

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1022/JP/2019  
निर्धारण वर्ष / Assessment Year :2017-18

Shri Om Prakash Karnani S-1, Khatipura Road, Govind Nagar Jhotwara, Jaipur	बनाम Vs.	ACIT, Circle-04, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ALMPK4407C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Ashok Kumar Gupta  
राजस्व की ओर से / Revenue by : Sh. Amrish Bedi

सुनवाई की तारीख / Date of Hearing : 09/11/2020  
उदघोषणा की तारीख / Date of Pronouncement: 28/01/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 24.06.2019 wherein the assessee has taken the following revised grounds of appeal:-

"1. *The Learned CIT (A) as well as Ld. AO has grossly erred in law and facts in making the assessment under section 153A for the assessment year while for the Assessment year 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 from initiation to completion of assessment proceedings have been conducted under section 153C of the Income Tax Act therefore complete assessment proceedings for the Assessment year 2017-18 is illegal and void ab initio.*

*2. The Learned CIT (A) has grossly erred in law and facts in confirming the assessment order as framed by Ld. AO on behalf of erroneous findings therefore did not follow the provisions of section 34 of evidence act.*

*(a) As Ld. AO has rejected the books of accounts of the assessee though it was regularly kept in the course of business, or*

*(b) Without issuing any show cause notice for rejecting the books of accounts, or*

*(c) Without mentioning the reasons of rejection of books of account in the notices,*

*3. The Ld. CIT(A) has grossly erred in law and facts in confirming the assessment order as framed by Ld. AO who made huge addition without issuing show cause notice for mentioning specific defects/reasons therefore it hurts fundamental rights of the assessee of 'Opportunity of being heard'.*

*4. The Ld. CIT(A) has grossly erred in law and facts in confirming the assessment order as framed by Ld. AO who invoked section 68 of the act and made an addition under such section as undisclosed income while right from beginning assessee himself claiming that the Questioned Cash pertained to his Business and part of his day to day business transaction therefore nothing was undisclosed at the time of initiation of this assessment proceedings.*

*5. The Ld. CIT (A) as well as Ld. AO has grossly erred in law and facts for not appreciating the books of accounts and other related documents of the assessee duly submitted to investigation wing of the department on 02.11.2016 in support of his contention.*

6. *The Ld. CIT (A) as well as Ld. AO has grossly erred in law and facts in the circumstances of the case for not appreciating the affidavit as submitted by the assessee to the investigation wing as well as before Ld. AO. Such affidavit cleared the assessee's contention about the cash seized as made by the department.*

7. *The Ld. CIT (A) as well as Ld. AO has grossly erred for denying the submission of the assessee that he had sufficient cash balance as on 01.04.2016 by saying that in preceding ITR there was no closing cash balance while that ITR was filed u/s 44AD where there is no provision to provide his personal cash balance.*

8. *The CIT (A) has grossly erred in confirming the action of Ld. AO for making addition for Rs. 5,34,000/- without appreciating affidavit as filed by other person in support of assessee contention.*

9. *The Ld. CIT (A) has grossly erred in confirming the action of Ld. AO in making the addition of Rs. 5,34,000/- without appreciating sufficient cash balance as available on said date (i.e. 21.10.2016) in support of Rs. 5,34,000/-*

10. *The Ld. CIT (A) has grossly erred in confirming the addition as made by Ld. AO on the basis of findings that "there is no withdrawal entry in the cash book either on 20.10.2016 or on the day of seizure. On the day of seizure the entry in cash book shows income tax (attachment)." by ignoring the principle of accounting,*

11. *The Ld. CIT (A) as well as Ld. AO has grossly erred in charging interest under section 234A & 234B of I T Act."*

2. Briefly stated, the facts of the case are that in this case, original return of income was filed on 26.03.2018 for the A.Y 2017-18 in the office of the ITO, Ward-1(3), Bikaner declaring total income at Rs. 1,01,600/-. Cash of Rs. 5,34,000/- was seized by the SHO Police Station, Shastri Nagar, Jaipur, from the possession of Shri Nand Lal Joshi and Shri Nand Lal Pandya on 21.10.2016, which belongs to Shri Om Prakash Karnani. Consequently, a requisition u/s 132A of the Income Tax Act, was issued by the Pr. DIT(Inv.), Jaipur on 27.10.2016 which was executed on 29.10.2016. The cash was subsequently seized on 29.10.2016. A search was conducted on 29.10.2016 in the case of Shri Nand Lal Joshi and Shri Nand Lal Pandya Group, Jaipur to which the assessee belongs. Cash of Rs. 5,34,000/- were found and seized as per annexure prepared during the course of search. Shri Om Prakash Karnani also in his statement dated 26.10.2016 recorded u/s 131 of the I.T. Act, 1961 has also admitted that the aforesaid cash belongs to him. During the assessment proceeding, a show-cause vide letter dt. 06/10/2018 was issued to the assessee to explain the source of cash seized. After considering the submission of the assessee, the Assessing Officer held as under:-

*"9. The assessee is trying to justify the cash of Rs. 5,34,000/- seized by the Police Authority from his proprietorship concern M/s Vinayak Enterprises. In support of his claim he furnished copy of his bank account and cash book of M/s Vinayak Enterprises. He claimed the cash from the cash sales from M/s Vinayak Enterprises. The cash book furnished by him showing opening cash balance of Rs.5,95,790/- for which no supporting evidence has been produced. Thereafter, the cash book reflecting cash sales but the assessee failed to produced any supporting evidence such as sale bills etc to substantiate the*

*cash sales. Moreover, the books of the assessee is also not an audited one as he filed return u/s 44AD on the basis of presumptive income, therefore, without any supporting documents in respect of the claimed cash sales the cash books produced by the assessee cannot be relied upon.*

*Further, it is noted that the assessee has shown cash balance as zero in return of income filed in earlier years prior to search.*

*In view of the above, the explanation of the assessee have not found tenable as the assessee has failed to produce the source of the above said cash deposit. Therefore, it is held that the amount in question is the assessee's unexplained money within the meaning of section 69A of the I.T. Act, 1961. The provisions of section 115BBE are also applicable in the case of the assessee for the purpose of charging of rate of taxes as per I.T. Act, 1961 to the total income of the assessee and tax in to be charged u/s 115BBE on the amount. Accordingly penalty proceeding u/s 271AAB(1)(c) of the Income-tax Act, 1961 is also being initiated."*

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and his findings are contained at para 5 and 5.2 of his order which is reproduced below:-

*"5. I have perused the written submissions submitted by the AR and the order of AO. I have also gone through various judgments cited by the Ld. A/R and those contained in the order of AO.*

*5.2 I am in agreement with the Ld. AO in making an addition of Rs. 5,34,000/- as the cash seized u/s 132A of the Act. Though the*

*Ld. A/R submitted that his cash book has sufficient cash balance (of Rs. 5,69,878/- on 20.10.2016 just a day before the date on which the cash was seized, there is no withdrawal entry in the cash book either on 20.10.2016 or on the day of seizure. On the day of seizure the entry in cash books shows income tax (attachment). On the facts and in the circumstances of the case, the addition made by the Ld. AO is confirmed."*

Against the said finding, the assessee is in appeal before us.

4. During the course of hearing, the Id. AR submitted that the assessee Shri Om Prakash Karnani is a regular tax payer and originally filed his ITR for the Assessment year 2017-18 on 26.03.2018 by disclosing the income from Business & Profession and interest from saving bank. The matter is triggered with a Search and Seizer proceedings as conducted by Police Thana Shastri Nagar under their territorial jurisdiction upon Nand Lal Joshi and Nand Lal Pandya two persons, who were carrying cash of Rs. 5,34,000/- from assessee's shop M/s Vinayak Enterprises situated at F-1, Jai Matadi Complex, Sikar House, Jaipur dated 21.10.2016. After having intimation of such proceeding, the Income Tax department had taken the statement of such persons under section 131 of Income Tax Act, 1961 on 22.10.2016 of Nand Lal Joshi and of Nand Lal Pandya. In order to verify the answer of Nand Lal Joshi as stated in Question No. 3 and 4 of such statement and Question No. 4 & 5 in case of Nand Lal Pandya the Income Tax Department had taken the statement of Om Prakash Karnani on 26.10.2016 and of Rajendra Prasad Karnani on 27.10.2016 and after having assured the facts and circumstances requisition had been issued and panchnama had been submitted by the Income Tax Department on dated 29.10.2016 in the name of Nand Lal Joshi and Nand Lal Pandya.

5. In support of aforementioned statements as given under section 131, Nand Lal Joshi, Nand Lal Pandya, Rajendra Prasad Karnani and Om Prakash Karnani produced separate Affidavits on 02.11.2016 stating the source of such seized Cash of Rs. 5,34,000/- along with the source documents comprises Cash Book of M/s Vinayak Enterprises (Proprietorship Firm of Om Prakash Karnani) up dated up to 21.10.2016 showing Cash balance of Rs. 5,69,878/- and in support of Opening Cash Balance of Cash Book of Vinayak Enterprises as on 01.04.2016 with other supporting documents viz. Bank Book, Shop Act Registration of Vinayak Enterprises and other documents in support of cash introduced in Cash Book and submitted Copies of Income Tax Return with Computation and Balance Sheets (as available) of Om Prakash Karnani. But without considering the factual circumstances based on unchallenged manifestly evidences the Income Tax Department had finished their Search and Seizer Proceedings upon Nand Lal Joshi and Nand Lal Pandya and started assessment proceedings accordingly under Section 153A upon them and under section 153C upon Om Prakash Karnani treated as "other person". Therefore, necessary notices were issued under section 153 of Income Tax Act on Nand Lal Joshi, Nand Lal Pandya and Om Prakash Karnani in due course and same were replied time to time by the appellant, desired information, documents and complete books of accounts were produced before investigation wing as well as the Ld. AO, case discussed and assessment made by making additions of Rs. 534000/- in the hands of Om Prakash Karnani by treated as undisclosed income u/s 68 of IT Act. Further assessment completed upon Nand Lal Joshi and Nand Lal Pandya as on returned income accepted. Being aggrieved with the order of Id. AO, assessee filed appeal before Ld. CIT(A) and the action of Ld. AO was confirmed by Id. CIT(A) and the assessee has filed present appeal before the Tribunal.

6. It was submitted that the assessment proceedings were conducted for the Assessment year from A.Y. 2011-12 to 2016-17 in pursuance to notice as issued under section 153C of the Income Tax Act, 1961 while assessment proceedings for the Assessment Year 2017-18 had been conducted under section 153A (according to the Show cause notice issued on 13.11.2018) of the Income Tax Act, 1961 which should have been conducted under section 153C in consonance with the other assessment years therefore assessment proceedings for the AY 2017-18 is bad in law and liable to be null and void. In support, reliance was placed on decision of Co-ordinate Bench's in the matter of Sh. Navrattan Kothari Vs. ACIT (425/JP/17 Dt. 31.12.2017).

7. It was further submitted that the books of accounts which are kept in regular course of business should be treated as an evidence. We would like to quote the provision of Section 34 of Evidence Act; "34. Entries in books of accounts including those maintained in an electronic form], when relevant. [Entries in books of accounts, including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability."

8. It is very much appreciable that the questioned Cash of Rs. 5,34,000/- was sufficiently mentioned in Cash books as being maintained regularly during the course of day to day business transaction and submitted before each and every stage of proceedings viz. Investigation Wing on dated 02.11.2016, during the course of assessment proceedings and before Ld. CIT(A) during first appeal, ignoring their authenticity and relevant provision of Evidence Act they just added this sum of Rs.



5,34,000/- into Assessee's total income. It is also important to mention here that the authorities below did not substantiate such cash book and with having pre conceived notion just ignored such strong piece of evidence and violate the justice of administration. Reliance is placed on Jain Diary matter where the Honorable Apex Court strongly believed the authenticity of Books of Account which are kept in regular course of day to day business transaction.

9. It was further submitted that without issuing specific show cause notice, no addition can be sustainable. Certainly, this act of authorities below lead to violation of fundamental right of natural justice. The Ld. AO without issuing specific show cause notice and without mentioning specific defect in show cause notice just ignored the books of accounts and added a huge addition in total income of the assessee cannot be sustained under law.

10. Regarding Ground no. 5 to 9, it was submitted as under:-

“(a) The Ld. AO alleged for rejecting the such cash books that Opening Cash balance as shown in cash books as on 01.04.2016 for Rs. 5,95,790/- is not supported by an evidence, as the cash is generated through cash sales but no sales bills were produced before the then during the course of assessment proceedings, he further alleged that closing cash balance as shown by the assessee in his preceding two previous year's Income Tax Return was Zero.

(b) The complete findings of Ld. AO is based on surmises and conjecture and vague as assessee submitted their Cash books since inception of Search Proceedings with all ledgers and bank statement which shows the intention of the assessee and fairness of his mind, despite of it Ld. AO did not ask a single question about sales bill during the course of

assessment proceedings even when the assessee produced all sales and purchase bills during the course of proceeding.

(c) So far as concern about opening cash balance of Rs. 595790/- as on 01.04.2016 which was questioned by Ld. AO was sufficiently backed with the statement of affairs of the assessee for the FY 2015-16 where in the same Cash balance is being shown as on 31.03.2016 along with Cash flow statement for the Financial year 2015-16 as submitted before Ld. AO during the course of assessment proceedings sufficiently described the transactions and give the strengthening the opening cash balance of Rs. 595790/-. It is also important to mention here the Ld. AO did not dispute this document which is clearly indication of acceptance at his level.

(d) It is also important to mention here that the Ld. AO has made six assessment preceding to the previous year pertained to the AY 2017-18, under which during assessment proceeding of AY 2016-17 he has accepted all the Financial statement and computation of income which was submitted by the assessee and which is explicitly mentioned Cash in hand as on 31.03.2016 a sum of Rs. 5,95,790/-.

(e) The Cash Balance of the assessee as shown by him in his Income Tax Return as well as in statement of affairs in last seven years are being tabulated here which shows the previous pattern of the assessee for maintaining cash balance;

Assessment Year	ITR Filing Date	PB-1 Page No.	Key Details of statement of affairs			
			Capital	Cash	Other Assets	Remark
2011-12	24.03.2012	99-102	994511	106876	887635	#
2012-13	17.08.2012	108-112	1127918	64358	1063560	#
2013-14	21.07.2013	118-122	1304542	491254	813288	#
2014-15	29.07.2014	129-133	NIL (##)			
2015-16	17.08.2015	140-144	NIL (##)			
2016-17	21.03.2017	150-154	-	335240	350397	##
2017-18	26.03.2012	155-157	1054078	112931	941147	####

Note;

# Complete Financial statement have been figured out in Income Tax Return Form as submitted originally on their old dates as mentioned in table,

## As assessee filed his ITR under section 44AD hence no need to mentioned financial figures therefore same are not been provided in ITR,

### As assessee filed his ITR under section 44AD therefore only business balance have been mentioned by him in his Income Tax Return form which are part of his statement of affair as submitted before your honors,

#### Though assessee filed his ITR under section 44AD but according to new instructions for filling of ITR form he had to filled relevant column of balance sheet of ITR Form,

(f) Therefore with the considering all these facts and circumstances the opening balance as taken by the assessee in his Cash books for Rs. 5.95.790/- was fully proper and genuine.

(g) Ld. AO alleged that Opening Cash balance as taken in Cash books is Rs. 5,95,790/- was not supported with the evidences and cash balance was Zero just at the end of year prior to search, both the allegation are based on surmises and perverse findings.

(h) Here the Ld. AO made addition without any further enquiry about the documents and books of accounts submitted. Thus the Ld. AO was not justified in properly considering and appreciating explanations filed time to time and ignoring documents and books of accounts without any reasonable cause and therefore making addition is based merely on arbitrary manner.

(i) At the time of investigation assessee has already accepted that the seized cash belongs to his firm M/s Vinayak Enterprises and the cash was generated from the day to day transactions of his business.

(j) It is well settled principle that the affidavit is an strong piece of evidence if it is ignored without making necessary enquiry, here in this case Investigation Wing and Ld. ACIT both did not comply necessary action for rejecting the affidavit therefore contention as contended by the assessee in the Affidavit which is on oath must have been relied by the Ld. ACIT.

(k) This contention is well explained and supported in favor of assessee in a landmark judgment OF HONORABLE APEX COURT in the matter of M/s MEHTA PARIKH AND COMPANY VS. THE COMMISSIONER OF INCOME TAX 1956 AIR 556, 1956 SCR 626.”

11. Per contra, the DR submitted that during the course of assessment proceedings, the specific notice was issued u/s 142(1) dated 06.10.2018 wherein the assessee was asked to furnish justification of cash amounting to Rs. 5,34,000/- seized from the possession of Sh. Nand Lal Joshi and Sh. Nand Lal Pandya which undisputedly belongs to the assessee. However, since the assessee failed to submit appropriate explanation along with documentary evidence, the addition was made by the Assessing Officer u/s 69A of the Act which has been rightly confirmed by the Id. CIT(A). He accordingly supported the findings of the lower authorities.

12. We have heard the rival submissions and pursued the material available on record. Undisputedly, the cash amounting to Rs. 5,34,000/- seized from the possession of Sh. Nand Lal Joshi and Sh. Nand Lal Pandya belongs to the assessee. The limited question therefore is source of such cash found and seized from the possession of these two persons which belongs to the assessee. The assessee has submitted that the same represents business receipts and withdrawal of cash from its books of accounts and in support, the assessee furnished copy of his cash book and

other details. However, the same was not found acceptable to the Assessing Officer for the reason that there is no supporting evidence in respect of opening cash balance of Rs. 5,95,790/- in the cash book. Secondly, the assessee has failed to produce any supporting evidence to substantiate cash sales during the year which justifies the cash in hand of Rs 534,000/-. The contention of the assessee is that the opening cash balance of Rs. 5,95,790/- is duly supported by the return of income for A.Y 2016-17 along with copy of statement of affairs and the cash flow statement. It was submitted that the return of income for A.Y 2016-17 was also taken up for scrutiny assessment and specific questions were raised regarding the cash sales, cash deposited and other details regarding sundry debtors and after considering detail/submissions filed by the assessee along with copy of cash flow statement and the statement of affairs, the return of income was accepted. It was accordingly submitted that once the return of income for A.Y 2016-17 has been accepted by the same Assessing Officer who has passed the impugned order and that to, on the same date and no adverse finding has been recorded by the Assessing Officer, as far as opening cash balance of Rs. 5,95,790/- is concerned, the same has been duly substantiated and examined by the Assessing Officer and in absence of any adverse finding in A.Y 2016-17, no adverse finding can be recorded for such opening cash balance in A.Y 2017-18. Regarding cash sales executed during the year under consideration, it was submitted that the same are duly supported by the sales and purchase bills in respect of which no adverse finding has been recorded by the Assessing Officer. It was accordingly submitted that when the gross receipt from the business amounting to Rs. 17,88,365/- and net profit of Rs. 2,51,604/- have been duly accepted by the Assessing Officer, cash sales executed during the year have not been disputed and therefore, in absence of any adverse finding regarding sales and

consequent profit so declared by the assessee, the source of cash is duly explained in terms of cash sales and opening balance at the beginning of the year. It was further submitted that from the perusal of the cash book, it can be seen that there was sufficient cash balance of Rs. 5,69,878/- before the date of seizure of cash. Therefore, the cash seized is duly explained from the entries so recorded in the cash book and which forms part of his book of accounts. We find force in the contentions so advanced by the Id. AR. The cash so seized admittedly belongs to the assessee and through return of income, the statement of affairs, cash flow statement for the previous year and cash book for the year under consideration, the source of cash so seized has been duly explained in form of sales and opening cash balance duly recorded in the books of accounts. We therefore, find that there is no basis for making the impugned addition in the hands of the assessee and the same is hereby directed to be deleted.

13. In view of the above, we do not think it is necessary to examine the other contentions so raised by the assessee regarding the legality of proceedings.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 28/01/2021.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 28/01/2021  
\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Om Prakash Karnani, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-04, Jaipur
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. 1022/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar