

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.757/Ind/2016
Assessment Year:2003-04**

Dinesh Kumar Choudhary, Prop. Abhinav Traders C/o P. Mogra & Associates, CA 203, M.D. Tower Near Janjirwalla Square Garoth	बनाम/ Vs.	ITO, Mandsaur
(Appellant)		(Revenue)
P.A. No.AAXPC8055G		

Appellant by	S/Shri S.N. Agrawal & Pankaj Mogra CA's
Revenue by	Shri R.P. Morya, Sr. DR
Date of Hearing:	29.06.2018
Date of Pronouncement:	02.08.2018

आदेश / O R D E R

PER MANISH BORAD, A.M.:

This appeal filed by the Assessee pertaining to A.Y. 2003-04 is directed against the order of Ld. Commissioner of Income Tax (Appeals), Ujjain, (in short 'CIT(A)'), vide appeal No. U-253/2006-07 order dated 10.05.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961 (hereinafter called as the 'Act') framed on 29.03.2006 by ITO- Mandsaur.

2. Briefly stated facts as culled out from the records are that the assessee is an individual carrying on business in the name proprietorship concern Abhinav Traders at Mandsaur. A survey proceedings u/s 133A of the Act was conducted on 27.05.2003 at the business premises of the assessee. It was revealed that the assessee is not filing its income tax return. Thereafter notice u/s 143(2) & 142(1) of the Act were served upon the assessee. The income of Rs.78,000/- declared in the return filed on 31.03.2004. Necessary details as called for were filed. During the course of assessment proceedings Ld. AO, on going through the statements given by the assessee during the survey proceedings as well as various loose papers seized marked as LP-01 to LP 04, observed that there were three bundles of promissory notes. As per these promissory notes amounts were advanced to various persons on credit and interest rates as well as date of receiving the money and advance money were mentioned. In the statement given during the course of survey the assessee accepted undisclosed income of Rs.9,00,000/- being offered to tax on account of promissory notes. However, as the assessee did not declare the alleged surrendered income in the income tax return. The ld. AO being not convinced with the submissions of the assessee made an addition of Rs.7,15,900/- and addition of interest on promissory notes at Rs.99,848/-. The Ld. AO also made addition of Rs.17,000/- for understatement of net profits and addition for unaccounted purchase at Rs.1,36,864/-. In total addition of Rs.9,70,612/- was

made to the declared income of Rs.78,000/-. The income assessed at Rs.10,48,612/-.

3. Subsequently, the assessee filed an appeal before the Ld. CIT(A) and partly succeeded.

4. Now the assessee is in appeal before the Tribunal raising 4 grounds of appeal out of which Ground No.4 is general in nature. Ground No. 1& 2 are inter connected and therefore taken together which reads as follows;

“1. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in maintaining addition of Rs.7,15,900/- being total amount advanced against the promissory notes during the A.Y. 2003-04 without properly appreciating the facts of the case and submission made before him.

2. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in maintaining the addition of Rs.99,848/- on account of interest on promissory notes.

5. Brief facts relating to these two grounds are that during the course of survey proceedings u/s 133A on 27.05.2003 various incriminating materials in the shape of promissory notes were found which indicated that the assessee was involved in money lending business and was giving short term loans of small amounts. The assessee himself surrendered income of Rs.9,00,000/- at his own will for the alleged promissory notes. However in the return of income filed subsequent to the search proceedings the surrendered

income was not offered to tax. During the proceedings before the lower authorities it is contended that the alleged loose papers/promissory notes are actually the sundry debtors for goods who have not paid their outstanding dues against the sales made and therefore interest has been charged on the outstanding debit balance of the debtors. Ld.AO however not satisfied with these submissions made addition for the alleged promissory notes on the basis of the amount pertaining to each year and for Assessment Year 2003-04 addition of Rs.7,15,900/- was made along with the addition for interest income of Rs.99,848/- earned from the advances given. The Ld.CIT(A) could not support the submissions of the assessee as the appellant failed to discharge the burden of proof as unable to establish the source of investment in the promissory notes.

6. Now the assessee is in appeal against the order of Ld. CIT(A) for the additions confirmed at Rs.7,15,900/- for the alleged unaccounted investments in promissory notes and also against the addition confirmed for the interest income of Rs.99,848/-.

7. The Ld. Counsel for the assessee vehemently argued referring to the written submission given before the Tribunal and the same are reproduced below;

7.1 That in the said ground of appeal the assessee has challenged the addition as made to the Total Income of the Assessee of Rs. 7,15,900/- on account of Amount Advanced against the

Promissory Notes during the year under consideration. List of such promissory notes is given on Page Nos 28 & 29 of the Compilation.

7.2 A Survey proceedings was carried out at the business premises of the assessee u/s 133A of the Income Tax Act on 27.05.2003 i.e. during the previous year relevant to the Asst Year 2004-05. The assessing officer on the basis of Promissory notes as found in possession of the appellant observed that these were not incorporated in the regular books of account of the appellant. The appellant received Promissory notes from the debtors from whom goods were sold and amount was not realised in time. The amount of Promissory notes relates to the amount of sundry debtors as shown in the Balance sheet of the appellant.

7.3 The assessing officer has made similar addition in the Asst Years 2000-01, 2001-02 and 2002-03. Detail of addition as made by the assessing officer in these years and that of year under appeal is as under:-

S.No	Particulars	2000-01	2001-02	2002-02	2003-04
1.1	Promissory Notes	54,200	65,500	82,800	7,15,900
1.2	Interest on Promissory notes	4,878	14,448	24,330	99,848
2.1	Sundry Debtors as shown in the Balance Sheet	49,200	1,14,700	1,26,430	5,41,770
2.2	Cash in hand	99,058	68,420	3,282	43,385
		1,48,258	1,83,120	1,29,712	5,85,155
3.1	Deleted by the Ld CIT[A]	54,200	65,500	82,800	NIL
3.2	Reference of CIT[A] order dt	18-04-2013	18-04-2013	18-04-13	10-05-16

7.3.1 The Ld CIT[A] vide her order dt 18-04-2013 as passed in the case of the appellant for the Asst Years 2000-01 to 2002-03 has dealt the said issue in detail and accepted the contention of the appellant and deleted entire addition so made on account of Promissory notes. However, The Ld CIT[A] vide his order dt 10-05-2016 has maintained the addition as made by the assessing officer but he has not referred the finding of his predecessor wherein similar addition was deleted in last three years and therefore there was no reason to deviate with the finding of his predecessor.

7.3.2 The assessing officer has grossly erred in adding the gross amount of Promissory notes to the income of the appellant more-so on the back of the promissory notes itself detail of refund was mentioned and therefore the assessing officer was not justified in adding the gross amount of promissory notes. Year-wise chart as prepared and filed before the Assessing officer and LdCIT[A] is enclosed for your ready reference. That as per summary and after taking credit of the amount as received by the appellant net amount due as per promissory notes was of Rs 5,58,770/- but the same was shown in the Balance sheet for Rs 5,41,770/-. Thus, there was difference of Rs 17,000/- which can be explained through the cash as available with the appellant.

7.3.3 It was also explained to the Ld. A.O, that an amount of Rs. 259900/- out of Total amount of Rs. 715900/- was already received by him during the year itself. Detail of the same is enclosed on page 17 of the paper book. Further it was also been explained to the Ld.

A.O, that an amount of Rs. 70400/- out was received out of Promissory Notes pertaining to A.Y. 2000-01 to 2002-03. Detail of the same is enclosed on page 17 of the paperbook. Summary of the same is as under:-

F.Y.	Total Amount Advanced	Realisations as per the Noting on Promissory Notes				Balance as on 31.03.2003
		1999-2000	2000-01	2001-02	2002-03	
1999-00	54200	5000			30000	19200
2000-01	65500	0	0	23000	20000	22500
2001-02	82800	0	1330	0	20400	61070
2002-03	715900	0	0	0	259900	456000
Total	918400	5000	1330	23000	330300	558770

7.3.4 That in view of the above, the amount of promissory notes as found in possession of the appellant was duly explained and properly reflected in the Statement of affairs as filed with the return of total income before the assessing officer. The Ld CIT [A] while deciding the appeals for the Asst Years 2000-01, 2001-02 and 2002-03 has also accepted similar contention of the appellant. The addition of Rs 7,15,900/- is therefore neither legal nor proper, the same now requires to be deleted in full.

7.4 As regards Ground No.2, he submitted that in the said ground of appeal the assessee has challenged the addition as made to the Total Income of the Assessee of Rs. 99848/- on account of Interest

on the Amount Advanced during the AY. 2003-04 to the various parties through Promissory Notes.

7.4.1 The assessee offers the Interest Income on receipt basis when the Interest is actually received by him. It is submitted that assessee has shown interest income of Rs. 20000/- in its Return of Total income for the A.Y. 2003-04. However, the A.O. has not allowed the credit of the same. Further the Ld. A.O. while calculating the amount of Interest of RS. 99848/- has also not considered that an amount of Rs. 259900/- as mentioned in para has been received from Debtors on various date as per the notings on Promissory Notes themselves.

7.4.2 That from the facts when the amount was received from Debtors and therefore there was no reason for charging of interest on the same. Thus, addition as made to the total income of the assessee was not justified. Hence, Hon'ble Bench is hereby requested to delete the same.

WITHOUT PREJUDICE TO THE ABOVE

7.4.3 The Assessing officer also grossly erred in taxing the gross amount of interest without allowing credit of the interest which was voluntarily offered by the assessee in his return of total income. In view of the above Hon'ble Bench is hereby requested to delete the entire amount of interest as taxed or reduce the same by the amount of interest income which was voluntarily offered by the assessee in his return of total income.

8. Per contra the Ld. Departmental Representative vehemently argued supporting the orders of lower authorities and again asserted that the alleged documents seized were Promissory notes only and they are not connected to the sundry debtors of the assessee. He also placed reliance on the decision of coordinate bench in the case of M/s Hi-Tech Construction ITA No.615/Ind/2016 in support of the view that statement made by the assessee voluntarily during the course of survey should have been disclosed in the return of income and in case the assessee deviated from its statement then the burden was upon the assessee to establish that the submission made in such statement at the time of survey was wrong.

9. We have heard rival contentions and the perused the records placed before us. The assessee has challenged the finding of Ld.CIT(A) confirming the addition of Rs.7,15,900/- for the alleged unaccounted investment in promissory note and addition of Rs.99,848/ made by the Ld.A.O calculating interest on promissory note not offered to tax.

10. This fact is not disputed by the assessee that during the course of survey promissory notes were found which indicated that the assessee apart from his business of retail trading was also engaged in money lending business by way of giving short term advances on interest. Perusal of the promissory notes placed in the paper book indicates the amount advanced on interest, name of the money lender, name of the borrower, date of signing the promissory note and rate of interest. The Ld. Counsel for the assessee in its contentions has referred to the findings of Ld.CIT(A) for other assessment years which are connected to the survey proceedings wherein assessee has been granted relief for the additions made on promissory notes was deleted. It is true that the amount of addition in the other assessment years are very small and the maximum addition relating to promissory note have been made in the assessment year for 2003-04.

11. Now to adjudicate this issue, in our understanding two questions needs to be dealt first (i) whether the alleged promissory notes are the outstanding sundry debtors of the assessee (ii)

whether the alleged promissory notes are to be treated as unexplained investment.

12. So far as linking of the promissory notes with the sundry debtors is concerned, we find that the assessee is engaged into retail trade of pump sets, its parts and GC sheets. Turnover of Rs.11,60,000/- was declared during the year and income has been offered @ 5% of the turnover. During the course of survey statements were recorded of the proprietor who has nowhere mentioned that the amount shown in the alleged promissory notes are the part of its business i.e. M/s. Abhinav Traders and names mentioned in the promissory notes are sundry debtors of Abhinav Traders. In normal course the persons who is doing the retail business will normally have more of cash sales of small amounts and little of credit sales and even if for the sake of argument it is accepted that the assessee was regularly making credit sales then the same would have been narrated in the statement itself mentioning that the persons mentioned in the promissory notes are sundry debtors of proprietary concern M/s. Abhinav Traders.

13. In the back ground of this fact emanating out of the statement given in the survey proceedings as well as for the reason that nowhere during the course of proceedings before lower authorities as well as before us, the assessee has been able to demonstrate with the help of bills issued for credit sales from the shop which could be linked to the promissory notes found during the course of survey.

14. Therefore we are of the considered view that the alleged promissory notes are having no connection with the sundry debtors of the assessee and the amounts indicated in the alleged promissory notes are actually the part of the money lending business of the assessee and this business was consistently carried out by the assessee along with the business of retail trade of GC sheets and PVC pipes.

15. Now coming to the second question as to whether the addition for unaccounted investment of Rs.7,15,900/- is to be made for the unaccounted investment in the promissory notes. We need to first examine as to whether the assessee was having explained source to cover up the investment in the promissory notes. For

reaching to the correct conclusion we have gone through the computation of income and statement of affairs filed by the assessee during the A.Y 1999-2000 placed at page 103 of the paper book which shows that the assessee was having closing capital balance of Rs.6,43,781/- and sundry creditor of Rs.68,409/-. Against the total of Rs.7,32,190/- on the liability side assessee has shown investments in PPF, closing stock, old property, sundry debtors of Rs.49,200/- and cash in hand and bank balance of Rs.1,09,200/-. In this statement of affairs Rs.49,200/- is the amount shown as sundry debtors and promissory notes found for this year were at Rs.54,200/-. Similarly in the financial year 2000-01 sundry debtors of Rs.1,14,700/- have been shown in the statement of affairs and promissory notes at Rs.65,555/- and as far as financial year 2001-02 is concerned debtors have been disclosed at Rs.1,26,430/-. From the perusal of statement of financial statement filed by the assessee the source of investment in assets has been explained by way of opening balance, income earned during the year including agricultural income as well as sundry creditors. These figures of opening balance and the income earned during the year by the assessee disclosed in the return of income

has not been disputed by the revenue authorities. In the investment as well as the assets shown in the statement of financial affairs as on 31.3.2002, the assessee possessed closing stock of Rs.4,00,270/- and alleged sundry creditors at Rs.1,26,430/- and in the statement of affairs as on 31.3.2003 the closing stock has moved down to Rs.95,500/- and the alleged debtors have increased to Rs.5,41,770/-. So there is source of investment to the various assets of the company which is discernable from the statement of financial affairs consistently maintained by the assessee and filed before the revenue authorities. Crux of the above discussion is that the sundry debtors figure shown by the assessee in his statement of affairs are actually the promissory notes issued to various persons in the course of money lending business. Assessee has also given the detailed working of the promissory notes with the year of the issue of the promissory notes, interest received year by year, amounts returned back by the borrowers along with dates and amount of such receipts. Assessee through his written submission has tried to assert the fact that no addition is called for the alleged promissory notes as the debtors at the close of the year can be reconciled to the amount outstanding at the paying of the year,

amount received during the year as well as received after the close of financial year 2002-03 but all these details rather than solving the issue and making it more complicated to arrive on a conclusion.

16. We therefore with a view to end the litigation and also after appreciating the facts narrated above including the income earned by the assessee during all the preceding years from his retail business as well as agricultural income and from the promissory note are of the considered view that as against alleged addition of Rs.7,19,500/-, sum of Rs.5,41,770/- shown as debtors needs to be accepted as explained as Promissory notes i.e. loan and advance. We accordingly do so and delete the addition of Rs.5,41,770/- and confirm the remaining addition of Rs.1,74,730/-, as the alleged unaccounted income invested in the money lending business by way of issuing promissory notes. Ground No.1 of the assessee is partly allowed.

17. As regards Ground No.2 relating to alleged interest income of Rs.99,848/- as interest on promissory notes we are of the view that the assessee deserves set off of interest income of Rs.20,000/- shown in the income tax return and we accordingly accept the

alternate submission of the assessee and confine the addition to Rs.79,848/-. In the result Ground No.2 is partly allowed.

Ground No.3

18. Now we came to Ground No.3 which reads as follows;

“3. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in maintaining the addition of Rs.137864/- on account of alleged investment in purchases by observing that such purchases were not recorded in the regular books of accounts and assessee has failed to furnish the source of investment.”

19. Brief facts of this ground are that the Ld. Assessing Officer on the strength of the list of purchase bill and loose papers bundle appearing at LP-4 found during the survey noticed that there was unaccounted investment in purchase of Rs.1,37,864/-. It is contended by the assessee that it offers income u/s 44AF of the Act and therefore the income is disclosed on the sales turnover which has not been disputed by the Ld.AO therefore no addition was called for any unaccounted purchases. The issue came up before the Ld.CIT(A) and the assessee failed to succeed. The Ld.CIT(A) confirmed the view of Ld. AO observing as follows;

“Ground No.3:- Through this ground of appeal the appellant has challenged the addition of Rs.7,15,900/- on account of investment in promissory notes. A survey u/s 133A was carried out at business premises of the appellant. During the course of survey promissory notes and loose paper were found. A Promissory recommends the

amount given on interest by the appellant. The appellant failed to furnish the source of investment in respect of these promissory notes. The appellant also failed to produce the books of account where the entry in respect of the promissory notes was made. On the, basis of promissory notes and loose papers, the AO made the inventory of promissory notes. The copy of inventory of promissory notes pertaining to the assessment year under consideration has been annexed by the AO as per annexure 'A' along with the assessment order. As per the inventory the appellant has made the investment of Rs.7,15,900/~ in the promissory notes and failed to furnish the source during the course assessment proceedings as well as appellate proceedings.

Section 69A provides that any unexplained money found in the books relating to which appellant offers no explanation about the nature and source thereof or such explanation is unsatisfactory, such unexplained money could be charged to, tax as income of the appellant. The principle embodied in section 69A is, only a statutory recognition of what was always understood to be the law based upon the rule that burden of proof is on the taxpayer to, prove the, genuineness of unexplained money in "his books, Since the relevant facts are exclusively within his knowledge.

The expression "nature and source" has to be understood together as a requirement of identification' of the source and the nature of the source, so that the genuineness or otherwise could be inferred.

It is settled law that while considering the question whether the alleged unexplained money was a genuine transaction, the initial onus is always upon the appellant and if no explanation is given or the explanation given by the appellant is not satisfactory, the

Assessing Officer can disbelieve the alleged transaction of loan: given. But the law is equally settled that if the, initial burden is discharged by the appellant by producing sufficient materials in support of the unexplained money, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the appellant and in the process, the onus may again shift from the Assessing Officer to the appellant.

It has been held in the case of CIT vs. K.T.M.S. Mohammad {1997} 92 Taxman 169/228 ITR 113 (Mad.) that the burden of proof is always on the assessee.

Therefore, the appellant failed to discharge the burden of proof by not establishing the source of investment in the promissory notes. Therefore, the addition made by the AO on this ground amounting to Rs.7,15,900/- is Confirmed. The appeal on this ground is Dismissed".

20. Now the assessee is in appeal before the Tribunal. The Ld. Counsel for the assessee submitted that assessee is an Individual carrying on the business of Trading of Pump Sets, its parts, GC Sheets and PVC pipes etc. at Garoth under his Prop. Concern in the name of M/s AbhinavTraders. He does not maintain the regular books of accounts and is filing Income Tax return following the provisions of Sec. 44AF of the Income Tax Act since last so many years.

20.1. The appellant has shown income as per provision of section 44AF of the Income Tax Act. Hence, there was no requirement to maintain proper books of account. The bills as found in possession of the appellant is as under:-

S.No	Particulars	Amount [Rs]
1	Purchase bills as found in file	9,34,172
2	Cash purchase bill as found loose from the premises	1,37,864
		10,72,036
3	Sales as shown by the appellant in the return	11,60,000
4	Purchase net of profit as considered by the appellant in return	11,02,000
5	The amount of purchases as considered by the appellant himself was higher than bills which were found in possession of the appellant. Hence, no separate addition was made to the income of the appellant	

20.2. That Hon'ble Punjab & Haryana High Court in the case of CIT vs Agarwal Engg Co as reported in 302 ITR 246 has held that when net profit rate applied in that case no separate addition can be made to the income of the appellant on account unexplained cash and purchases. The Hon'ble Allahbad High Court in the case of CIT vs Banwari Lal Bansidhar as reported in 229 ITR 229 has also expressed similar view.

20.3 That in view of the above, when the appellant has shown income as per provision of section 44AF of the Income Tax Act. The Assessing officer was not justified in adding the entire amount of purchases to the income of the appellant. That as per the Provision of Section 44AF are Comprehensive and no other addition is required to be made in the case of an assessee who declares Income

under the Section 44AF as per the Contents of CBDT Circular 684 dt. 10.06.94 and 763 dt.18.02.98. Thus considering the above facts it is requested that the entire amount of addition as made to the Total income of assessee of Rs. 137854/- required to deleted.

21. On the other hand Ld. Departmental Representative supported the orders of CIT(A).

22. We heard the rival submissions and perused the records placed before us. Through Ground No.3, the assessee is aggrieved with the findings of Ld.CIT(A) confirming the addition of unaccounted purchase of Rs.1,36,864/-. We find that the assessee regularly prepares financial statements and offers business income u/s 44AF declaring the net profit @5% on the turnover during the year which for the instant appeal the turnover stood at Rs.11,60,000/- and assessee declared income of Rs.58,000/-. The issue arised from the document seized during the course of survey relating to purchase. We still first like to go through the relevant facts linking to the purchases. Even though the assessee is not maintaining regular books of accounts but he has submitted the figure of closing stock in the statement of financial affairs. We start with the figure of closing stock shown by the assessee as on 31.3.2002.

<u>Particulars</u>	<u>Amount</u>
Closing stock as on 31.3.2002	4,00,270
Add: Purchase bills found in file for Financial year 2002-03	9,34,172
Add: Cash purchase bill found during the survey proceedings	<u>1,37,864</u>
Total	14,72,306
Less: Closing stock shown by assessee in his statement of affairs as on 31.3.2003	<u>95,500</u>
Total cost of goods sold during the year	<u>13,76,306</u>

23. The above details of cost of goods sold at Rs.13,76,306/- is emanating out of the details filed by the assessee himself and this figure is much more than sales shown by the assessee at Rs.11,60,000/-. This clearly establishes that the assessee was engaged in making sales out of record which was not disclosed in the total turnover shown in the return of income. If we do reverse calculation reducing the estimated gross margin from sale the resultant figure of goods sold would be much less than cost of goods sold calculated by us at Rs.13,76,306/- and the addition for unaccounted purchase would rather increase than the one made by the Assessing Officer.

24. We, therefore in the given facts and circumstances of the case are of the considered opinion that no interference is called for in the findings of Ld.CIT(A) confirming the addition of purchases of Rs.1,36,864/-. In the result Ground No.3 of the assessee is

dismissed.

25. In the result the appeal of the assessee is partly allowed.

Order was pronounced in the open court on 02 .08.2018.

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANTMEMBER

Indore; दिनांक Dated :02 / 08/2018

/Dev.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore