

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.477/Ind/2016

Assessment Year: 2010-11

Shri Vinod Kumar Jain R/O MIG 20 Patel Nagar Mandideep Dist. Raisen	Vs.	ITO Vidisha
(Appellant)		(Revenue)
PAN No.AAQPJ8582Q		

Appellant by	Shri P.D. Nagar, CA
Revenue by	Shri V.J. Boricha Sr., DR
Date of Hearing	14.01.2020
Date of Pronouncement	28.01.2020

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2010-11 is directed against the orders of Ld. Commissioner of Income Tax (Appeals) (in short 'Ld.CIT(A)'), Bhopal-2 dated 30.10.2015 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 01.03.2013 framed by ITO-Vidisha.

2. Briefly stated facts as culled out from the records are that the assessee is an individual deriving income from the business of excavation and transportation work and commission income. The return of income for A.Y. 2010-11 filed on 07.07.2010 declaring income of Rs.9,21,870/-. The case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. While examining records the Ld. AO observed that assessee has shown income from other sources at Rs.1,25,040/-. Assessee was asked to furnish the details. Assessee submitted that he also carried out transport business in the name of M/s V.K. Transport wherein gross receipts were Rs.19,88,592/- and expenditure of Rs.18,63,552/- was incurred, but inadvertently the receipts from M/s. V.K. Transport was not shown along with business carried out in the individual name of which the books of accounts were audited. Ld. AO was not satisfied with this reply and denied the benefit of claiming expenditure u/s 57 of the Act thereby making an addition of Rs.18,63,552/-.

3. Ld. AO also observed that during the year assessee had received gift of Rs.10 lacs from his mother-in-law and Rs.2,50,000/- from his father. Both the donors are relatives of the assessee and it was submitted that they declared gifts on affidavit and both had sufficient source to explain the gift. However their details and submission were not sufficient to convince the assessing officer and he accordingly made the addition for unexplained gift at Rs.12,50,000/-. Minor addition was also towards disallowance of

interest on loan at Rs.95,247/-, addition u/s 43B of the Act at Rs.25,977/- and disallowance of repair and maintenance expenses at Rs.25,000/-. Income assessed at Rs.41,81,646/-. Thereafter, the assessee challenged various additions made by the assessing officer before the Ld. CIT(A) but partly succeeded.

4. Now the assessee is in appeal before the Tribunal raising following grounds:

1. That the Ld. Commissioner of Income Tax (A) erred in law in confirming the disallowance of Rs.18,63,552/- on the ground that there was no reason to exclude the business receipts of M/s. V.K. Transport from the audited accounts and direct and indirect expenses were already debited in the audited accounts and the documents submitted do not establish that the expenditure of Rs.18,63,552/- was incurred or paid against business receipts of M/s. V.K. Transport in any manner.

2. That the ld. Commissioner of Income Tax(A) erred in law in confirming the addition of Rs.10 lacs u/s 68 of the Act received by the appellant by way of gift from his mother-in-law on the ground that she was not being assessed to income tax. He erred in not providing reasonable opportunity to locate and furnish gift deed duly signed by her. The addition of Rs.10 lacs so confirmed is, therefore, wholly unjustified, improper and deserves to be quashed.

3. That the Ld. CIT(A) erred in law in confirming the addition of Rs.2,50,000/- u/s 69 of the Act being the amount received by way of gift from Shri Nemichand Jain, father of the appellant, who had also confirmed such payment. The additional evidence in the form of confirmation regarding payment from the father was not admitted on the ground that there was no reasonable cause for its non-submissions before the AO. The addition so confirmed is wholly unjustified, improper, bad in law and deserves to be quashed.

4. That without prejudice to above, the Learned Commissioner of Income Tax (A) ought to have allowed the telescoping benefit against the addition made u/s 68 and 69 of the Act being gifts received of

Rs.12,50,000/-. He ought to have appreciated that when the expenditure claimed in profit and loss account of M/s. V.K. Transport has been treated as not incurred at all, such amount of cash was available with the appellant, which was deposited in bank. Disallowance of expenditure on one hand at Rs.18.63 lacs vis-à-vis gifts received from mother-in-law and father of the appellant at Rs.12.50 lacs assessed as unexplained cash credit/investment resulted into doubt taxation. The addition so made u/s 68 and 69 of the Act, therefore deserved to be quashed.

5. Apropos ground No.1, 2, 3 & 4 Ld. counsel for the assessee vehemently argued referring to the following written submissions:

Disallowance of all expenses of M/s. V.K. Transport

The appellant derived income from excavation and transportation business under the name and style as “M/s. Vinod Kumar Jain” as well under the name and style as M/s.V.K. Transport. Separate books of accounts were maintained for both, based on which return of income was submitted declaring the same at Rs.9,21,870/- which was assessed at Rs.41,81,646/-. Division-wise gross receipts, expenditure and net profit as per books of account were as under :-

Particulars	Gross receipts including commission	Expenditure	Net profit	Remark
M/s. Vinod Kumar Jain	Rs.2,47,40,924/-	Rs.2,38,60,904/-	Rs.8,80,019/- i.e. 3.56%	Audit report obtained u/s 44AB of the Act
M/s.V.K. Transport	Rs.19,88,592/-	Rs.18,63,552/-	Rs.1,25,040/- i.e. 6.28%	Not covered by Tax Audit & offered under the head “Income from other sources”.

As the transportation work was being carried out with Public Limited Companies viz. M/s.Crompton Greaves Limited and M/s. Dawat Foods Limited, with an object to carry on such business in trade name, separate division in the name of M/s. V.K. Transport was started during the year. Copy of profit and loss account of both the businesses are annexed (Page 1 to 6 of P.B).

➤ At the outset, following two mistakes were committed by the appellant while submitting the return of income :- (i) Books of accounts of separate division viz. M/s. V.K. Transport were not audited and (ii) Income from said business was offered under the head "Income from other sources" instead of "Income from business".

➤ It is submitted that the nature of business in the case of M/s. Vinod Kumar Jain is that of excavation and sale of gitti, muram etc. which also involved transportation thereof. Contrary to this, separate business under the name and style as M/s. V.K. Transport was that of commission agency business of transportation of goods where the Trucks were taken on hire. Details of following major expenses incurred are annexed :-

- a) Lorry hire expenses charges Rs.6,71,450/- (Page 7 to 16 of P.B)
- b) Diesel expenses Rs.3,79,938/- (Page 17 to 26 of P.B)
- c) Repairs & maint. charges against transport work Rs.1,74,096/- (Page 27 to 31 of P.B)
- d) Loading service charges Rs.4,01,766/- (Page 32 & 33 of P.B)

It is also evident from copies of accounts of respective parties that major payments were made to them through banking channel and supporting evidences along with copies of account of creditors were also submitted before authorities below. In substance, gross receipts of transportation charges of Rs.18.04 lacs has been taxed as income but corresponding expenses to earn such income have been disallowed in full.

➤ The Income tax officer did not doubt upon the genuineness of expenditure incurred by separate division i.e. M/s. V.K. Transport as regular books of accounts for both divisions were produced yet vide para-5 of the assessment order, disallowed entire expenditure reflected in the profit and loss account of M/s. V.K. Transport at Rs.18,63,552/- on following grounds :-

- a) Such expenditure were claimed as deduction u/s 57 of the Act i.e under the head "Income from other sources" hence not permissible.
- b) There was no reason to exclude the business income from the scope of audit and to offer it separately under the head "Income from Other Sources".
- c) Direct and indirect expenses of M/s. V.K. Transport were already claimed in audited trading account.

➤ The learned Commissioner of Income tax (A) confirmed the disallowance of entire expenditure at page - 4 of the appellate order he observed that both the receipts and expenses of the transport

part of the business activity are included in the audited trading account of M/s. Vinod Kumar Jain. Thus, receipts credited in separate set of books of M/s. V.K. Transport was considered as income but expenditure was disallowed on the same grounds stated by the AO vide para-7(g) of the appellate order. While confirming the disallowance he also observed following discrepancies :-

i) Gross receipts as per P & L Account of V.K. Transport was Rs.19,88,592/- whereas as per copy of account of transportation charges it was Rs.18,04,227/- (Page 34 of P.B).

Such observation is incorrect because he did not consider that gross receipts includes excavation charges recovered at Rs.1,66,365/- separately stated in profit and loss account. (Page 35 of P.B).

ii) The bank account in the name of M/s. V.K. Transport maintained with State Bank of India do not match the credits with ledger account.

iii) TDS was not deducted by M/s. Crompton Greaves Limited, M/s. Ratansingh Builders and M/s. Dawat Foods Limited on hiring charges. In fact, TDS was deducted by all of them as evident from copies of accounts at page-36 to 41 of the paper book.

iv) Appellant did not deduct tax at source on Lorry hire expenses paid to other transporters hence provisions of Section 40a(ia) are attracted. No explanation was asked for non-deduction. In fact, the Truck owners were having less than 10 Trucks hence TDS was not deducted .

II) Amount received from Mother-in-law assessed u/s 68 of the Act.

The appellant had purchased residential house during the year for Rs.27,50,000/- vide registered sale deed executed on 04.09.2009 in joint name with his wife who also contributed towards cost of acquisition. Mother-in-law of the appellant being widow had gifted a sum of Rs.10 lacs for purchase of said house. She was in possession of said sum out of agricultural proceeds having more than 50 acres of land including accumulated funds received after the death of her husband. The fact regarding gift received was categorically stated during assessment proceedings vide letters dated 06.02.2013 and 08.10.2013 (Page 42 to 44 of P.B) and also submitted before CIT(A). Gift deed was executed in favour of the appellant on 04.06.2009 wherein other three sisters of appellant's wife were witnesses. The gift deed could not be produced before lower authorities because the original gift deed duly notarised, was misplaced due to change of residential house.

In the absence of such gift deed and death of donor, genuineness could not be proved before lower authorities.

Copy of gift deed was later on found with the father of the appellant. An application under Rule 24 of Income Tax (Appellate Tribunal) Rules 1983 has been filed with request to admit additional evidence.

III) Amount received from Father assessed u/s 69 of the Act :

The appellant is residing with his father who derives income from Kirana and Money lending business. His income is below taxable limit hence returns were not filed by him. However, while purchasing the residential house by the appellant, he contributed a sum of Rs.2,50,000/- for purchasing the stamps for registration and expenses thereof.

He had also executed a gift deed in favour of the appellant which was duly notarized on 01.09.2009 but the same could not be produced before lower authorities because original gift deed executed was misplaced due to change of residential house.

The fact regarding gift received was categorically stated during assessment as well appellate proceedings (Page 42 to 44 of P.B). In the absence of such gift deed, the capacity could not be proved before lower authorities whereas the genuineness was proved from the facts and circumstances.

Copy of gift deed was found later on with the father of the appellant. An application under Rule 24 of Income Tax (Appellate Tribunal) Rules 1983 has been filed with request to admit additional evidence.

6. Ld. counsel for the assessee also made an alternate submission though ground No.4 for providing telescopic benefit of Rs.12.50 lacs submitting as follows:

“Additional Ground of Appeal – Telescopic Benefit of Rs.12.50 lacs:

It is humbly submitted that the authorities below disallowed entire expenditure debited in separate profit and loss account of M/s. V.K. Transport amounting to Rs.18.63 lacs on the ground that such expenses were not incurred at all. Presuming but not admitting such conclusion, the appellant may please be given telescopic benefit on

the ground that part of the expenditure incurred was impliedly available with the appellant which was utilized for investment in residential house, received in the form of gifts from father and mother-in-law of the appellant at Rs.12,50,000/- in aggregate. Such Telescopic benefit is being allowed by the Hon'ble Bench so as to avoid double taxation. [Kindly refer – C.I.T. vs. Omprakash Dhanwani, Indore – ITA No. 254 to 256/IND/15 order dated 17.05.2016].

Kind attention is also invited to judgment in the case of M/s. Sind Medical Stores vs. Commissioner of Income tax (2014) 90 CCH 497 (Raj. HC) wherein vide para-12 of the judgment it was held that “when any amount is paid, letter withdrawn from the books would be available for recycling and rotation, unless otherwise established as invested elsewhere by the Revenue”. (Copy annexed).

It is prayed that disallowance of Rs.18.63 lacs on one hand and addition of Rs.10,00,000/- u/s 68 and Rs. 2,50,000/- u/s 69 of the Act resulted into double taxation on Rs.12,50,000/- hence appropriate relief may please be allowed.

7. Per contra, ld. Departmental Representative (DR) vehemently argued strongly supporting the detailed finding of Ld. CIT(A).

8. We have heard rival contentions and perused the records placed before us.

9. As ground No.1 relating to disallowance of expenses of Rs. 18,63,552/-, we observe that the assessee is regularly engaged in the business as commission agent. Gross receipts from the

commission business carried out in the name of M/s. Vinod Kumar Jain was at Rs.2,47,40,924/- on which net profit of 3.56% is declared which computes to Rs.8,80,019/-. Books of accounts of M/s. Vinod Kumar Jain are duly audited u/s 44AB of the Act. Ld. Assessing Officer had not made addition relating to commission business. Issue relates to receipts of transport business newly started during the year under the name of M/s. V.K. Transport. Gross receipts from transport business for the year of Rs.19,88,592/-. After claiming expenditure of Rs.18,63,552/- net profit of Rs.1,25,040/-(6.28%) has been shown under the head income from other sources and for this reason the transport business receipt was not subjected to tax audited.

10. Documentary evidence filed in the paper book clearly shows that the regular books of accounts were maintained for M/s V.K. Transport. Transportation services relating to transport work were provided to various public Limited Company viz. M/s Crompton Greaves Limited and M/s. Dawat Foods Limited, and other concerns. Ledger accounts of various customers of M/s V.K. Transport are placed on record. Assessee does not own any transport vehicle and he carried out this transportation business by hiring trucks/Lorry from other concerns for which charges are paid. Major expenses are towards brokerage, diesel expenses, loading services charges, Lorry charges and repairs & maintenance charges. In these given facts and circumstances, assessee having carried out the business of transport cannot be disputed. Since the

assessee is carrying out business of providing transport service then certainly expenses incurred for carrying out business needs to be allowed.

11. It is true that assessee has not shown the business receipts and income under the head business income but this reason alone cannot preclude to assessee for claiming incidental expenses incurred for carrying out business. Though, assessee has declared 6.28% net profit rate on the transport business on the gross receipt of Rs.19,88,592/-, we in the interest of justice and being fair both the parties and looking to the fact that books of accounts are not audited, are of the considered view that estimating of net profit @ of 8% of the gross receipts of Rs. 19,88,592/- i.e. Rs.1,59,087/- will be justified. Accordingly additions of disallowance of expenses of Rs.18,63,552/- is sustained only to the extent of Rs.34,047/-. Assessee gets relief of Rs.18,29,505/-. Thus, ground no.1 is partly allowed.

12. As regards ground No.2 & 3 wherein common issue is raised relating to unexplained gift of Rs.10 lacs received from mother-in-law and Rs.2,50,000/- from father of the assessee. We, observe that the alleged cash gift of Rs.10,00,000/- & Rs.2,50,000/- were received in cash and during the course of assessment proceedings assessee was unable to file documentary evidences in support of genuineness of the gift and creditworthiness of the donor before the Ld. AO. However, it was duly claimed that gift deeds were made for the alleged gifts and the donor had sufficient source to explain it.

13. We, further observe during the course of appellate proceeding assessee placed sufficient documentary evidences to prove the identity, genuineness and creditworthiness of the gifts. Gift of Rs.10 lacs received from assessee's mother-in-law Smt. Urmila Jain, resident of Bhopal was said to be the owner of around 50 acres agricultural land receiving regular income from agricultural proceeds for many years. Gift deed dated 04.06.2009 duly notarized is placed it pages 47 & 48 of the paper book wherein Smt. Urmila Jain has declared that out of her accumulated capital, 'Stridhan' and income from gift received from her husband late Shri Bhaiyalal Ji Jain who was earning regular agricultural income, is the source of gift given to her son-in-law. This fact that Smt. Urmila Jain was having regular source of agricultural income and the authenticity of gift deed has not been disputed. She is also "relative" of the assessee as provided in clause (e) of explanation to section 56 of the Act. It is also brought to our notice that Smt. Urmila Jain has also expired.

14. In these given facts and documentary evidences placed before us, we are satisfied with the identity genuineness, creditworthiness of the donor Smt. Urmila Jain who is a mother-in-law of the assessee and thus, find no reason to doubt the genuineness and creditworthiness of the gift at Rs.10 lacs. Accordingly, addition made u/s 68 of the Act for Rs.10 lacs is direct to be deleted. Thus, ground No.2 of the assessee's appeal is allowed.

15. As regards cash gift of Rs.2,50,00/- received from assessee's

father it has been claimed that his father was deriving income from Kirana and Money Lending business. Since his income was below the taxable limit, return of income was not filed. He being a senior citizen it cannot be denied that he had accumulated savings from land in many years and thus his contribution of Rs.2,50,000/- as gift to his son for helping him to purchase a residential house cannot be doubted. Gift deed was duly notarized and signed by assessee's father is placed on record. It is also submitted by Ld. counsel for the assessee, that assessee's father has also expired before some time.

16. We, therefore, in the given facts and circumstances of the case and looking to the peculiarity of the facts wherein in the donor has expired after signing an affidavit for the gift given to his son, find no justification in the action of the Ld. AO making the addition for unexplained investment u/s 69 of the Act, since the assessee has duly explained the source of Rs.2,50,000/- being receipt from his father. Accordingly addition u/s 69 of the Act is deleted. Thus, ground no. 2 & 3 stands allowed.

17. As regards alternate claim of Telescopic of Rs.12.50 lacs raised in ground No.4 we find no reason to adjudicate this issue since it will be merely academic in nature as we have already partly allowed assessee's ground no.1 to the extent of deleting addition of Rs.18,29,505/- and allowed Ground No. 2 & 3 of the assessee's appeal deleting addition of Rs.10,00,000/- and Rs.2,50,000/- respectively. Thus, ground no.4 is dismissed as infructuous.

18. In the result appeal of the assessee is partly allowed.

The order pronounced in the open Court on 28.01.2020.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 28th January, 2020

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore