

**COMMISSIONER OF INCOME TAX, BIKANER VS. M/S.
KEWAL KRISHAN & PARTNERS, SRI GANGANAGAR.
(D.B.INCOME TAX APPEAL NO.185/08)**

Dated:- 12.1.2009.

HON'BLE MR.JUSTICE A.M.KAPADIA
HON'BLE MR.JUSTICE SANGEET LODHA

Mr.K.K.Bissa , for the appellant.

1. This appeal preferred u/s 260 A of the Income Tax Act, 1961 (in short "the Act of 1961") by the Revenue is directed against order dated 30.10.07 passed by the Income Tax Appellate Tribunal,Jodhpur Bench,Jodhpur (in short "ITAT" hereinafter) in ITA No. 408/JDPR/2004[A.Y.1990-91], whereby the order dated 17.6.04 passed by the Commissioner of Income Tax (Appeal), Bikaner (in short "CIT(A)" hereinafter) confirming the addition of Rs.8,50,000/- u/s 68 of the Act of 1961 by the Assessing Officer (in short "AO" hereinafter) to the income of the respondent assessee, has been allowed and accordingly, the aforesaid addition made by the AO stands deleted.

2. According to the appellant following substantial of law arises out of the impugned order of the learned ITAT for consideration of this Court:-

(i) "Whether on the facts and in the circumstances of the case as well as in the law the learned Tribunal is legally correct in deleting the addition of Rs.8,50,000/- made by the AO under Section 68 of the I.T.Act, even when the assessee failed in proving the genuineness, creditworthiness and identity of the creditors and thereby in discharging its onus of proof?"

3. The relevant facts in nutshell are that for the Assessment Year 1990-91 , return was filed by the respondent-assessee declaring income of Rs.1,50,150/- in the status of AOP.The assessment was made by the Assessing Officer u/s 143(3) of the Act of 1961 vide order dated 16.12.92 by making addition of Rs.8,50,000/- on account of unexplained cash credit standing in the names of the partners of the firm S/Shri Ali Mohd. , Amar Nath and Kewal Krishan Kumar and accordingly, the income was assessed at Rs.10,47,675/-, which was confirmed by the CIT(A) vide appellate order dated 7.1.94. However, on further appeal,the learned ITAT set aside the assessment with the direction that the assessment be made by the AO afresh in light of the evidence produced.

4. The income assessed as aforesaid was maintained by the AO while passing the fresh assessment order dated 28.3.03, which was confirmed by the CIT(A) vide order dated 17.6.04. However, as detailed supra, on further appeal, the order passed by the CIT(A) has been set aside by the learned ITAT. Consequently, the addition made by the AO as aforesaid stands deleted. Hence, this appeal.

5. The learned ITAT has arrived at the finding that the contribution in the capital account made by the partners prior to commencement of the business cannot be treated as cash credit and cannot be added u/s 68 in the hands of the assessee. The

learned ITAT opined that the capital contributions have to be considered in the hands of individual partner and not in the hands of assessee.

6. It is contended by the learned counsel for the Revenue that the assessee having failed to discharge the onus to prove the genuineness , creditworthiness and identity of the creditors , the unexplained cash credits deserves to be added to the income of the assessee u/s 68 of the Act of 1961.

7. It is not in dispute that the members of the AOP S/Shri Ali Mohd. deposited Rs.5,00,000/-, Amarnath deposited Rs.3,00,000/- and Kewal Krishan deposited Rs.50,000/- as capital contribution on the first day of commencement of the business by the firm i.e. 1.4.1989. All the partners have confirmed that they had introduced those amount as their capital contribution. Obviously, it was for the partners to explain the source of the deposits and if they failed to discharged the onus then, such deposits could be added in the hands of the partners only and not in the hands of the assessee firm. In any case, such capital contributions entered into the books of the accounts of the assessee firm prior to the commencement of the business cannot be treated to be the income of the assessee firm. In considered opinion of this Court, such unexplained credits may be added to the income of the partners concerned in terms of Section 69 and not u/s 68 of the Act of 1961.

8. For the aforementioned reasons, in our view, no substantial question of law arises out of the order impugned passed by the learned ITAT for consideration of this Court.

9. In the result, the appeal fails, it is hereby dismissed. No order as to costs.

(SANGEET LODHA),J.

(A.M.KAPADIA),J.

Aditya/-