

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI ANIL CHATURVEDI, AM
AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.49/RPR/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Income Tax Officer-1,
Rajnandgaon, (C.G)

.....अपीलार्थी / Appellant

बनाम / V/s.

Bhupendra Kumar Jain (HUF),
AB-05, Kailash Nagar,
Rajnandgaon, (C.G)

PAN : AACHJ9985P

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.51/RPR/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Bhupendra Kumar Jain (HUF),
AB-05, Kailash Nagar,
Rajnandgaon, (C.G)

PAN : AACHJ9985P

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer-1,
Rajnandgaon, (C.G)

.....प्रत्यर्थी / Respondent

Assessee by :Shri R.B. Doshi
Revenue by :Shri R.P. Namdeo

सुनवाई की तारीख / Date of Hearing :16.01.2019
घोषणा की तारीख / Date of Pronouncement :11.03.2019

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

These cross-appeals filed by Revenue and assessee emanate out of the order of Commissioner of Income-Tax (A)-II, Raipur dated 11-01-2016 for A.Y. 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and derives income from share trading and interest on deposits from Bank. Assessee filed his return of income for A.Y. 2012-13 on 17-07-2013 declaring total income at Rs.3,66,000/-. The case was selected for scrutiny and thereafter the assessment was framed u/s 143(3) vide order dated 30-03-2015 and the total income was determined at Rs.57,41,000/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 11-01-2016 (in Appeal No.CIT(A)-II/RPR/A.No.46/14-15/2015-16) granted partial relief to

the assessee. Aggrieved by the order of Ld. CIT(A), assessee and Revenue are now in appeal before us.

3. The grounds raised by the Revenue in ITA No. 49/RPR/2016 reads as under :

1. *“Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs.43,00,000/- made by the AO on account of unexplained cash credit u/s.68 of the Income Tax Act, 1961 ?”*
2. *“The Ld. CIT(A) has erred in confirming a sum of Rs.7,49,090/- out of total cash deposits of Rs.43,00,000/- made by the assessee during the financial year under consideration.”*
3. *“The Ld. CIT(A) has erred in ignoring the provisions of section 68 of the Income Tax Act, 1961 which is a deeming provision and, therefore, in absence of primary evidence for explanation of nature and source, the total amount ought to have been confirmed by the Ld. CIT(A).”*
4. *“The Order of the Ld. CIT (A) is erroneous both in law and on facts?”*
5. *“Any other ground that may be adduced at the time of hearing?”*

On the other hand the grounds raised by the assessee in ITA No. 51/PUN/2016 reads as under :

- “1. *That on the facts and on the circumstances of the case Ld. CIT(A)-II erred in upholding addition of Rs.7,49,090/- out of disallowance of Rs.43,00,000/- made by Ld. A.O. on account of deposit in bank. The addition of Rs.7,49,090/- is unjustified and may kindly be deleted.*
2. *That on the facts and on the circumstances of the case Ld. CIT(A)-II erred in upholding addition made by Ld. AO for the Unsecured loan of Rs.10,75,000/- provided by Mr. M.C. Jain, father of Karta to the HUF through Cheque. The addition made is unjustified and may kindly be deleted.*

3. *The Appellant craves leave to add and/or amend and/or alter above-mentioned grounds of Appeal at the time of hearing.”*

4. Before us at the time of hearing, at the outset, Ld. DR vide letter dated 17-01-2019 submitted that the Revenue wishes to withdraw the appeal on account of low tax effect. In view of the submissions of Revenue the appeal of Revenue is dismissed being withdrawn.

5. In the result, the appeal of Revenue is dismissed as withdrawn.

ITA No. 51/RPR/2016

6. We now proceed with assessee's appeal. First ground with respect to addition of Rs.7,49,090/-.

7. During the course of assessment proceedings, Assessing Officer noticed that assessee had deposited cash aggregate to Rs.43,00,000/- in the saving bank maintained with Axis Bank, Rajnandgaon. The assessee was asked to explain the source of cash deposits and furnish cash flow chart. The Assessing Officer noted that the assessee did not furnish any explanation with respect to cash deposits. Assessing Officer accordingly, considered the cash deposits in the bank account as unexplained cash credit u/s. 68 and made its addition. Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A). The CIT(A) after

considering the submissions of assessee granted partial relief to the assessee by observing as under :

“1.5 From the details of capital and cash balance position furnished during the assessment stage and brought to my notice during the appeal proceedings I find that the capital and cash balances reveal sufficient balances which is reproduced herein below:-

| S. No. | Capital | | Cash | |
|---------|-------------|-------------|-------------|-------------|
| | Opening | Closing | Opening | Closing |
| 2009-10 | 19,93,152/- | 41,41,658/- | 26,57,5311- | 29,87,633/- |
| 2010-11 | 41,41,6581- | 51,64,355/- | 29,87,633/- | 27,60,909/- |
| 2011-12 | 51,64,355/- | 60,60,883/- | 27,60,909/- | 25,96,3101- |

I also observe that in the balance sheet the items are comprising of investments returns made by the Karta from credible sources wherein the details of parties and transactions with them have been explained by highlighting the sources and bank details that were made available to the AO. I also notice there are no significant liabilities that are being discharged which would have had the effect of eroding the balances and rendering the figures shown by the appellant disputable and not genuine. I therefore agree that the opening balance in the cash flow statement prepared by the Id. AO is not in doubt which will be taken for working out the cash deposits in the bank account. Although I am in agreement with the counsel with respect to the opening balance in the cash flow statement I am not inclined to accept the explanation with respect to the genuineness of cash deposits in the bank account as the appellant has not been able to reconcile and relate the cash deposits in the bank account from time to time satisfactorily. In the absence of satisfactory explanation various Courts have supported the view that the additions on account of unexplained cash deposits in the bank account is justified where the genuineness and sources of cash deposits are not explained satisfactorily. From the savings bank statement it is observed that cash deposits on various dates have been made which do not have correlation with the explanation offered. The AO has worked out the peak credits in his cash flow statement at Rs.7,49,090/- which is held as unexplained and confirmed out of the total additions of Rs.43,00,000/- and the balance amount is deleted.”

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

8. Before us, Ld. A.R. pointed to the cash flow chart which is placed at page 33 of the paper book which was prepared by the Assessing Officer to determine the negative cash balance of Rs.749,090/- on which the Commissioner of Income Tax (Appeals) had upheld the addition. He submitted that aforesaid cash flow is not correct because assessee had also furnished a cash flow which is placed at pages 35 and 36 of the paper book before the Commissioner of Income Tax (Appeals) and on which remand report from Assessing Officer was called for. He submitted that in the remand report Assessing Officer has not pointed as to why the cash flow chart furnished by the assessee is not correct. He also pointed to the receipts from the Karta which have been ignored by the Assessing Officer. He pointed that if those credits aggregate to Rs.8.5 lakhs are considered, then there is no negative cash flow. Under such situation no addition is called for.

9. The Ld. D.R. on the other hand did not controvert the submissions made by the assessee but however supported the order of Assessing Officer.

10. We have heard the rival submissions and perused the material on record. We find that it is assessee's contentions that it had submitted cash flow before the Commissioner of Income Tax (Appeals) and which was also sent to Assessing Officer asking for his report but no comments have been offered by the Assessing Officer on such cash flow. A perusal of cash flow that is prepared by assessee and which is placed in the paper book reveals that there are certain deposits from the Karta aggregate to Rs.8.5 lakhs which have not been considered while working out the negative cash balance. If those receipts are considered while working out the cash flow there would be no negative cash balance. In such situation we find force in the arguments of assessee and in the absence of any contrary facts placed by Revenue, we allow this ground of appeal. **Thus, the grounds of appeal No. 1 is allowed.**

11. Ground No. 2 is with respect to addition of Rs.10,75,000/-.

12. During the course of assessment proceedings it was noticed by Assessing Officer that the assessee had received Rs.10,75,000/- from Mr. M.C. Jain as gift. The Assessing Officer was of the view that Mr. M. C. Jain was not a member of HUF and provisions of section 56(2)(v) are applicable and he accordingly made its addition u/s.56(2)(v). Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A), who upheld the order of Assessing Officer by observing as under :

“1.6 Coming to the second ground of appeal the counsel submitted that the addition made on account of unsecured loan of Rs.10,75,000/- from Mr. M C Jain through cheque is unjustified and may kindly be deleted. I have considered the grounds of appeal and the submissions made by the Id. Counsel and heard the Id. assessing officer. During the assessment stage it was submitted by the appellant that Rs.10,75,000/- was a gift received from Mr. M C Jain through cheque in the bank account of Mr. Bhupendra Kumar Jain (HUF). Confirmations from Shri M C Jain was furnished before the assessing officer wherein the donor certified that he had gifted Rs. 10,75,000/- on various dates vide cheque drawn on Axis Bank Rajnandgaon. The details of cheque payment as well as the signature of the donee was appended in the said certificate furnished by Shri M C Jain. During appeal proceedings it was submitted that the gift was intended for Shri Bhupendra Kumar Jain by his father but got wrongly credited in the account of the HUF. A fresh certificate was furnished during the appeal proceedings where in a different view was taken by the appellant in which it was submitted that the cheque received from Shri M C Jain was not a gift but an unsecured loan which was subsequently returned by Shri Bhupendra Jain to his father. In the written submissions the appellant explained that "the father of the Karta intended to make gift of the said sums under consideration to his son Bhupendra Jain in his individual capacity. During the course of assessment also the lender confirmed that the made gifts to his sons in his individual capacity and not to HUF. However since the cheque was deposited in the Bank account of the HUF, it cannot by any stretch of imagination be treated as gift to HUF. Copy of confirmation submitted during the course of assessment is enclosed as per Annexure 8." On perusal of the submissions it is seen that the appellant has been offering different versions for Rs. 10,75,000/- received from Shri M C Jain. If it was in the nature of gift as explained during the assessment proceedings and wrongly credited in the bank account of the HUF the obvious and simple recourse should have been to either cancel the cheque and get a fresh cheque issued in the name of the concerned person or transfer the amount into the individual bank account of the appellant and not retain it in the bank account of the HUF. Subsequently, during appeal proceedings this amount was shown as returned to Shri M C Jain vide account payee cheque by treating the same as loan. Thus, for the same amount two different versions were offered by the appellant that contradict each other. The appellant has been changing his statements and submissions both at the assessment stage and at the appeal proceedings. Under such facts and circumstances the genuineness of the transaction is in doubt. The conditions laid down by various courts operate on different footings for gifts and for loans. In the case of loans the courts have invariably held that the identity creditworthiness and genuineness of such loans must be established beyond reasonable doubt. Similarly for gifts the

court have emphasised the genuineness of the transactions which is of paramount importance. In the instant case it is noticed that the genuineness of the transaction has not been clearly established by the appellant. Though bank statements and confirmations have been filed by the appellant it is important to note that the Hon'ble Andhra Pradesh High Court held in 221 Taxman 143(AP) that mere filing of bank statement is not enough to establish the genuineness of the transaction. In the case of Pradeep Kumar Loyalka reported in 63 ITD 87 (Patna) it was held that the sources of gifts or occasion to make gift are important parameters and hence the claim of the assessee that the gifts were from relatives supported by affidavits and I T Returns would not lend colour of genuineness to the transaction. The Hon'ble Court emphasised the importance of evidences of creditworthiness and where such evidences were scanty or negligible or did not inspire any confidence or was against human probabilities adverse view could be taken against the genuineness of gifts. In the light of above discussion the addition of Rs.10,75,000/- is confirmed.”

Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us.

13. Before us, the ld. AR submitted that before Assessing Officer the assessee has made a statement vide letter dated 31-03-2015 wherein it was stated that the amount was loan and not a gift. He fairly admitted that the letter was submitted on 31-03-2015 and the assessment order of Assessing Officer was passed on 30-03-2015. He further pointed to the confirmation from Mr. M. C. Jain wherein he submitted that the amount was loan to Shri Bhupendra Jain and the same was later on returned back. He further pointed to the affidavit of Mr. M.C. Jain which is placed at pages 37 to 39 of the paper book. He submitted that no cross-examination of Mr. M.C. Jain has been done by the Assessing Officer. He further submitted that in the remand report there is no adverse finding of

Assessing Officer. He therefore, submitted that when the assessee has furnished an affidavit which is not been found untrue, the contents of the affidavit cannot be discarded and for this proposition he placed reliance on the decision of Hon'ble Supreme Court of India in the case of Mehta Parikh & Co. Vs. Commissioner of Income Tax reported in 30 ITR 181 (SC). He therefore submitted that the addition be deleted.

14. The Ld. D.R. on the other hand supported the order of lower authorities and submitted that the repayment of loan has been made after the passing of order of Assessing Officer.

15. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to addition of Rs.10,75,000/-. It is Revenue's case that the amount received is gift and since the donor is not a member of HUF gift is covered u/s. 56(2)(v) of the Act and therefore Assessing Officer has rightly made its addition. On the other hand it is assessee's contention that the amount is not a gift but was a loan and in support of which assessee furnished the confirmation and affidavit of the lender. We find that the confirmation and affidavit were furnished before the Commissioner of Income Tax (Appeals) and on the same comments of Assessing Officer was asked for but Assessing Officer has not made any adverse comments. Further, there is no material on record to demonstrate that the contents of the affidavit filed by the lender

is false. Considering the totality of aforesaid facts, we are of view that assessee has explained the position about the amount being loan which has not been controverted by the Revenue. Under such circumstances no addition is called for. **Thus, the grounds of appeal No. 2 is allowed.**

16. In the result, the appeal of assessee is allowed.

17. To sum up, the appeal by the Revenue is dismissed and the appeal of assessee is allowed.

Order pronounced on 11th day of March, 2019.

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 11th March, 2019.

RK

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

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, I.T.A.T., Raipur

//True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर/ ITAT, Raipur.

| | | Date | |
|----|--|------|----------|
| 1 | Draft dictated on | | Sr.PS/PS |
| 2 | Draft placed before author | | Sr.PS/PS |
| 3 | Draft proposed and placed before the second Member | | JM/AM |
| 4 | Draft discussed/approved by second Member | | AM/JM |
| 5 | Approved draft comes to the Sr. PS/PS | | Sr.PS/PS |
| 6 | Kept for pronouncement on | | Sr.PS/PS |
| 7 | Date of uploading of order | | Sr.PS/PS |
| 8 | File sent to Bench Clerk | | Sr.PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | |
| 10 | Date on which file goes to the A.R | | |
| 11 | Date of dispatch of order | | |