आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'B' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 614/JP/2018
निर्धारण वर्ष/Assessment Year :2010-11

Shri Govind Swaroop Garg, Ravan Ki Bagichi, Ajmer (Raj.)	बनाम Vs.	The ITO, Ward1(2), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADNPG9550F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Shri K C Meena (Add.CIT)

सुनवाई की तारीख/ Date of Hearing : 27/03/2019
उदघोषणा की तारीख/Date of Pronouncement: 02/04/2019

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. CIT(A), Ajmer dated 06.02.2018 for AY 2010-11.

2. Briefly stated, the facts of case are that the assessee is a majority shareholder holding 80% equity and one of the Directors of M/s Raj Auto Wheels Pvt. Ltd., Ajmer. During the course of assessment proceedings of M/s Raj Auto Wheels Pvt. Ltd., Ajmer for AY 2010-11, the ACIT, Circle-1, Ajmer found that the said company has given an advance of Rs. 1.02 crores to the assessee during F.Y 2009-10. On receipt of the said information, the Assessing Officer recorded the reasons for reopening the assessment in the case of the assessee and after seeking necessary approval, notice u/s 148 was issued to the assessee. Subsequently, the assessee filed his objections which were disposed off by the Assessing Officer and thereafter considering the submission

of the assessee, the Assessing Officer made an addition of Rs. 28,35,265/- as deemed dividend u/s 2(22)(e) in the hands of the assessee besides other additions towards unexplained cash deposit in the bank account, rental and interest income and assessment was completed u/s 147 read with section 143(3) vide order dated 17.03.2015. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT(A) who has confirmed the action u/s 147 and also upheld the additions made by the Assessing Officer. Against the said finding of the ld. CIT(A), the assessee is in appeal before us.

3. In Ground No. 2, the assessee has challenged the assumption of jurisdiction by the Assessing Officer u/s 147 by issuance of notice u/s 148 and the consequent order passed u/s 147 r/w section 143(3) of the Act.

4. The ld. AR submitted that on perusal of the reasons so recorded before issuance of notice u/s 148, it may be noted that there is nothing in the reasons to justify the formation even a prima facie view that the income of the assessee has escaped assessment and it was submitted that the mere fact which came to the notice of the Assessing Officer from the copy of the ledger account was simple fact that company had given some amount which the AO has assumed to be advanced of the nature of loan. There is no whisper of any other supporting fact or material so as to give even a very remote clue to Assessing Officer to consider this information of advance to be a case falling u/s 2(22)(e) of the Act. The ld AR submitted that to bring the case u/s 147 in the context of section 2(22)(e) when the AO was to deem a fact, though it was not really so, strict interpretation was required. The law is well settled that when the law creates deeming fiction, very strict interpretation of the law is required and the scope of the fiction is also limited to the particular purpose. It was submitted that there must be something to show that the amount given was in the nature of loan. On the contrary, from a bare perusal of the assessee's ledger account

in the books of the company, it is evident that there are frequent giving and taking back (debits & credits), absence of charging any interest and absence of any fixed/stipulated period of repayment. In other words, there are no attributes to term the amount given was in the nature of loan, even remotely. It was submitted that how the AO could have assumed such receipt to be in the nature of loan is not clear. It was further submitted that even assuming that subjected amount were in the nature of loan, the net amount given was Rs. 51 lakhs only and not Rs. 1.02 crores as wrongly stated in the reasons recorded by the AO. It was accordingly submitted that the fact simpliciter that there was receipt of the amount by the assessee director from the company, does not ipso fact, convert the same into the receipt of any particular nature, what to talk of in the nature of loan or advance, without there being any other supporting facts or attributes so as to deem such receipts as dividend. It was further submitted that even the Assessing Officer was of the view that the matter require further examination, now, what is the nature of this payment whether it is Trade/Loan advances or not it can be analysed and established during the assessment proceedings where ample opportunity of being heard will be given to the assessee. In this regard, our reference was drawn to Page No. 5, Para No. 3 of the assessment order. It was submitted that the initiation of proceedings u/s 147 in view of this fact is meant/initiated with a view to make more and deeper enquiries to cover the subjected receipts as a case of deemed dividend and it was submitted that it was an attempt on the part of the AO to explore some income and not to show that some income already existed which escaped assessment. It was accordingly submitted that it is a case of overstretching of the powers conferred u/s 147 of the Act, which are supposed to have been exercised sparingly, only in the strict compliance of law, and in the light of the settled judicial guidelines, hence the impugned reason is nothing but a reason to suspicion and therefore, the consequent proceedings, u/s 147 deserve to be quashed.

5. Per contra, the ld. DR submitted that from the perusal of the assessment order, it is clear that the Assessing Officer had sufficient material to form belief that income pertaining to AY 2010-11 had escaped assessment. It was submitted that during the course of assessment proceedings of M/s Raj Auto Wheels Pvt. Ltd., Ajmer, it came to the notice of the Department that certain loan amount was received by the appellant from M/s Raj Auto Wheels Pvt. Ltd., Ajmer, and the said information was forwarded to the Assessing officer and proceedings were initiated u/s 147 to bring such amount to tax as deemed dividend u/s 2(22)(e) of the Act. It was accordingly submitted that the Assessing Officer had the requisite material to form the prima facie view that income has escaped assessment to the extent of advances received by the assessee which are taxable as deemed dividend u/s 2(22)(e) and therefore, the issuance of notice u/s 148 and consequent order passed u/s 147 need to be upheld.

6. We have heard the rival contentions and perused the material available on record. In order to appreciate the rival contentions, it would be relevant to refer to the reasons so recorded by the Assessing Officer before issuance of notice u/s 148 of the Act and the same are reproduced as under:-

"The assessee is one of the directors of the company namely M/s Raj Auto Wheels Pvt. Ltd., Ajmer. During the course of assessment proceedings for AY 2010-11 in the case of M/s Raj Auto Wheels Pvt. Ltd., it was noticed that the company has given advances of Rs. 1.02 Crores to its director Shri Govind Garg during the year under consideration. Section 2(22)(e) of the I.T. Act says as under:

> *"any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part*

of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to particular in profits) holding not less than ten percent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits."

In view of the provisions of section 2(22)(e) of the I.T. Act, advances of Rs. 1.02 Crores given by the company to the assessee Shri Govind Swaroop Garg is deemed dividend in his hands and the same is not offered for tax in his return of income. Therefore I have reason to believe that income of Rs. 1.02 Crores escaped assessment. Therefore it is a fit case for issue of notice u/s 148 of the Income-tax Act, 1961."

7. The reasons so recorded thus talk about the fact that the assessee is a Director and beneficial holder of more than 10% voting power in M/s Raj Auto Wheels Pvt Ltd. It further talks about the fact that the said company has advanced a sum of Rs 1.02 Crores to the assessee during the course of assessment proceedings in case of M/s Raj Auto Wheels Pvt Ltd. On perusal of assessee's ledger account maintained with M/s Raj Auto Wheels, it is noticed that the said account is termed as "Govind Garg - Advance A/c" and has debits totaling to Rs 1,01,95,000 and credits totaling to Rs 50,95,000 with closing balance of Rs 51,00,000. These are undisputed facts which are emerging from the records which are sufficient enough to hold a prima facie view that the conditions for invoking the provisions of section 2(22)(e) are satisfied and given

the fact that no original assessment has happened, the income to that extent has escaped assessment. The Assessing officer thus has the tangible material in his possession to form a prima facie view that the advances are in nature of deemed dividend u/s 2(22)(e) and income to that extent has escaped assessment. It is a trite law that before invoking jurisdiction u/s 147 of the Act, the AO has to record a prima facie belief that income has escaped taxation and there should be a nexus between the material and the formation of belief that income has escaped taxation. In the instant case, the necessary nexus has been established between the material in possession of the Assessing officer and the formation of a prima facie belief that the income has escaped assessment. We therefore donot find any infirmity in assumption of jurisdiction u/s 147 and the consequent order passed by the AO u/s 147 r/w 143(3) of the Act. In the result, ground no. 2 of the assessee's appeal is dismissed.

8. In Ground No. 3, the assessee has challenged the addition of Rs. 28,35,265/- on account of being dividend u/s 2(22)(e) of the Act.

9. The ld. AR submitted that section 2(22)(e) applies to any payment made by a company to a substantial share holder by way of loan or advance however trade/business advance which is nature of the money transacted to give effect to a commercial transaction doesn't fall within ambit of provisions of section 2(22)(e). It was further submitted that the word "advance" which appears in the company of the word "loan" given only mean such advance which carries with it an obligation of repayment. Trade advance which is in the nature of money transacted to give effect to a commercial transaction would not fall within the ambit of the provision of section 2(22)(e) of the Act. In the facts of the present case, it was submitted that Rs. 51 lakhs was given to the assessee director for the purchase of land for construction of showroom and service station thereon. In support thereof, the assessee submitted a copy of the

agreement dated 04.07.2009 before lower authorities and the said agreement affirmed the fact of giving advance of Rs. 32,45,000/- through two cheques dated 03.07.2009 and 24.07.2009 respectively. It was submitted that the agreement was duly signed by the witnesses and duly notarized. As far as contents of the agreement, the same are not in dispute. It was further submitted that the Assessing Officer has wrongly alleged that there are two different agreements and such confusion has arisen only because of the date put on the Non Judicial Stamp Paper, which was not legible but factually, there was only one agreement and the date of agreement was clearly mentioned thereon being 14.07.2009. It was further submitted that the assessee did not make the payment of Rs. 1 crore within 6 months which itself shows that the parties had cancelled their agreement and was not formalized in terms of sale deed. It was further submitted that the dispute as to the true nature of the subjected amount given by the company to the assessee director, came up for consideration in the assessment of the company M/s Raj Auto Wheels Pvt. Ltd. wherein the AO considered the advance given for non-business purposes and interest @ 12% was charged on the said amount on the basis that company is interest free fund on the allegation that the assessee has paid interest to other parties but not charged interest on the loans given to two persons covered u/s 40A(2)(b) of the Act. However when the matter was taken before ld. CIT(A). The ld. CIT(A) has given a categorical finding that the advance of Rs. 51,000,00/- given by the company to Shri Govind Garg for purchase of land for showroom and service station and such advance are for the purpose of business and for the commercial expediency.

10. It was further submitted that a bare perusal of the copy of the account of the assessee Director in the books of the company goes to show that there are frequent receipts and payments and such transactions were in the form of

the current/ accommodation/ adjustment entries in form of a running account and not being by way of loan or advance as envisaged u/s 2(22)(e) of the Act.

11. Per contra, the ld. DR relied heavily on the finding of the Assessing Officer which have been confirmed by the ld. CIT(A) and the same are contained at paras 3.11 and 3.12 of the assessment order which is reproduced as under:-

"3.11 From the above sequence of events, it can be seen that many discrepancies, contradictions are being emanated from the submissions filed by the assessee from time to time which are discussed as under:-

a) Initially the stand of the assessee was that he had entered into an agreement (registered) with M/s Raj Auto Wheels (P) Ltd on 04/07/2009 for sale of his property AMC No. 402/4 situated at Mission Press Bungalow, Harbilas Sharda Marg, Civil Lines, Ajmer. As per this agreement, he had received an advance of Rs 16,85,000/- & Rs 15,60,000/- on 3.7.2009 & on 24.7.2009 respectively (total comes to Rs 32,45,000/-). As per this agreement assessee had to receive another Rs 1 crore within 6 months from the date of agreement i.e. by February, 2010.

b) Due to the above, initially it was consistently argued by the assessee that the amount received was a trade advance and hence sec. 2(22)(e) is not at all applicable in his case. (see objection letter filed on 12/08/2010).

c) On being specifically asked to furnish the proof of receipt of Rs 1 crore as per the 'registered' agreement, assessee did not say anything. This amount was expected to have received by the assessee in the month of February, 2010 as per the so called agreement.

d) When assessee was confronted with the glaring discrepancies noticed in the copy of agreements furnished to the department on two different occasions i.e. on 12/3/2014 and on 26/8/2014, he again kept silent. The contradictions and discrepancies already discussed in the foregoing paras in this regard undoubtedly establishes on record that assessee has intentionally furnished fabricated records to mislead the department and tried his level best to evade the payment of legitimate tax as per the Act.

e) On being pointed out the above contradictions, assessee came forward with another argument by filing fresh objection letter on 02/01/2015 as discussed in para 3.10 above. This time, it was argued and admitted that the amount of 'temporary advance' got by the assessee from company was Rs 51,00,000/-. Whereas as per the so called 'agreement' the advance claimed to had received by the assessee in lieu of this so called 'agreement' were shown at Rs 32,45,000/- only (Rs 16,85,000 on 3.7.2009 & Rs 15,60,000/- on 24.7.2009). This again proves that assessee is again and again furnishing false, fabricated and wrong information and arguments before the department to evade payment of tax.

f) Assessee himself admitted in the letter filed on 02/01/2015 that the amount of advance received by the assessee from company during the F.Y. 2009-10 was Rs 51,00,000/-. It was then argued that in subsequent year i.e. in F.Y. 2010-11 assessee had repaid the amount and as on 31.3.2011 the amount of outstanding balance with the assessee remained at Rs. 1,00,000/- only. This admission itself proves beyond any doubt that assessee's case is fully covered by provisions of Sec. 2(22)(e) of the Act as an amount of Rs 51,00,000/-was with the assessee as on 31.3.2010. Even if assessee had repaid the amount of advance partly or fully in subsequent year(s), how could it come for the rescue of the assessee

from the ambit of provisions of section 2(22)(e) is best known to assessee only. A loan or advance for few days would be within the ambit of section 2(22)(e) of the Act. It does not say that in order to come in the category of deemed dividend, loan/advance should be for particular minimum duration. Reliance is placed on Hon'ble Bombay High Court's decision rendered in the case of Walchand & Co. Ltd. vs. CIT (1975) 100 ITR 598.

g) Vide letter filed on 02/01/2015 it was argued that the advance was temporarily given for purchase of premises for company for which the deal was cancelled later and the amount of advance received back by the company. This is against the facts on records due to the simple reason that the argument of 'agreement to purchase of a premise' has already been proven a blatant lie put forth by the assessee as discussed above. Further, assessee did not furnish any evidence to support his argument that the 'agreement' was cancelled at a later stage.

h) In the letter filed on 02/01/2015, assessee came up with a formula for calculation of deemed dividend in. assessee's hands and worked out the same at Rs 17,82,120/- as against the reserves and surplus shown in the balance sheet of the company as on 31.03.2010 at Rs. 28,35,265/-. This is also proves to be totally wrong and unacceptable. Section 2(22)(e) is unambiguous and states "……..payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits."

i) So far as the accumulated profit is concerned, assessee has again disputed the same by arguing that it will further be reduced by difference of depreciation as per Company Law and as per LT law. Again this argument was also made by the assessee without apprising the facts of his case from the records of the company's

balance sheet. As per the balance sheet of M/s Raj Auto Wheels (P) Ltd, the reserves and surplus as on 31.3.2009 were shown at Rs 14,48,485/-. The profit of the company as on 31.3.2010 after claiming depreciation of Rs 30,23,022/-as per I.T. Act was dedared at Rs 13,86,022/-. Thus the accumulated profit of the company as on 31.3.2010 comes to Rs 28,35,265/- (Rs 14,48,485 + Rs 13,86,780/). It may be mentioned here that this accumulated profit was arrived at by the company after deducting the allowable depredation as per Income-tax Act. Thus it is unknown what is the basis of a further deduction of Rs 6,07,615/- from the accumulated profit of Rs 28,35,265/- asked for by the assessee in his written reply filed on 02/01/2015 and further restricting with 80% of the balance amount.

3.12 In view of the above discussed facts and circumstances of the case, it has become absolutely clear and established on record that assessee's case is fully covered by provisions of Sec. 2(22)(e) which at one point of time has even been admitted by the assessee himself. All the efforts put in by the assessee to justify his arguments have been proven futile and in that exercise, the 'mens-rea' in the minds of the assessee has been exposed. Thus after considering all the facts of the case in its legality and the contradictions found as discussed in the foregoing paras, an addition of Rs. 28,35,265/- is being made to assessee's total income u/s 2(22)(e) of the I.T. Act, 1961 being deemed dividend. "

12. We have heard the rival contentions and pursued the material available on record. The assessee is holding 80% equity holding in M/s Raj Auto Wheels Private Limited during the financial year relevant to impugned assessment year. During the financial year, there are total advances to the tune of Rs 101.95 lacs given by M/s Raj Auto Wheels Private Limited to the assessee. The ld CIT(A) during the appellate proceedings in case of M/s Raj Auto Wheels Private Limited has held advances to the tune of Rs 51 lacs for the purposes of business and therefore, to that extent, the same would not be considered and

reduced for the purposes of determining the deemed dividend in hands of the assessee. Further, there is a payment of Rs 18.50 lacs made on 18.01.2010 which has been returned on the very next day on 19.01.2010 and the same appears to be a current account transaction and not to be considered for determining the deemed dividend. There is nothing on record in terms of remaining advances either for business purposes or any current account transaction. Further, the fact that such advances have been repaid in the subsequent financial year will not provide any relaxation from the rigours of section 2(22)(e) of the Act. Therefore, remaining advances to the tune of Rs 32.45 lacs will be considered for determining deemed dividend. The AO has determined the accumulated profits at Rs 28.35 lacs of M/s Raj Auto Wheels Private Limited which has not been disputed by the assessee. The lower of the two i.e, Rs 28.35 lacs has thus been rightly brought to tax as deemed dividend u/s 2(22)(e) of the Act. In the result, the ground no. 3 of assessee's appeal is dismissed.

13. In Ground No. 4, the assessee has challenged the addition of Rs. 7,57,000/- made by the AO on account of cash deposit in his bank account maintained with the Bank of Baroda, Ajmer.

14. Briefly stated, the facts of case are that during the course of assessment proceedings, the Assessing Officer observed that the assessee has deposited Rs. 8,67,000 in his bank account maintained with Bank of Baroda, Ajmer. The assessee submitted that the cash deposits were out of cash withdrawals made from his proprietary concern M/s Govind Garg & Co and out of his capital balance with the firm. He further submitted that there was also cash lying from his Truck income. The Assessing Officer however observed that as per capital account, there was no withdrawal and further no cash book in support of the withdrawal made from M/s Govind Garg & Co however, he accepted source of cash deposits of Rs. 1.10 lakh from Truck income and after giving credit

thereof, an amount of Rs. 7,57,000/- was brought to tax on account of unexplained cash deposit in the bank account of the assessee. On appeal, the ld. CIT(A) has confirmed the said addition.

15. During the course of hearing, the ld. AR submitted that the allegation of the Assessing Officer that cash book was not furnished is not correct as the AO never asked for it at first place. It was submitted that the AO in his show-cause dated 25.02.2015 had asked the assessee to explain the source of deposit with the necessary supporting evidence. In response, the assessee filed copy of his capital account along with fund flow statement. It was accordingly submitted that the AO never asked the assessee to produce the cash book of the proprietary concern and it is not in dispute that such books of the proprietary concern including the cash books were subjected to examination of the auditor and such audit report and the audited balance sheet were filed before the AO. It was accordingly submitted that the lower authorities proceeded merely on suspicion and the same cannot be based for making addition in the hands of the assessee.

16. The ld. DR supported the order of the lower authorities and submitted that the Assessing Officer in the assessment order has given a finding that there was no withdrawal of Rs. 7,57,000/- from the capital account of the assessee and even the cash book was not produced. It was accordingly submitted that the action of the lower authorities and the addition so made should be confirmed.

17. We have heard the rival contentions and perused the material available on record. It is a trite law that when an amount is found deposited in the assessee's bank account, the onus is on the assessee to explain the source of such deposits. In the instant case, the explanation of the assessee is that

source of such deposits is the withdrawal of cash from his capital account maintained with his proprietary concern M/s Govind Garg & Co. The AO's finding is that the assessee has not produced the cash book in support of the said explanation to which the assessee has contended that he was never asked to produce the cash book at first place. In view of the contradictory stand taken by both the parties, we believe that it would be just and fair that the assessee is given one more opportunity to produce the cash book of his proprietary concern M/s Govind Garg & Co. before the AO. The matter is accordingly set-aside to the file of the AO to examine the same afresh. In the result, the ground is allowed for statistical purposes.

18. In Ground No. 5, the assessee has challenged the addition of Rs. 1,80,592/- on account of rental income. Briefly stated, the facts of case are that during the course of assessment proceedings, the AO observed that the assessee was in receipt of rental income of Rs. 2,57,988/- from Bank of Baroda on which TDS has also made by the Bank of Baroda u/s 194I of the Act. The assessee was asked to explain as to why he has not included the rental income from Bank of Baroda in his return of income. In response, the assessee submitted that rental income was received in the account of Govind Garg HUF since long back. However, in absence of TDS certificate, the same has not been claimed. The submission so filed by the assessee was not found acceptable as the Assessing Officer observed that in the return of income filed by the HUF, it has shown net taxable house property income of Rs. 2, 07,522/-. Further, no documentary evidence like any agreement entered into between Bank of Baroda and Govind Swaroop Garg (HUF) has been furnished. The AO accordingly held that the property income shown in the hands of the HUF might be a different property as even there is difference in rental income shown in the return of income HUF and as per ITS of Sh. Govind Swaroop Garg (Individual). After allowing deduction for repair & maintenance @ 30%, the net

rental income of Rs. 1,80,592/- was brought to tax in the hands of the assessee. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT(A) who has confirmed the said addition holding that assessee has not produced any documentary evidence that the rental income of Rs. 2,57,988/- pertains to Govind Swaroop Garg (HUF) and not to the appellant.

19. During the course of hearing, the ld. AR reiterated the submission made before the lower authorities. It was submitted that the premises given on rent belongs to Govind Swaroop Garg (HUF), the rental income has been shown in their HUF A/c having PAN AAXPG4033G, assessed in Ward 2(1) Ajmer. It was further submitted that the rental income has been credited in the HUF bank account. However the Bank has wrongly deducted TDS from rental income shown in individual account of Govind Garg and accordingly it has appeared in Form No. 26AS of the assessee. However no credit has been claimed by the assessee in respect of said TDS. It was accordingly submitted that the rental income has already been assessed in hands of Govind Swaroop Garg (HUF) and the same cannot be added in the hands of assessee. It was further submitted that on enquiry made by the AO u/s 133(6), the bank reported through its letter dated 29.11.2016 that the rent was being paid to Shri Govind Garg HUF in the A/c 08110100004176. It was further submitted that the assessee has not claimed the TDS on the rental income as income legally and factually belonged to the HUF, therefore, it was the HUF alone who could have made a claim of the TDS. It was further submitted that the rental income in the past and the subsequent years has been declared and assessed in the hands of the HUF and the following rule of consistency, the same cannot be brought to tax in the hands of the assessee.

20. We have heard the rival contentions and perused the material available on record. It has been contended before us that the rent has been paid in HUF bank account however, by mistake, the TDS has been deducted by the Bank by quoting assessee's PAN and it has wrongly been reflected in assessee's Form 26AS. It has further been contended that HUF has shown the rental income in its return of income and the same is the position in earlier and subsequent years which is consistently been followed and accepted by the Department. In our view, mere reflection of a transaction in assessee's Form 26AS cannot be made a sole basis for bringing certain transaction to tax especially where the assessee is contending that such transaction doesn't belong to him and but belong to the HUF. However, it is for the assessee to demonstrate that such transaction doesn't belong to him especially where HUF is a related entity and the assessee has access to the records of the HUF and is being controlled by the assessee. We accordingly believe that where the HUF is the right full owner of the subject rental income and it has already included the same in its return of income, the same cannot be brought to tax in the hands of the assessee. We accordingly set-aside the matter to the file of the AO to examine aforesaid contentions so raised by the assessee and decide the matter afresh. In the result, the ground is allowed for statistical purposes.

21. In Ground No. 6, the assessee has challenged the addition of Rs. 85,969/- on account of interest income. During the course of assessment proceedings, the AO observed that the assessee was in receipt of interest income of Rs. 45,969/- from the Punjab & Sind Bank and Rs. 40,000/- from M/s Bhansali Udyog on which TDS has been deducted, however, the assessee has not included the same in his return of income. The assessee submitted that the interest income has been shown in his proprietary concern M/s Govind Garg & Co and TDS of Rs. 5,801/- has already been claimed. Moreover, the TDS on interest income from M/s Bhansali Udyog could not be claimed in absence of

Form 16. The AO however did not find the submission of the assessee acceptable and after perusal of the financial statement of the assessee, he brought to tax at Rs. 85,969/- in hands of the assessee. On appeal, the ld. CIT(A) has confirmed the said addition holding that the assessee could not be proved its case with the help of documentary evidences.

22. During the course of hearing, the ld. AR reiterated the submission made before the lower authorities. It was submitted that the interest income of Rs. 85,969/- has been shown in other income of Rs. 1,63,317/- in the books of account of the proprietary concern M/s Govind Garg & Co as clear from the journal entry and P & L A/c and the same cannot be brought to tax in the hands of the assessee. The matter is accordingly set-aside to the file of the AO to examine the aforesaid contention so raised and where the same is found to be correct and duly offered to tax in hands of M/s Govind Garg & Co, delete the impugned addition. In the result, ground is allowed for statistical purposes.

In the result, the appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the Open Court on 02/04/2019.

Sd/-	Sd/-
(विजय पाल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 02/04/2019
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:
1. अपीलार्थी/The Appellant- Shri Govind Swaroop Garg, Ajmer
2. प्रत्यर्थी/ The Respondent- ITO, Ward 1(2), Ajmer
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. 614/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar