000/- on 29.02.2016 and Rs. 5,40,000/- on 01.03.2016 from Dena Bank, but, Smt. Yashoda Devi showed in the books of M/s Hari Om Agency transfer of these amounts

from Dena Bank Home Loan Account to the assessee-appellant. He further observed that no such amount having been transferred by Smt. Yashoda Devi to the appellant, payment of cash of Rs.12,20,600/-to Atul Kumar Surana for purchase of the abovesaid property of Suwana remained unexplained. As further observed by Ld. CIT(A) in absence of any supporting evidence, it was not established that said cash withdrawn from the bank account of Smt. Yashoda Devi was advanced to the appellant.

17. Available on record is of statement of account of Smt. Kavita Samtani in the ledger of Hari Om Agency. As per said statement of account, on 29.02.2016 and 01.03.2016, a sum of Rs. 6,00,000/- and a sum of Rs. 5,40,000/-are shown to have been debited.

18. Ld. AR for the appellant has submitted that Id. CIT(A) did not correctly appreciate the entries, the reason being that the said amounts were transferred from Dena Bank account to the account of Smt. Yoshada Devi, who in turn withdraw the said amount from her bank and paid to the joint sellers, Sh. Atul Kumar Surana and Smt. Kanti Devi Surana, and as such, there was no incriminating material which can be said to be there to to make additions.

In this regard, firstly, it may be mentioned that payment of the sale consideration in cash to the vendors for purchase of immovable property was clearly in violation of provisions of the Act.

Secondly, there is no evidence from the assessee-appellant to suggest that she had received cash from her mother in law and paid the said cash amount to the vendors.

Contrary to it, the submission put forth by Learned AR for the appellant is that Smt. Yashoda Devi had withdrawn the abovesaid amount and paid the same in cash to the co-owners. This version was never put forth by the assessee at any stage of the proceedings before the Assessing Officer or before Learned CIT(A).

Thirdly, the assessee did not disclose said income in the Income tax return for the year under consideration. Same adversely affects the case of the assessee, particularly, when, admittedly, she has not been maintaining any books of accounts.

In the given situation, self serving confirmation by Smt. Yashoda Devi, mother in law of the appellant, does not come to the help of the assessee-appellant.

19. Nowever, taking into consideration income of the assessee during the F.Y. 2016-17 i.e. of Rs. 3,66,224.00 - Rs. 54,000.00 paid to Mohan Broker Agency during said year, we restrict the addition to Rs. 9,08,376 (i.e. Rs. 12,20,600.00 - Rs. 3,12,224.00, source of which she failed to establish, despite reasonable opportunity, before the Assessing Officer and before Ld. CIT(A).

### **Additional Grounds**

20. First additional ground raised on behalf of the assessee-appellant is that the impugned assessment order is a nullity as no DIN Number was generated as regards the assessment order, as prescribed by CBDT in its instructions issued to the Income Tax Authorities, which they are required to follow, but were not followed, and as such, impugned assessment order deserves to be set aside.

21. In support of this contention, Id. AR has referred to in the written submissions to the following decisions:-

- Smt. Smrutishuda Nayak vs. UOI (2021) 323 CTR 617 (Ori.)
- CIT vs. Kabul Chawla (2015) 281 CTR (Del)45
- CIT vs. Chetan Das Lachman Das (2012) 254 CTR (Del) 392
- Hau /steek (India) vs. Asstt. CIT (2013) 259 CTR (Raj.) 281.
- Chintels India Ltd. vs. DY. CIT (2017) 297 CTR (Del) 574
- Bharati Vidyapeeth Medical Foundation vs. ACIT, ITA No. 959-967/PN/10 dated 28.04.2021.

- CIT vs. Kabul Chawla (2015) (2016) 380 ITR 573 (Del)
- Jai Steel (India) vs. Asstt. CIT (2013) 259 CTR (raj) 281.
- PCIT Abhisar Builders (2023 332 CTR (SC) 385.

22. On the other hand, Ld. DR for the Revenue has submitted that the matter as regards impact of non mentioning of DIN number, as per instructions issued by CBDT is pending adjudication before the Hon'ble Supreme Court, and as such, there is no merit in the contention on behalf of the assessee-appellant.

23. The said instructions were issued vide Circular No. 19/2019 dated 14.08.2019.

24. As regards the decisions cited, it may also be mentioned that Ld. AR has not provided full text of any of the above said decisions. Only certain portions of some of the decisions have been extracted in the written submissions.

As regards, three decisions mentioned in para 2.5 of the written submissions, what to say of providing of Full text thereof, even no portion or relevant paragraph thereof has been reproduced or extracted in the written submissions.

25. Admittedly, the point in issue is sub judice before Hon'ble Supreme Court of India after a decision by Hon'ble Delhi High Court in the case of **CIT vs. Brandix mauritious holding limited**, ITA No. 163/2023, decided on 20.03.2023.

26. Record reveals that while challenging the impugned assessment order before Learned CIT(A), no such ground/objection on behalf of the assessee-appellant was raised.

Even though this is a legal ground and can be raised before the Appellate Tribunal, it was for the assessee-appellant to prove to the satisfaction of this Tribunal if any prejudice has been caused to the assessee-appellant due to non mentioning of DIN number.

Instructions issued by Central Board of Direct Taxes are meant for compliance by the Income Tax Authorities. When the instructions were issued that such communications without DIN number shall be treated as 'non-est', and shall be deemed to have never been issued, can safely be said to have been issued to ensure and lay emphasis on their compliance by the Income tax authorities, without fail.

It is not the allegation of the appellant that no assessment proceedings were conducted by the Assessing Officer or that the impugned assessment order is a made up or forged and fabricated document.

In absence of any such plea or material to suggest that any prejudice was caused to the assessee-appellant, we do not find any merit in the contention raised on behalf of the assessee-appellant that because of non mentioning of DIN number. in the impugned assessment order, the same deserves to be set aside.

### **Impugned assessment order not digitally signed-its impact**

27. Another additional ground raised by Ld. AR for the appellant is that the impugned assessment order has been manually signed, and since same has not been digitally signed as required u/s 282 A of the Act and as per Instruction No. 6 dated 03.10.2017 issued by CBDT, the impugned assessment order deserves to be set aside.

28. In support of this contention Ld. AR of the assessee-appellant relied on following decisions:-

- Aravali Trading Co. Vs. ITO 8 DTR 199 (Raj.)
- Labhchand Bohra vs. ITO (2008) 8 DTR 44 (Raj.)

- Kanhaialal Jangid vs. ACIT (2008) 8 DTR 38 (Raj.)
- CIT vs. Jai Kumar Bakliwal (2014) 101 DTR 377 (Raj.)
- CIT vs. Shree Barkha Synthetics 182 CTR 175 (Raj.)
- CIT vs. Orissa Credit Corp. Ltd. 159 ITR 78 (SC).
- Sarogi Credit Corp. Vs. CIT 103 ITR 344 (Patna.
- ACIT vs. India Tyre House 72 TTJ 316 (Gau)
- CIT vs. Heeralal Chaganlal 257 ITR 281 (Raj).
- CIT vs. Ajay Kumar Sharma 259 ITR 240 (Raj.).
- Jhalani Timbers vs. CIT (1997) 223 ITR 11 (Gau)

29. On the other hand, Ld. DR for the Revenue has submitted that no such ground was raised in the appeal before Learned CIT(A), and that the impugned assessment order, even if manually signed by the Assessing Officer, cannot be discarded from being taken into consideration.

30. It may be mentioned here that full text of the abovesaid decisions cited by Ld. AR of the appellant has not been provided. Only portion from the said decisions have been incorporated in the written submissions.

31. Copy of the assessment order made part of the appeal filed by the assessee-appellant is a photocopy of the copy supplied to the assessee. It purports to bear signatures of DCIT, Central Circle, Ajmer-Assessing

Officer. The original assessment order is stated to forming part of the original record pertaining to assessment proceedings. Exact copy of the said original order has not been made available. In absence thereof, it is difficult to say if this is a case of any violation of the provisions of section 282A of the Act.

In the written submissions reference has been made to instruction NO.6 dt. 3.10.2017, requiring the Income tax authorities to digitally sign the assessment order, demand notice and computation sheet etc.

Instruction No.1/18 dated 12.2.2018 issued by Central Board of Direct Taxes has also been relied on in the written submissions to submit that all departmental orders/notices/communications issued to the assessee through 'e-proceedings' are to be digitally signed by the Assessing Officer.

As already noticed above, instructions issued by Central Board of Direct Taxes are meant for compliance by the Income Tax Authorities. Same can safely be said to have been issued to ensure compliance and lay emphasis on their compliance by the Income tax authorities, without fail.

It is not the allegation of the appellant that no assessment proceedings were conducted by the Assessing Officer or that the impugned assessment order is a made up or forged and fabricated document.

Ld. AR for the appellant has not been able to satisfy if any prejudice was caused to the assessee-appellant for want of digital signatures on the impugned assessment order. Accordingly, we do not find any merit in the contention raised on behalf of the appellant.

**Prior approval u/s 153D of the Act, whether the same was granted mechanically?**

32. Ld. AR for the appellant has contended that the impugned assessment order is nullity, being without jurisdiction, in as much as no prior approval as mandated by section 153D of the Act was obtained.

At the same time, it has been contended that no approval u/s 153D of the Act was obtained from the specified authorities.

Furthermore, it has even been contended that if the said approval was obtained, same was accorded mechanically without application of mind.

Accordingly, Ld. AR for the appellant has urged that the impugned assessment order deserves to be set aside.

33. On the other hand, Ld. DR for the Department has referred to the approval dated 31.12.2019 accorded by Additional Commissioner of

Income Tax, Central Range, Udaipur and contended that the same having been accorded in accordance with law, there is no merit in the contention raised by Id. AR for the appellant.

34. Significant to note that after having raised abovesaid inconsistent grounds as regards the approval, in the common paper book-II dated 29.08.2024 presented on behalf of the assessee-appellant on 17.09.2024, the very first document made available at page No. 23 (as assigned by the Ld. AR for the appellant), is the copy of approval u/s 153D of the Act, accorded by Additional Commissioner of Income Tax, Central Range, Udaipur, vide its letter dated 31.12.2019.

The impugned assessment order is dated 30.12.2019.

It is available from the abovesaid letter dated 31.12.2019 that on receipt of letter dated 30.12.2019 from the office of DCIT, Central Circle, forwarding therewith draft assessment orders, mentioned therein, for approval u/s 153D of the Act, Additional Commissioner of Income Tax went through the contents of draft assessment orders and accorded approval u/s 153D of the Act.

35. In view of the said document submitted by the appellant, there is no merit in the contention raised on behalf of the assessee-appellant.

36. No other argument has been advanced before this Appellate Tribunal.

## Result

37. In view of the above discussion, this appeal is partly allowed, in the manner indicated above.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 23/10/2024.

Sd/-  
(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-  
(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23/10/2024

\*Santosh

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

1. The Appellant- Kavita Samtani, Bhilwara
2. प्रत्यर्था / The Respondent- DCIT, Central Circle, Ajmer
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. 800/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar