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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL No. 468/2018 & CM No.15412/2018**

Date of decision: 8th August, 2018

LATE SH. DINESH KUMAR JAIN (THROUGH LEGAL HEIR SH.
ANKIT JAIN) Appellant

Through: Mr. C.S. Aggarwal, Senior Advocate
with Mr. Prakash Kumar, Advocate

versus

PRINCIPAL COMMISSIONER OF INCOME TAX, NEW DELHI

..... Respondent

Through: Mr. Raghvendra Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The present appeal under Section 260A of the Income Tax Act, 1961 has been filed by the legal heirs of Late Dinesh Kumar Jain.

2. The appeal impugns the order dated 16.10.2017 passed by the Income Tax Appellate Tribunal in ITA No.3612/Del/2016 and relates to Assessment Year 2011-2012.

3. The impugned order upholds addition of Rs.27,33,333/- made by the Assessing Officer and affirmed by the Commissioner of Income Tax (Appeals) on account of unexplained cash deposits of Rs.82,00,000/- made on different dates in the joint bank account of the appellant-assessee along with two others.

4. Factum that Rs.82,00,000/- was deposited in cash in the joint bank account on different dates is not disputed and under challenge.

5. Appellant has drawn our attention to the cash flow chart, enclosed as annexure-4 to the appeal, and submits that Rs.1,52,00,000/- was withdrawn in cash from the joint bank account on different dates between 3.5.2010 till 4.1.2011. Rs.82,00,000/- was deposited in cash on different dates between 24.5.2010 till 31.1.2011. Revenue, it is argued, accepts that the appellant and other joint account holders had an over draft facility and the amounts withdrawn were for construction of a building belonging to the three joint account holders and the surplus money, when not required, was re-deposited. Findings of the Income Tax Appellate Tribunal in not accepting the explanation of the appellant are perverse. Our attention is drawn to the judgment of the Gujarat High Court in *Uganda Industries Co. v. CIT*, (1986) 158 ITR 567(Guj.) and decision of this Court in *Sona Electric Co. v. CIT*, (1985) 152 ITR 507(Del.).

6. The Income Tax Appellate Tribunal, in the impugned order, has rejected the aforesaid explanation, recording as under:-

“6. We have considered the rival contentions and do not find any merit in this ground of appeal of assessee. It is well settled law that Ld. CIT(A) being the First Appellate Authority has co-terminus powers to that of A.O. Merely because wrong section is mentioned in the assessment order, is no ground to delete the addition. There is a cash deposit in the joint bank account maintained by assessee and others, the source of which is not explained. Therefore, provisions of Section 69/69A are clearly attracted in this case. The Ld. CIT(A) has already taken care of this issue and applied Section 69A of the I.T.Act while confirming the addition on merit. The Hon'ble Allahabad High Court

in the case of Jauhari Mal Goel 201 CTR 54 (.All.) held that deposit in the bank account would amount to investment under section 69 of the I. T. Act. Therefore, there is no merit in the contention of the Learned Counsel for the Assessee that no addition could be made on account of cash deposited in the bank account of assessee and others. The contention of the Learned Counsel for the Assessee is, therefore, rejected.

7. As regards addition on merit, the A.O. has specifically noted that assessee could not prove at the assessment stage that out of cash withdrawn, some payments have been made to the contractors/suppliers and balance cash in hand has been deposited subsequently. The assessee did not make any cheque payment for construction. The A.O. asked for the details of project report and details furnished to the bank for utilizing the bank loan. However, no details have been filed before A.O. as to how the cash amount has been used in phased manner for construction in the property. The assessee also failed to provide any details of cost of construction incurred by the assessee and others in the property. Even no bills of purchase of material or any payment to contractor have been produced before A.O. It, therefore, clearly proved that assessee has no evidence at all to explain as to how much amount has been incurred in construction of the property. These facts prove that assessee has no evidence of any amount invested in construction of property in assessment year under appeal because no bills of material purchased have been filed before the authorities below. The assessee did not incur any construction expenditure through banking channel. No details of construction expenses were prepared or filed before A.O. No details of expenses shown in cash supported by any evidence were filed before the authorities below. Assessee later on prepared a cash flow statement and filed (copy of which is filed at page-10 of the paper book) before the Ld. CIT(A) to

show the amount of withdrawal, re-deposited and amount used for construction. It would show that from 5th May, 2010 to 20th May, 2010 assessee has withdrawn Rs.46 lakhs in cash and on 24th May, 2010 assessee made re-deposited to Rs. 1 lakh only and used Rs.5 lakhs for construction only. Similarly, on 11th June, 2010 assessee has withdrawn Rs. 10 lakhs from the bank but it was not used either for redeposit or for construction purpose up to 30th June, 2010 because on 30th June, 2010 assessee claimed deposit of Rs.1 lakh only. Similarly, on 29th July, 2010 and 30th July, 2010, no amount have been withdrawn from the bank but assessee claimed redeposit of Rs.5 lakhs and Rs.2,50,000 on both the days as well as claimed Rs.5 lakhs spent for construction. Similarly, from 2nd August, 2010 to 5th August,2010 assessee has withdrawn Rs.30 lakhs from the bank but claimed construction expenses of Rs.5 lakhs only on 5th August, 2010. Thereafter, from 7th August, 2010 to 18th August, 2010, there is no withdrawal from the bank but assessee made deposits of Rs.34,50,000 in cash in the bank account. This position is going on for the entire year. The assessee has not filed any explanation about the discrepancy in the cash flow statement. It is not explained when huge cash amount have been withdrawn, why only part amount have been used for construction and if sufficient cash was available to assessee on prior dates, why there is again huge cash withdrawal on subsequent dates without incurring any expenditure on construction. Ld. D.R. therefore, rightly contended that cash flow statement is wholly unreliable and full of doubts. The cash flow statement would not prove any nexus between the withdrawals of the cash account from the bank and redeposit as claimed by the assessee. The totality of the facts and circumstances clearly prove that assessee failed to explain deposit of huge cash in the joint bank account to the satisfaction of the authorities below. The authorities below therefore, rightly rejected the

contention of the assessee that amount is redeposited after making withdrawal from the same bank account. The Ld. CIT(A) on proper appreciation of the facts and material on record, correctly sustained the addition of 1/3rd amount in question under section 69A of the I.T. Act. Considering the findings of the authorities below in the light of above discussion, the decisions of various Benches of the Tribunal relied upon by the Learned Counsel for the Assessee, would not support the case of the assessee. This ground of appeal is accordingly dismissed.”

7. Cash flow statement filed before us as annexure-4 and relied upon by the appellant-assessee is reproduced hereunder:-

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S.No.	Date	Amount Withdrawn (Rs.)	Utilisation of cash withdrawn			Balance (Rs.)
			Re-deposit	Used for	Total	
1	3.5.2010	5,00,000		5,00,000	5,00,000	
2	4.5.2010	8,00,000		8,00,000	8,00,000	
3	5.5.2010	12,00,000				12,00,000
4	5.5.2010	12,00,000				24,00,000
5	5.5.2010	12,00,000				36,00,000
6	20.5.2010	10,00,000				46,00,000
7	24.5.2010		1,00,000	5,00,000	6,00,000	40,00,000
8	11.6.2010	10,00,000				50,00,000
9	30.6.2010		1,00,000		1,00,000	49,00,000
10	30.6.2010	5,00,000		5,00,000	5,00,000	49,00,000

11	29.7.2010		5,00,000	5,00,000	10,00,000	39,00,000
12	30.7.2010		2,50,000		2,50,000	36,50,000
13	2.8.2010	5,00,000				41,50,000
14	5.8.2010	9,00,000				50,50,000
15	5.8.2010	8,00,000				58,50,000
16	5.8.2010	8,00,000		5,00,000	5,00,000	61,50,000
17	7.8.2010		6,50,000		6,50,000	55,00,000
18	7.8.2010		8,00,000		8,00,000	47,00,000
19	10.8.2010		5,00,000		5,00,000	42,00,000
20	17.8.2010		9,00,000		9,00,000	33,00,000
21	18.8.2010		9,00,000		9,00,000	24,00,000
22	18.8.2010	6,00,000				30,00,000
23	20.8.2010		6,00,000		6,00,000	24,00,000
24	1.9.2010		9,00,000	5,00,000	14,00,000	10,00,000
25	16.11.2010		10,00,000		10,00,000	-
26	16.11.2010	5,00,000		5,00,000	5,00,000	-
27	16.11.2010	5,00,000		5,00,000	5,00,000	-
28	18.11.2010	5,00,000		5,00,000	5,00,000	
29	18.11.2010	5,00,000		5,00,000	5,00,000	
30	18.11.2010	5,00,000		5,00,000	5,00,000	
31	3.1.2011	7,00,000		7,00,000	7,00,000	
32	4.1.2011	5,00,000				5,00,000
33	4.1.2011	5,00,000				10,00,000
34	31.1.2011		5,00,000		5,00,000	5,00,000
35	31.1.2011		5,00,000		5,00,000	-

36	9.2.2011	5,00,000		5,00,000	5,00,000	-
37	23.2.2011	5,00,000		5,00,000	5,00,000	-
38	1.3.2011	5,00,000		5,00,000	5,00,000	-
39	2.3.2011	5,00,000		5,00,000	5,00,000	-
40	7.3.2011	5,00,000		5,00,000	5,00,000	-
41	11.3.2011	5,00,000		5,00,000	5,00,000	-
		182,00,000	82,00,000	1,00,00,000	182,00,000	

The aforesaid statement reveals that huge amounts were withdrawn in cash on different dates. Rs.36,00,000/- was withdrawn by way of three bearer cheques of Rs.12,00,000/- each on 05.05.2010 and Rs.25,00,000/- was withdrawn in cash by way of three bearer cheques on 05.08.2010. On 16.11.2010, Rs.10,00,000/- was deposited in cash and on the same day Rs.10,00,000/- was withdrawn by way of two bearer cheques of Rs.5,00,000/- each. Rs.10,00,000/- was withdrawn in cash on 20.5.2010, 11.06.2010 and 16.11.2010. Withdrawals were substantial and on many occasions there were three withdrawals, i.e., as many as or equal to number of account holders.

8. On being questioned, learned Senior Advocate for the appellant-assessee had stated that the overdraft account was separate and a different from the joint account from which withdrawal and deposits were made. We find it strange that deposits were not made in the overdraft account so as to reduce liability to pay interest. However, we need not base our decision on the said reason.

9. Incongruities in the cash flow statement with reference to the quantum and dates of withdrawal and deposit and failure to produce any bills/vouchers and the accounts relating to construction, to verify and justify substantial cash

withdrawals of Rs.1,82,00,000/- during the entire year for meeting cost of construction and re-deposits of Rs.82,00,000/- when money was not required, it is apparent dig holes and exposes the concocted explanation. The appellant-assessee had conveniently claimed that entire construction was without any bank transaction or bill, vouchers, etc. This is not plausible. Facts on record are glaring and one-sided. It is obvious that the bills of purchases, payments made to contractor etc. and the accounts relating to construction were held back, as they would have revealed the truth and would not have supported the already weak and tenuous explanation of the appellant-assessee. The reasoning given by the Income Tax Appellate Tribunal is not perverse. It is based and founded on the evidence and material on record.

10. The decisions relied upon by the learned Senior Counsel for the appellant-assessee, pertain to factual matrix in the two cases. Aforesaid decisions do not lay down an affirmative legal ratio which would be of assistance and help to the appellant-assessee in the facts of the present case.

11. The appeal has no merit and the same is dismissed, as raising no substantial question of law. Pending application is also dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

AUGUST 08, 2018
Tp/VKR