

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.427/Ind/2018
Assessment Year: 2014-15**

Shri Mustafa Chhawaniwala C/o Asiad Marketing UG-1, Mishika Tower Opp. Sapna Sangeeta Indore	बनाम/ Vs.	ITO-5(4) Indore
(Appellant)		(Revenue)
P.A. No.AFWPC9588C		

Appellant by	Shri R.K. Vohra, A.R.
Respondent by	Shri K.G. Goyal, D.R.
Date of Hearing:	25.11.2019
Date of Pronouncement:	19.12.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal filed by the assessee is directed against order of the CIT(A)-II, Indore dated 11.12.2017 for the A.Y.

2014-15. The assessee has raised following grounds of appeal:

1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in sustaining the addition of Rs.49,50,000/- under section 69 of Income Tax Act, without considering the facts and circumstances of the case.*
2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred by not following the principles of natural justice as he did not pass a speaking appellate order.*
3. *The appellant craves leave to add, amend, alter or delete the said ground of appeal.*

2. The only effective ground is against sustaining the addition of Rs.49,50,000/- u/s 69 of the Income Tax Act, 1961 (hereinafter called as 'the Act'). The facts giving rise to the present appeal are that case of the assessee was taken up for scrutiny assessment and the assessment u/s 143(3) of the Act was framed vide order dated 15.12.2016. The A.O. while framing the assessment observed that the assessee had purchased two properties valued at Rs.58,88,000/- & Rs.48,21,000/- during the year under consideration. In respect of source of investment it was

stated that he had taken loan of Rs.44 lakhs from relatives and Rs.55,00,000/- was invested out of his own sources. The A.O. did not accept this contention and made addition of Rs.49,50,000/- in the income of the assessee. The A.O. further made addition of Rs.10,000/- on account of excessive deduction claimed by the assessee. Hence, the A.O. assessed income at Rs.52,84,650/- against the disclosed income of Rs.3,24,650/-.

3. Aggrieved against this order, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions dismissed the appeal. Now the assessee is in further appeal before this Tribunal. Ld. Counsel for the assessee vehemently argued that the authorities below were not justified in making the addition and sustaining the same.

4. Ld. Counsel for the assessee submitted that Ld. CIT(A) was not justified in sustaining the addition. Ld. Counsel

submitted that even the action of the A.O. is not in accordance with law as admittedly properties were in the joint name. Ld. Counsel for the assessee reiterated the submissions as made in the reply to remand report submitted before the Ld. CIT(A). He submitted that the source of acquisition of property initially was stated to be out of the loan/gifts received from various persons. The confirmations of the persons were also furnished during the assessment proceedings. However, the assessee realised that the submissions made before the A.O. were not correct as the amount was received from contribution by the brother of the assessee. The amount was remitted by the brother of the assessee. The assessee is not very educated person. He was not aware of the nitty gritty of the law. Therefore, the Ld. Counsel for the assessee pointed out that the evidence supporting the contention that the amount was remitted from abroad and there were cash

withdrawals as well. He drew our attention to bank statement enclosed with paper book. Ld. Counsel for the assessee placed reliance on the judgement of the Hon'ble High Court of Allahabad relevant in the case of CIT Vs. Dilbagh Rai Arora (2019) 104 Taxmann.com 371 to buttress the contention that the authorities below ought to have considered these evidences.

5. On the contrary, Ld. D.R. vehemently opposed these submissions and submitted that the assessee himself took a stand that the source of money was out of the loan/gifts received from various persons. Before assessing authority, the assessee has not stated the fact which he made before the Ld. CIT(A) i.e. the money was contributed by the brother of the assessee through remittances from abroad. He submitted that it is settled law that when the assessee does not approach with clean hands before the authorities, he will not deserve any leniency. He submitted that the

assessee is cooking up stories just to avoid tax liability, which is not permissible under the law.

6. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Undisputed fact remains that before the A.O. the assessee has categorically stated that the property in question was purchased out of his own resources, which he stated to be out of loan taken from the bank and loan/gifts from various persons. In support of loan/gifts, he has also filed confirmations who had given loan to the assessee. However, before Ld. CIT(A), the assessee took a U-turn and submitted that the properties were acquired out of the contribution made by the brother of the assessee. The only explanation before this Tribunal for taking such contradictory stand is that in support of the contention documents furnished before the authorities below are third party documents, which cannot be termed as self-created and self-served documents. The assessee has demonstrated with evidence that the brother of the assessee has been remitting money from Kuwait and the cash was being withdrawn by the father of the assessee.

We find that Ld. CIT(A) has decided the issue by observing as under:

4.0 These grounds of appeal are with respect to addition made as unexplained investment u/s 69C. I have carefully considered the facts as narrated in the assessment order, submissions of the appellant, facts as outlined in the remand report by the AO and the counter comments of the appellant on the same.

4.1 In this case return of income for the period relevant to the A.Y. 2014-15 has been filed on 30.07.2014 declaring total income of Rs. 3,24,650/-. The case was selected for scrutiny assessment which was completed u/s 143(3) of the IT Act 1961 on 15.12.2016 by making some additions at total assessed income of Rs. 52,84,650/-. While completing the scrutiny assessment, the Assessing Officer made the addition of Rs. 49,50,000/- on account of 'Unexplained Investment'. During the course of scrutiny assessment, on perusal of written submission it was found that during the period under consideration, the assessee had claimed to purchase two immovable properties amounting to Rs. 58,88,000/- and Rs. 48,21,000/- respectively. In order to purchase such properties, inclusive of stamp duty and other expenses total amount of Rs. 1,15,44,520/- (58,88,000 + 4,12,160 + 48,21,000 + 3,37,500) was invested by the assessee.

4.2 When the assessee was asked during the course of assessment proceedings to explain the sources of these investment to the tune of Rs. 1,15,44,520/-, the assessee replied that besides the loan taken from Axis Bank and Punjab National Bank, he had taken gift and loan from nine persons total amounting to Rs. 44 lakh and remaining Rs. 5,50,000/- has been invested from own sources. Further, the assessee was asked to furnish credible documentary evidences in order to establish identity, creditworthiness and genuineness of these nine lenders. Here it would be worth mentioning that during the



proceedings of scrutiny assessment itself, the assessee filed another letter and claimed that in the earlier letter, the amount of Rs. 44 lakh received from nine persons had been erroneously mentioned as loan but actually it was 'Gift' except the amount taken from Shri Arjun. The assessee claim that the amount of Rs. 4,00,000/- taken from Shri Arjun was a loan and the amount taken from remaining eight persons was 'Gift'. In support of his claim, the assessee had furnished some documentary evidences including 'Gift Patra or Gift Lekh'. It would be pertinent here to reproduce the relevant portion of the remand report here to highlight not only the discrepancies so pointed out by the AO but also the changing instance of the appellant from time to time.

"On perusal of these documentary evidences as furnished by the assessee in support of his claim, the assessee was confronted with various discrepancies like, in some cases neither the assessee nor lenders of the amount are aware about the status of payment made. In case of Shri Arjun, the assessee is claiming that he has taken loan of Rs. 4,00,000/- from Shri Arjun, but the documentary evidences as produced is 'Gift Lekh'. Similarly in the case of father of the assessee Shri Sajjad Chhawaniwala, the assessee is claiming that he has taken Gift of Rs. 6,00,000/- from his father, but the documentary evidence states that his father has given gift of Rs. 60,000/-. Likewise there were so many discrepancies in the papers submitted by the assessee. And by narrating various facts in his assessment order, the Assessing Officer concluded that the assessee has utterly failed in establishing identity, creditworthiness and genuineness of these nine lenders. Further the AO has concluded that even investment of Rs. 5,50,000/- claimed to be made from his own sources could not be proved by the assessee during the course of scrutiny assessment. Therefore the AO considering this investment to the tune of Rs. 49,50,000/- made from 'Unexplained Sources' u/s 69 of the IT Act, made the addition to the total income of the assessee.

4. Now, aggrieved with the addition made by the AO in his assessment order, the assessee is in appeal before your honour. On going through the written submission made by appellant at the appellate stage, it is found that now the assessee is taking entirely different stand.

Income T

There the appellant has stated that he holds only 50% share in properties purchased, remaining 50% share is held by assessee's brother Shri HuzafaChhawaniwal as joint owner of the property under consideration. Therefore assessee's brother was required to make 50% of total investment i.e.57,72,260/-. Against amounting to Rs. 57,72,260/-, the assessee made the investment of Rs. 61,50,020/-, out of this amount of Rs. 61,50,020/-, the assessee had received amounting to Rs. 51,50,020/- by way of cash from his brother Shri HuzafaChhawaniwala and remaining Rs. 10,00,000/- was received by cheque from Huzafa in two installments of Rs. 7,00,000/- and Rs. 3,00,000/-. Further the assessee has stated that he has received the amount of Rs. 61,50,020/- from his brother Shri HuzafaChhawaniwal who is NRI and lives in Kuwait since last 17 years. Further the assessee has stated that it not correct to say that such amount of Rs. 44 Lakh from nine persons either in the mode of loan or Gift. During the assessment proceedings, the AR of the assessee has submitted these facts without the knowledge of the assessee.

Assessing Officer's Comment:

6. If the entire facts placed on the records and details involved in this case are considered in totality, it is clear that the assessee's submission is nothing but afterthought and changing is story frequently. The submission furnished by the assessee at the appellate stage is not deserves to be considered on account of following reasons:

(i) All of first, it is very much clear that since initial stage, the assessee is changing his stand frequently; it means that there is something which is being tried not to be disclosed. Because at beginning, the assessee claimed that amounting to Rs. 44 lakh was arranged by taking loan from nine persons, thereafter it has been claimed that this amount was not arranged by accepting loan, actually this amount has been taken as 'Gift' from these persons except Shri Arjun. In spite of that there was remarkable discrepancies in the documentary evidences produced by the assessee in support of his claim viz-a-viz loan or Gift. Here question arises that in this case there is involvement of substantial amount and that is in lakh. From the details it is very much clear that the assessee has claimed to receive the amount of Rs. 10,00,000/-, Rs. 6,50,000/-, 7,00,000/- and minimum amount is of Rs. 2,00,000/-. This is not a petty amount which cannot be remembered. How is it possible that the lenders who has the capacity to lend the amount or to Gift the amount and that is too in lakh, will not be aware about the nature of payment? Whether it was loan or Gift.

(ii) Actually, during the proceeding of scrutiny assessment, initially the assessee claimed that such amount has taken from nine persons as loan, subsequently, sensing the mistake that now Assessing Officer will examine Identity, Genuineness and creditworthiness of such lenders, the assessee changed his stand. Now he stated that actually it is 'Gift' not Loan and thereafter the assessee furnished the 'Gift Lekh' or



whatever documentary evidences in support of his claim but again the mistake of the assessee was noticed. Because in such documentary evidences some person is claiming that has giving the loan but the assessee is claiming that he has taken such amount as Gift. There was complete absence of credibility in the reply of the assessee and only then the AO had made the addition of Rs. 49,50,000/- considering it as 'Investment from unexplained sources.'

(iii) Further, in his submission the assessee has stated that actually it was not the matter of Rs. 44 lakh and albeit he has taken amounting to Rs. 61,50,020/- from his brother Shri Huzafa Chhawaniwala who is a NRI. Here question arises that assessee's which reply is needed to be taken into account. Scarcely is it possible that one person who is taking huge amount of Rs. 44 lakh or 61 lakh will forget the sources thereof. Even for the sake of justice, the assessee's claim is accepted for a while, then why it was not disclosed before the AO during the scrutiny proceeding. It is not a matter to forget easily. When such amount was received from assessee's brother then what will be fate of the documentary evidences furnished by the assessee in support of the claim particularly with regard to loan or Gift taken by the assessee. What will be the sanctity of the claim of the lenders that he has given such and such amount to the assessee. Were those papers fabricated? Here, the assessee has claimed that the AR of the assessee has submitted that details without the knowledge of the assessee. Here question arises, how is it possible that such important or crucial papers will be filed by the AR of the assessee without his knowledge and who has provided these papers to the AR. Is it possible that these all papers were already in custody of the AR and which were furnished before the AO without assessee's knowledge? Whereas if the assessee's claim was genuine then during the scrutiny proceedings, he should come forward and submit that fact before the AO that this amount has been taken from this brother and at the same time he should furnish entire details with regard to the transaction made with his brother and all details of his brother's income. But he could Furthermore the assessee has tried to take the benefit stating that as he is a semi literate person but here crux of the matter is that to understand the basic fact that from whom such amount has been taken, vast literacy is not required. Therefore all these claims of the assessee are ingenuine and baseless.

(iv) Actually, the assessee had invested his unaccounted income in purchasing the immovable properties under consideration and now to cover the up the matter he is trying to narrate the story. It is nothing but afterthought of the assessee. Sometimes the assessee states that amount has been arranged from various persons as loan, further it becomes Gift and now at the appellate stage he is pleading that this amount of has been taken from his brother. The assessee has been utterly failed in establishing genuine sources of investment made in purchasing the immovable properties. Therefore the AO had correctly made the addition to the tune of 49,50,000/-u/s 69 of the IT Act, 1961.

Therefore after taking into account entire facts and details involved in this case, submission made by the appellant at the appellate stage does not deserve to be considered."

4.3 The entire facts narrated by the assessing officer in his remand report coupled with the facts so elaborately discussed by the AO in the assessment order clearly points out to one single finding that neither the submissions made by the appellant which incidentally are changing every time nor the evidences so produced are reliable. That questions the credibility of not only the appellant but also of all the evidences produced in this regard from time to time.

4.4 The Hon'ble Supreme Court in the case of **CIT vs. Biju Patnaik (SC) 160 ITR 674** had held that assessee must prove identity of the creditors and the capacity of creditors to advance money and genuineness of transaction, then only burden shifts to the department. In the case of **CIT vs Korley trading Co. Ltd. (Cal.) 232 ITR 820** it was held that mere filing of Income tax file no. is not enough to prove cash credits. The jurisdictional High Court in the case of **V.I.S.P. (P) Ltd. CIT (MP) 265 ITR 202** had held that sec 68 did not confine to cash entries in the books. It was further held that if no plausible and reasonable explanation was given by the assessee, the amount could certainly be added towards the income of the assesses. In the case of **S. Punjabi Vs. ACIT, (ITAT Madras) 62 ITJ 749**, it was held that if only confirmation letter were filed in respect of creditors and they were not produced for examination, the assessee could not ask A.O to issue notice u/s 131. From all the above case laws it is clearly established that it is assessee's burden and duty to prove his claim regarding cash credit loans/gifts. In the instant case he summarily failed to do so in all respect. From the above contradictions and changing stance of the appellant, it is clear that the contention put forth by the assesses regarding loan/gifts are

nothing but merely an afterthought. The assessee even failed to explain his own source of cash of Rs. 5,50,000/- invested in the purchase of above properties. Thus, it is crystal clear that the appellant failed to prove the genuineness and creditworthiness not only all the donors and creditors but as well as of his own source also. Thus, I do not find any merit in the submissions of the appellant and these grounds of appeal are accordingly **dismissed**.

7. From the above, it is clear that the contention of the assessee was not accepted by the Ld. CIT(A) on the ground that the assessee has been changing his stance. However, the assessee has also furnished certain documentary evidences demonstrating that the joint owner of the property being brother of the assessee has also contributed for the acquisition of property as he made remittances from Kuwait. It is a fact that the assessee has been changing his stand but it is also fact that the assessee has filed certain evidences in support of his contention that the brother of assessee remitted certain amounts from Kuwait who happened to be co-owner of the properties in question.

Moreover, there is no finding by the lower authorities as to what happened to money which the assessee claimed to have received as gift/loan. Under these facts, we deem it proper to restore this issue to the file of the Ld. CIT(A) to decide the issue afresh after examining the aspect of remittance by the co-owner of the property and also the loan/gift claimed by the assessee. Ground of the assessee's appeal is allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order was pronounced in the open court on 19.12.2019.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 19/12/2019

VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore