

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No.349/Agra/2018
(ASSESSMENT YEAR: 2009-10)**

Verma Service Station Bye Pass Road, Firozabad. PAN: AA AFV0442K (Appellant)	Vs.	DCIT, Circle 2(2)(1), Firozabad. (Respondent)
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**S.A. No.06/Agra/2018
(in I.T.A No. 349/Agra/2018)
(ASSESSMENT YEAR: 2009-10)**

Verma Service Station Bye Pass Road, Firozabad. PAN: AA AFV0442K (Appellant)	Vs.	DCIT, Circle 2(2)(1), Firozabad. (Respondent)
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Appellant by	Shri R. K. Agarwal & Rahul Agarwal, Advs.
Respondent by	Shri Waseem Arshad, Sr. DR.

Date of Hearing	18.07.2019
Date of Pronouncement	12.09.2019

ORDER

Per Dr. M.L. Meena, A.M.:

This appeal has been filed by the assessee is directed against the order dated 28.03.2018 passed by the Commissioner of Income Tax (Appeals)-2, in respect of A.Y. 2009-10 wherein the assessee has raised the following grounds of appeal:

- “1. *Because Ld. Commissioner of Income Tax (Appeals) hereinafter referred to as Ld. CIT (A) grossly erred both in law and on facts in sustaining penalty of Rs. 28,43,000/- levied by the Assessing Officer under section 271 (1)(c). The Ld. CIT(A) failed to appreciate that the appellant having furnished all the material facts, legally required, the order as passed by the Ld. CIT(A) is wholly erroneous and illegal in the eyes of law.*
2. *Because the Ld. CIT(A) grossly erred both in law and on facts in relying upon the various judicial pronouncement which are contrary to the facts of the case. In the absence of any concealment of facts or furnishing inaccurate particulars, the penalty sustained is wholly illegal.*
3. *Because Ld. CIT(A) having failed to adjudicate the ground of appellant claiming lack of sufficient opportunity by the Assessing Officer before passing of order u/s 271(1)(c), the order of Ld. CIT(A) suffers from fatal error in law.*
4. *Because the order is against the law & facts.*
5. *Because the appellant craves leave to alter/ modify grounds before or at the time of hearing of the appeal.”*

2. In this case, return of income for the A.Y. 2009-10 was filed on 29.09.2009 declaring total income of Rs. 4,86,270/-. Subsequently, the case was taken up for

scrutiny under CASS and the assessment was completed at a total income of Rs.1,01,55,498/-. In the process of making additions, the AO disallowed a sum of Rs 92,00,000/- introduced as capital of the partners of the firm and stated that in the assessment order the appellant conceded for the addition. The AO also disallowed interest of Rs.2,85,984/- and Rs.1,83,248/- for which, it was stated that the authorized representative of the assessee conceded.

3. Being aggrieved the assessee filed appeal before the Ld. CIT(A)-II, the ld. CIT(A) dismissed the appeal in limine by holding that no appeal is maintainable since the assessment order was passed on the confession of the assessee. vide ITA No. 189/Agra/2011 dated 12.08.2015 this bench has restored the matter back to AO holding that since the additions are based on the confession of the counsel of the assessee without investigation the facts, AO should make the assessment again after affording opportunity to the assessee. In the reassessment made by AO assessee again could not explain the source of capital introduction of Rs.92,00,000/- and hence the same was again treated as unaccounted income of the assessee under section 68 and added to the total income of the assessee.

4. In the 2nd round of assessment, the assessee again could not explain the source of capital introduction of Rs.92,00,000/- and hence the same was again treated as unaccounted income of the assessee under section 68 and added to the total income of the assessee.

5. Aggrieved by such addition in total income of the assessee, assessee has filed this appeal before CIT(A) -II, Agra in 2nd round where she has after going through the affidavit of both the partners regarding source of receipts of deposits and written submissions filed by the assessee confirmed the addition of Rs.92,00,000/- unexplained capital introduction by observing as follows:

5.3 *I have gone through the assessment order, submissions of the assessee and legal position in this regard. It is seen that the two partners Sri Naveen Chandra Verma & Smt. Bharti Verma have deposited Rs.65,00,000/- and Rs.27,00,000/- in cash. It was explained that this cash has been received against advance for sale of land in individual hands. During the course of assessment proceedings AO has specifically asked for the evidence of holding of land, agreement with the purchasers and date / mode / source of receipts. However, the assessee could not furnish any details before the assessing officer, it was further seen that AO has issue summons dated 10.05.2016 for attendance on 18.05.2016 and thereafter, on 14.07.2016 and 23.08.2016 but no compliance to any summons was made and no documents in support of contention that these amounts are received from sale of land were filed by the assessee.*

5.4 *During the course of appellate proceedings assessee was again asked that the partner should be produced with all these documentary proofs for receipt of cash against advance for sale of land. However, during the appellate proceedings also could not file any evidence regarding cash received against advance as also the partners were not produced to give their statement. In this connection, emphasis on*

production of the partners during appellate proceedings was made as before the ITAT, the counsel of the assessee has accepted that these are unaccounted income in the hands of the assessee but it was held that the confession of the counsel of the assessee is not valid in law and the case has been set aside to the file of the Assessing Officer.In the renewed opportunities provided to the assessee, assessee did not file any details of land sold or agreement to sale etc., and hence the acceptance of the counsel of the assessee was correct, though not accepted by assessee.

5.4.1 To verify the nature and source of these transactions AO has again allowed opportunity to the assessee. The nature of these deposits were that Rs.1,00,000/- was deposited in cash everyday or every alternate day. In the absence of any agreement to sell/purchase, these kind of deposits could not have been in the nature of any land advance. In spite of providing opportunities at both assessment and appellate stage, assessee could not produce any agreement to sell, name and address of the purchaser, existence and details of any land that was proposed to be sold.

5.5 In this connection, in the case of Venus Auto which is a sister company of the assessee, it is seen that in the A.Y. 2009-10 that is the same assessment year the transactions that were explained by the assessee before the AO were that the M/s Venus Auto has transferred Rs.62,00,000/- to M/S Krishna Bulk Movers (P) Ltd. and thereafter M/s Krishna Bulk Movers (P) Ltd. has transferred this amount to M/s Verma Service Station (P) Ltd. Copy of all these accounts were available in the case of Venus Auto and hence, assessee's contention that this amount has now come from some advance for land sold seems to be after thought not

supported by any documentary evidence. Under these circumstances, AO is correct in holding these credits as unexplained in the hands of the assessee and imposed penalty u/s 271(1)(C).

In this case assessee has made a claim which is wholly without any basis and the explanation furnished to explain the cash deposits in terms of advance for sale of land is also found to be wrong as assessee could not file any details of land that was sold or any agreement to sell or the name of any party to whom the land was sold. Moreover, the deposits that are there in the bank account are such that are generally not given in land deals. In the land deals generally, an initial advance is five and then there can be payments at regular interval or a final payment. In this case cash of Rs.1,00,000/- is deposited in cash everyday nature and source of which could not be explained by the assessee.

In view of the foregoing AO is correct in imposing this penalty after analyzing section 271(1)(c) and its explanation and after relying on various case laws.

Hence imposition of penalty of Rs.28,42,800/- under section 271(1)(c) of the Income Tax Act is hereby confirmed.

6. The ld. AR reiterated the submission made before the ld. CIT(A) and submitted that the partners have made deposits in the firm. The AO did not accept the deposit as belonging to the partners and made addition in the firm, ld. CIT(A) has upheld the order of A.O. The addition in firm is contrary to judgment of jurisdictional High Court. He has filed affidavits balance sheets etc. documents of

partners of the firms as additional evidence in Rule 29 of ITAT Rules, is admitted. (APB-pg.1-20).

7. The ld. DR has supported the order of penalty confirmed by the ld. CIT(A). He has no objection to the additional evidence filed by the assessee under Rule 29 of ITAT Rules. He contended that the partners have to explain the source of deposits since they have failed to discharge the ONUS, then such deposit could not be added in the hands of the partners only. Hon'ble Allahabad High Court in the case of Jagmohan Ram Chandra vs. CIT 1993 CTR All 153, has following Hon'ble Supreme Court in Jain Brothers has overturn such a proposition vide para 21 as under:

Para-21

“Thus, from the aforesaid decisions, it is settled that if an entry of cash credits is found in the books of account of a firm, it is for the firm to give explanation regarding identity and source of such deposits and if the explanation is disbelieved then it is to be added as an income under section 68 of the Act in the hands of the firm. Similarly, if an assessee, who is a partner in the partnership firm, has made investments which are not recorded in the books of account maintained by him for any source of income and the explanation given by the partner or individual regarding source of deposits is disbelieved, then such deposits

which are invested can be brought to tax as income from undisclosed sources.”

8. Heard the rival submissions for the parties and perused the orders passed by the assessing authority, order of the Commissioner of Income-tax (Appeals) and the Tribunal order, and the material on record. Considering the additional evidence furnished by the Id. AR for the Assessee the addition has been confirmed by us in the quantum appeal in the present case in ITA No. I.T.A No. 212/Agra/2018 order dated 11/09/2019.

9. On perusal of balance sheet (APB, Pg. No. 7) filed as documents of additional evidence, it is noted that the sale value of the land was shown at Rs.10 lacs in the balance sheet whereas advance of Rs.62,00,000/- was shown to be received against the said land by the partners Sh. Naveen Chandra Verma and Smt. Bharti Verma. It is seen that the two partners Sri Naveen Chandra Verma & Smt. Bharti Verma have deposited Rs.65,00,000/- and Rs.27,00,000/- in cash. During the course of assessment proceedings AO has specifically asked for the evidence of holding of land, agreement with the purchasers and date / mode / source of receipts. In appellate proceedings assessee was again asked that the partner should be produced with all these documentary proofs for receipt of cash against advance for sale of land as before the ITAT, the counsel of the assessee has accepted that these are unaccounted income in the hands of the assessee

but it was held that the confession of the counsel of the assessee is not valid in law and the case has been set aside to the file of the Assessing Officer. Earlier the transactions that were explained by the assessee before the AO were that the M/s Venus Auto has transferred Rs.62,00,000/- to M/S Krishna Bulk Movers (P) Ltd. and thereafter M/s Krishna Bulk Movers (P) Ltd. has transferred this amount to M/s Verma Service Station (P) Ltd. assessee's contention that this amount has now come from some advance for land sold seems to be after thought not supported by any documentary evidence is logical and justified.

10. On examination of additional evidence, APB page no. 4, 7, and 9 the return of income, balance sheet and ledger account of M/s Verma service station in the books of Sh. Naveen Chandra Verma partner of the firm and vice versa we find that though he has meagre income of Rs.4,21,280/- with opening balance of Rs.1,00,000/- to deposit in the firm as on 01.04.2008 and further payment of Rs.50,00,000/- to the credit of following accounts as on 06.05.2008 make it clear that the financial status of the creditor doesn't warrant such deposits, detailed as under:

Debit	Credit
Verma Service Station	Ch. No. 258042, From Rama Rama Rs.8 lacs
Rs.50,00,000/-	Hara Hara Rs.12, lacs
06.05.2008	Krashna Krashna Rs.10 lacs

	Venus Automative Services Pvt. Ltd. Rs.10 lacs
	Verma Service Station Pvt. Rs.10 lacs

11. From the balance sheet (APB page no. 7), it can be seen that assessee has shown an agricultural land for Rs.10,07,560/- as shown on the asset side of the balance sheet whereas he has shown advances against the sale of land at Rs.68,50,000/-. Thus, there was a discrepancy in the amount of consideration shown against the sale of agricultural land which cannot be more than Rs.10,07,560/- and thereby the difference of Rs.Rs.68,50,000/- (-) Rs.10,07,560/- = Rs.58,42,440/- remained unexplained liability against sale of land as per the balance sheet in the hands of the assessee.

12. We are inclined to agree with the finding of the Id. CIT(A) logically supported with due reasoning by the Ld. DR that the assessee has itself conceded in the original assessment that Rs.92,00,000/- and added as unexplained income in respect of unexplained capital deposit made by the partner and that in the 2nd round of assessment proceeding's in compliance to the directions of the Agra Bench, the assessee failed to explain source of deposit of partners' capital of Rs. 92,00,00,000/- and merely, filing of an affidavit of the partner would not sufficient to discharge the assessee primary onus of cash credit liability.

13. The case law referred by the Id. AR for the assessee does not apply to the peculiar facts of the present case. The facts involved therein a credits appearing on the very first day of accounting year whereas in the present case the credits have been introduced by the partners during the year being explained by the assessee before the AO that the assessee sister concern M/s Venus Auto has transferred Rs.62 lacs to M/s Krishna Bulk Movers (P) Ltd. and thereafter M/s Krishna Bulk Movers P. Ltd. has transferred this amount to M/s Verma Service Station P. Ltd. In the first round of proceedings and in the second round proceedings assessee's contention has changed to have received some advanced for land sold was not supported by any documentary evidence except self-certified evident of advance receipts against sale of land which are contrary to the value of the sale of land shown in the balance sheet as above. None of the cases relied by the Id. AR are applicable to the peculiar facts of the case at hands.

14. Whereas cash receipts of Rs.35,00,000/- and Rs.33,50,000/- as on 10.04.2008 and 01.11.2008 respectively shown to be receipt as an advanced against the sale of land has not been demonstrated with the corroborative supportive evidences, in the second round of proceedings from the level of AO to the argument and contentions raised before us. It is worthy mention that in the first round of proceeding the assessee has explained the source of such cash credits that the M/s Venus Auto has transferred Rs.62,00,000/- to M/S Krishna Bulk Movers

(P) Ltd. and thereafter M/s Krishna Bulk Movers (P) Ltd. has transferred this amount to M/s Verma Service Station (P) Ltd. Copy of all these accounts were available in the case of Venus Auto and hence, assessee's contention that this amount has now come from some advance for land sold held to be after thought were being not supported by any documentary evidence and these concerns were having zero sales turnover. Again, the value of the land has been shown to be sold as Rs.10 lacs as evident from the balance sheet of the firm M/s Verma Service Station as above. Under these circumstances, AO was correct in holding these credits as unexplained in the hands of the assessee and the Id. CIT(A) was justified in confirming the addition as unexplained capital of the assessee firm u/s 68 of the Act and so the Tribunal confirmed the addition of Rs.92,00,000/- is confirmed as unexplained capital u/s 68 of the Act in the hands of the firm.

15. The Assessing Officer has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the Assessing Officer is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of section 271(1)(c) has also been elaborately discussed by this court in *Union of India v. Dharamendra Textile Processors* [2008] 306 ITR 277 (SC) ; [2008] 13 SCC 369 and *CIT v. Atul Mohan Bindal* [2009] 317 ITR 1 (SC) ; [2009] 9 SCC 589." (Emphasis supplied). The Assessing Officer, in our view, has recorded a categorical finding that he was satisfied that the assessee

had concealed true particulars of income and is liable for penalty proceedings under section 271 read with section 274 of the Income-tax Act, 1961.

16. Taking into consideration the above facts vis-a-vis the instant case, in our view the facts are exactly identical where the Assessing Officer consequent a surrender was made by the assessee herein the 1st round of assessment proceedings, as in the case of *MAK Data (P.) Ltd. (supra)*. Rather in the instant case, we find that there are not only documents of partners but also statement of account of Firm to corroborate unexplained deposit of Rs 92 lac by the partners. Therefore, the proposition laid down by Hon'ble Apex Court in the judgment of *MAK Data P. Ltd. (supra)* is applicable to the facts of the present case.

17. Next the Hon'ble Jurisdictional Allahabad High Court in the case of *Smt. Sheela Ahuja Vs. CIT [2018] 99 taxmann.com 406 (Allahabad)* held that Section 68 of the Income-tax Act, 1961 - Cash credit (Gift) - Whereas per information received from DIT (Investigation) assessee had received certain bogus gifts and assessee had failed to produce donors as well as creditworthiness of donors despite various opportunities, amount was rightly added to assessee's income under section 68 [In favour of revenue].

18. From the information received by the Directorate of Income-tax (Investigation), it was found that the assessee had received the bogus gift of certain

amount which, in fact, was the income of the assessee introduced in her funds in the shape of the gifts. As the assessee was not able to produce said persons for confirmation of gift and the creditworthiness of the donors could not be proved by the assessee, the Assessing Officer made addition under section 68 which was confirmed in appeal.

Held that since the assessee failed to prove the creditworthiness of the donors there was no illegality in the orders of the authorities below. The same proposition of law is applicable to the facts of the present case as the assessee failed to prove the creditworthiness of the cash deposits (Capital) in the partnership firm and therefore was no illegality in the orders of the authorities below as well in the present case.

19. In the above view and considered the legal position, we find no illegality in the orders of the authorities below as well as in the impugned order of the Tribunal and since the assessee/ appellant has failed to prove the creditworthiness of the partners as well as failed to place any evidence in support of its contention in respect of the issues which are raised before the Tribunal, therefore, we find no error in the order of the Id. CIT(A). The order of the Id. CIT(A) is confirmed and the appeal filed by the appellant is dismissed as the Id. CIT(A) has recorded a categorical finding of facts.

20. Following the jurisdictional Hon'ble Allahabad High Court in the case of Jagmohan Ram Chandra Vs. CIT (supra), and Smt. Sheela Ahuja(Supra) we hereby upheld the order the ld. CIT(A) and confirmed the levy of penalty u/s 271(1)(c) of the Act. The ground of appeal rejected.

21. In the result, the appeal of the assessee is dismissed.

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22. Since the appeal of the assessee, in I.T.A No. 349/Agra/2018) has been disposed of by us, therefore, the stay applicable become infructuous.

23. In the result, both the appeal as well as stay application of the assessee are dismissed.

Order pronounced in the open court on 12/09/2019.

Sd/-
(Laliet Kumar)
JUDICIAL MEMBER

Sd/-
(Dr. M.L. Meena)
ACCOUNTANT MEMBER

AKV

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sr. Private Secretary,
ITAT, Agra