

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 615/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2013-14

Jagdish Prasad Sharma 516, Mahaveer Nagar, Near Shree Ram Mandir, Tonk Road, Jaipur.	बनाम Vs.	Income-tax Officer, Ward-2, Sawai Madhopur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ARQPS 6492 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sidharth Ranka (Adv.) &  
Shri Sorabh Harsh (Adv.)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 09/11/2023  
उदघोषणा की तारीख / Date of Pronouncement : 10/01/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2013-14 dated 29.08.2023, which in turn arises from the order passed by the AO, passed under Section 144/147 of the Income tax Act, 1961 (in short 'the Act') dated 19.12.2018.

2. The assessee has marched this appeal on the following grounds:-

*“1 That on the facts and in the circumstances of the case the Id. Assessing Officer grossly erred in reopening the assessment u/s 148 of the Income-tax Act, 1961.*

*2. That on the facts and in the circumstances of the case the Id. Lower Authority grossly erred in confirming the addition of Rs. 27,00,000/- on account of total cash deposits made by assessee in his bank accounts during the year under consideration and assessed income of the assessee at Rs. 27,00,000/- and in ignoring that submission of the assessee appellant.*

*3. That on the facts and in the circumstances of the case the Id. Lower Authority grossly erred in considering the facts that cash deposit in the bank account of the assessee appellant is belongs to his friends Shri Ravi Bansal when it was already submitted during the statement recorded u/s 131 of the Act and PAN Number of Shri Ravi Bansal was also submitted before the Id. CIT(A).*

*That appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”*

3. The fact as culled out from the records is that the case of the assessee was reopened under the provisions of section 147 of the I.T. Act based on the AIR information for the year under consideration on account of the reasons that the assessee has deposited a sum of Rs. 27,00,000/- in his bank account. As the assessee has deposited the said money and has not filed any return of income, therefore, considering that reason the case of the assessee was reopened and notice u/s 148 of the Act was issued

to the assessee. Various notices were issued to the assessee from time to time the assessee has only submitted a bank statement of the assessee was recorded u/s 131 of the Act wherein the assessee submitted that he is engaged in the business of brokerage on the sale of the property. He has explained that the amount of Rs. 27,00,000/- deposited in the bank account with Federal Bank of India is not related to any business of the assessee but the assessee belonging to his associates of Shri Ravi Bansal. The Id. AO noted that the assessee could not brought any evidence the said amount was considered as income of the assessee for the year under consideration. Accordingly, the assessment was completed u/s 144 of the I.T. Act.

4. Aggrieved from the above order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:-

“4.2.4 On perusal of submission of the appellant, it is seen that the appellant has made cash deposits in his bank accounts. The documents filed in appellate proceedings are same as filed before the AO. The appellant has been claiming that the cash deposit of Rs. 27 Lakh has been made by his friend Ravi Bansal, but has however, till date failed to file any letter or confirmation from his friend Ravi Bansal admitting the same. Besides, no conclusive evidence in the form of any document has been filed by the appellant confirming the said claim.

The appellant has been claiming that the amount paid to Sh. Vivek Oberoi and Sh. Inderpal of Rs. 23,52,800/- each is on behalf of Sh Ravi Bansal and the appellant has filed a "Mukhtiyar Nama" to support its claim. I have perused the "Mukhtiyar Nama", but it is seen that the said document nowhere mentions the amount that has been transferred/agreed upon by the parties for the transaction. Thus the appellant's claim of the amount being transferred on behalf of Sh. Ravi Bansal is not proved. The appellant has been repeatedly asking for adjournment but has failed to avail the repeated adjournments provided to him. This office is therefore left with no option but to agree to the addition made by the AO as the appellant has grossly failed to provide any supporting document establishing his claim. The ground of appeal is hence rejected.

4.5 In view of the above, the grounds of appeal raised are dismissed and the addition of Rs. 27,00,000/- made by the AO is hereby confirmed.

5. In the result, the appeal is dismissed.”

5. Feeling dissatisfied from the above order of the Id. CIT(A) the assessee has preferred the present appeal before the Tribunal on the grounds as stated in para 2 above. In support of the various grounds so raised by the Id. AR of the assessee reiterated the submission made before the Id. CIT(A) and the same is reproduced hereinbelow:-

“The assessee appellant is an individual and engaged in the business of brokerage on the sale of the property. That during the year under consideration assessee appellant has not taxable income and no return were filed.

Ground No. 1 and 2 [Opening of assessment proceeding u/s 148 and addition on account of cash deposit of Rs 27,00,000/-1

1. That Id. Assessing officer grossly erred in issuing the notice u/s 148 and passing the order u/s 144/147 of the act.

2. That during the year under consideration the friend of the assessee appellant Shri Ravi Bansal, r/o 177, Janakpuri-II, Imliphatak, Jaipur (PAN AJRPB3934G) keeping the assessee appellant in dark, had deposited Rs 27,00,000/- in the bank account of the assessee appellant on 01.01.2013 and apart from this cash deposit Shri Ravi Bansal had also deposited Rs. 5,00,000/- on 27.12.2012, Rs. 10,00,000/- on 01.01.2013 and Rs. 5,00,000/- on 01.01.2013. Thus, total Rs. 47,00,000/- [500000+1000000+500000+2700000] was deposited by Shri Ravi Bansal in the bank account of the assessee appellant at his back.

3. That Shri Vivek Oberoi, Shri Inder Pal Singh & Shri Ashok Kumar jointly executed the Registered Power of Attorney dated 08.01.2013 in favour of Shri Ravi Bansal for agricultural land situated at Gram Badh, Ramjanipura Patwar, Shivdaspura, Tehsil Chaksu owned by them. Copy of Power of Attorney dated 08.01.2013 is enclosed herewith.

4. That in reference of Power of Attorney executed by Shri Vivek Oberoi, Shri Inder Pal Singh & Shri Ashok Kumar a sum of Rs. Rs 23,52,800/- each was paid to Shri Vivek Oberoi, Shri Inder Pal Singh from the bank account of the assessee appellant. On perusal of the bank statement, it can be noted that there are two debit entries in favour of Shri Vivek Oberoi and Inder Pal on 02.01.2023. Copy of Bank Statement of the assessee appellant is enclosed herewith.

5. That Shri Ravi Bansal is regularly filing its Income-tax return and also filed the return of income during the year under consideration and his PAN is AJRPB3934G.

6. That during the course of assessment proceeding, the statement of the assessee appellant was recorded on oath u/s 131 of the Act on 14.12.2018 wherein the assessee appellant stated that the cash deposited in his bank account belongs to Shri Ravi Bansal, Shri Ravi Bansal has operated his bank account without his knowledge, the signatures on the cheque is of the assessee appellant himself and that Shri Ravi Bansal was appointed as Power of Attorney holder of Shri Vivek Oberoi, Shri Inder Pal Singh & Shri Ashok Kumar dated 08.01.2012 in respect of agricultural land situated at Gram Badh, Ramjanipura Patwar, Shivdaspura, Tehsil Chaksu and in reference of which the said consideration was paid by Shri Ravi Bansal. (Copy of statement recorded u/s 131 dated 14.12.2018 is enclosed herewith)

7. That Id. Assessing Officer without considering the statement recorded u/s 131, without considering the registered power of attorney, without perusing the bank statement and without carrying out any further verification & examination from Shri Vivek Oberoi, Shri Inder Pal Singh, Shri Ashok Kumar & Shri Ravi Bansal has made the impugned addition on the ground the assessee appellant has not submitted any evidence in support of their statement. The Id. Assessing Officer has not doubted the deposit of Rs. Rs. 5,00,000/-, Rs. 10,00,000/- & Rs. 5,00,000/- made by Shri Ravi Bansal.

8. That the assessee appellant has discharged its burden of proof at the time of recording of statement recorded u/s 131 of the Act and we humbly submit that the cash deposited in the bank account of the assessee appellant belongs to Shri Ravi Bansal who has used the said bank account keeping the assessee appellant in dark and therefore the addition made by the assessee deserves to be deleted.”

5.1 The Id. AR of the assessee in support of the various contentions/averments made has relied upon the following documents:-

S. No.	Particulars	Page No.
1.	Copy of written submission filed before CIT(A)	01 to 03
2.	Copy of Power of Attorney dated 08.01.2023	04 to 11
3.	Copy of Bank Statement of the assessee appellant	12-13
4.	Copy of statement recorded u/s 131 of the Act dated 14.12.2018	14-17

5.2 The Id. AR of the assessee in addition to the above written submission submitted that the Assessing Officer has made an addition of Rs. 27,00,000/- being the amount deposited in cash in the bank account of the assessee whereas in the same bank account Shri Ravi Bansal has also deposited cheque amount which has been accepted by the Revenue as ignoring from the Ravi Bansal, Inder Pal Singh and Vivek Oberoi in which he relied upon the registered copy of Power of Attorney and the money given from the account of the assessee is duly reflected in this agreement. The Id. AR of the assessee referring to the copy of bank account at page 13 of his paper book submitted that in addition to deposit of cash of Rs. 27,00,000/- of Mr. Ravi Bansal has also given money of Rs. 20,00,000/- in the same bank account and the Id. Assessing Officer has accepted the explanation of the assessee that these amounts from the explanation sources. The Id. AO based on these information has partly considered the explanation of the assessee but has not appreciated the fact that the RTGS received and cash deposited both gone to Vivek Oberoi and Inder Pal Singh in accordance with the copy of documents submitted at page 4 to 11 of the Paper books of the assessee and this fact has not been deposited by the Revenue. The Id. AR of the

assessee based on these information controverted evidences submitted that utmost brokerage income of total transaction of 47,00,000/- can be considered as income of the assessee but not Rs. 27,00,000/- being the amount of cash deposited into the bank account. The Id. AR of the assessee in support of the various contentions so raised has relied upon the copy of statement recorded during the assessment proceedings and has recorded the question Nos. 2 and 4 and the same is also extracted herein below:-.

प्रश्न-2. क्या आप आयकरदाता है यदि हाँ तो अपनी आय के स्रोत बताएं ?  
उत्तर - मैंने पिछले सात-आठ वर्षों से आयकर विवरण नहीं भरी है। वित्त वर्ष 2012-13 में मैंने प्लॉट/जमीन बेचने की दफ्तारी का कार्य किया है। जिससे मेरी सालाना आय लगभग रु 1 लाख रूपय हो जाती थी। इस कारण मैंने आयकर विवरण नहीं भरी। मेरा पैन नम्बर ARQPS 6492P है।



प्रश्न- 4. वित्तिय वर्ष 2012-13 में आपने फेडरल बैंक लिमिटेड, भालविय नगर, जयपुर की खाता में खाता सं० 18320/00001884 में रु. 27,00,000/- नकद दिनांक 01-01-2013 को जमा कराए है इस संबंध में आपका क्या कहना है ?

उत्तर - वित्तिय वर्ष 2012-13 में फेडरल बैंक लिमिटेड भालविय नगर, जयपुर उक्त खाता मेरे नाम में है एवं मैंने इस बैंक में खुलवाया था। इस खाते में जमा की गई नकद 27,00,000/- रु. की शर्शि को मैंने नहीं कराया है बल्कि श्री रवि वंसल पुत्र श्री कैदार नाथ वंसल, निवासी 177, जनकपुरी-III, ईमली फाटक, जयपुर के द्वारा नकद जमा कराई गई है। श्री रवि वंसल के साथ मेरा व्यापारिक संबंध है।

Since these information has not been controverted making addition of Rs. 27,00,000/- as against the set off of facts available on record.

6. Per contra, the Id. DR submitted that the assessment has been completed under the provisions of section 144 of the Act and the assessee has remained non compliance to the various notices issued by the Id. Assessing Officer. The Id. AR of the assessee submitted that the assessee has failed to explain as to why he has

deposited money into bank account and why Ravi Bansal has not given by cheque and therefore, when the other money received by the cheque. The Behavior of the assessee is not free from doubt as the assessee has only submitted power of attorney, bank statement and no further evidence has been submitted so the Id. DR supported the orders of the lower authorities.

6.1 In the rejoinder of the Id. AR of the assessee submitted that the registered power of attorney and bank statement is sufficient evidence before the Assessing Officer and the Assessing Officer should have to take over all view of the matter which he failed to do so.

7. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions. It is not undisputed that in the bank account in addition to the deposit of cash of Rs. 27,00,000/-. Further a sum of Rs. 20,00,000/- particularly received from Ravi Bansal is apparent it is also not disputed that the assessee has submitted that these bank

statement to the Assessing Officer. It is also made it clear in the statement recorded by the assessee in the assessment proceeding that he has given the name of person on whose behalf the money has been credited and he has also given the name of Ravi Bansal S/o Keddar Bansal deposited the cash into the bank account and therefore these explanations which is clear from the statement recorded on 14.12.2018. There is no discussion or finding of the Id. Assessing Officer in the assessment order as to why these explanation is not taken into consideration. The Id. Assessing Officer has also not taken any cognizance of the money deposited by way of RTGS from the Ravi Bansal thus the Bench is of the view that the assessee has discharged his primary onus of proving the plausible explanation of the matter and these burden has shifted the Revenue to proof that the assessee information is correct or not. Considering the evidences placed on record in the form 1/3 parties evidence and registered copy of power of attorney we are of the view that the assessee is not the real owner of cash deposit of Rs. 27,00,000/- in the bank account. The Id. CIT(a) has merely not considered the plea of the assessee on account of the fact that in the said Mukhtiyar nama the amount transferred or agreed by between the parties have not been mentioned and

merely on these correct reason the explanation of the assessee are rejected. The contention of the Id. CIT(A) has not correct when the assessee from the third party evidence proves that the money received in his bank account through RTGS and through deposit of cash has been given to Shir Vivik Oberoi and Shri Inder Pal Singh for which the power of attorney has been placed on record. Thus looking into bank all facts present by the assessee, we are of the considered view that the Revenue may taken necessary action against Ravi Bansal if deem it fit in accordance with law but in the case of the assessee ultimately income i.e. to be chargeable to tax is only the brokerage income and the Assessing Officer. Considering the rate of brokerage privilege in the market the excess income of the assessee considering that the finding of the fact that ground No. 2 and 2.1 of the assessee are allowed.

8. Ground No. 1, at the time hearing, the learned counsel for the assessee has stated at bar that the assessee does not press ground no. 1 and the same may be dismissed as not pressed. The Id. DR has raised no objection if ground no. 1 of the assessee's

appeal is dismissed as not pressed. Accordingly the ground no. 1 of the assessee's appeal is dismissed being not pressed.

In light of these observations the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 10/01/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठौड़ कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/01/2024

\*Santosh

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

1. अपीलार्थी / The Appellant- Jagdish Prasad Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2, Sawai Madhopur..
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 615/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar