

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 152/JP/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Meena Garg, A-02, Ashiana Bageecha, Bhiwadi, Alwar.	बनाम Vs.	Income Tax Officer, Ward-2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFKPG 5947 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajiv Sogani (CA)
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/03/2017
उदघोषणा की तारीख / Date of Pronouncement : 07/03/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee against the order dated 04/12/2015 passed by the Id. CIT(A), Alwar for the A.Y. 2011-12, wherein the assessee has raised following grounds of appeal:-

- "1. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the Id. A.O. in adding a sum of Rs. 11,33,000/- as alleged unexplained income introduced in capital account. The action of the Id. CIT(A) is*

illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 11,33,000/-.

2. *In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of Id. A.O. in not allowing the deduction of Rs. 9850/- U/s 80C. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by allowing the said deduction of Rs. 9850/- U/s 80C.*
3. *In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of Id. A.O. is disallowing a sum of Rs. 10,000/- out of total disallowance of Rs. 18,197/- on account of various expenses. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by allowing the said addition of Rs. 10,000/-."*

2. The assessee is proprietor of M/s Swastik Enterprises and has filed her return of income for the year under consideration on 28/09/2011 declaring total income of Rs. 7,34,277/-. The case of the assessee was selected for scrutiny and the assessment was completed on 21/2/2014 wherein certain additions have been made.

3. Ground No. 1 of the appeal is against sustaining the addition of Rs. 11,33,000/- on account of unexplained income introduced in capital account. The assessee claimed that the assessee was having two bank accounts, one was savings bank account for personal purposes and another was current account for business purposes. During the year under consideration, capital to the extent of Rs. 11,33,000/- was introduced. This money was introduced out of funds which were, prior to such introduction, transferred from current account of M/s Swastik Enterprises to personal savings bank account of the assessee. The assessee has failed to prove the source of capital introduced for Rs. 11,33,000/- as claimed as per its capital account, which is treated as bogus capital introduced and undisclosed income of the assessee and the same is added back to the income of the assessee.

4. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the Id. CIT(A), who after considering the submissions has confirmed the addition made by the Assessing Officer by holding as under:-

"4.3 I have gone through the assessment order as well as submissions made by the appellant and find that an addition of Rs. 11,33,000 has been made by the AO

on account of unexplained credits in the capital account of the appellant. The addition was made on the ground that certain amounts have been introduced in the capital account by way of transfer entries in the bank account of the business M/s Swastik Enterprises. During the course of assessment proceedings complete details of all the bank accounts maintained by the appellant were sought by the AO and it was found that a savings bank account in the name of the Prop. Smt. Meena Garg has not been disclosed. The AO while scrutinizing the details of capital introduction found that transfer of funds have been received in the business account from the undisclosed savings account of the Proprietor.

4.4 The AO has further stated in the order that money has been transferred from the business account without reducing the capital account balance to the savings account of the proprietor and vice-a-versa also. The details of the transactions so carried out have been given in para 1.8 on page 5 of the order. Thus, AO has given a finding that a capital introduction of Rs. 10 lacs by way of cheques from the un disclosed savings account of the proprietor has to be treated as unexplained income of the appellant. Further, it is stated that 1,33,000 has

been introduced in the capital account by way of cash contribution and in the absence of any evidence, the same was also held to be unexplained income.

4.5 *The appellant has stated that an amount of Rs. 10 lacs was transferred through the bank account and a cheque no. 370177 of Rs. 5 lacs was introduced on 13-04-2010 and a cheque no. 370178 of Rs. 5 lacs was introduced on 28-04- 2010. The amount of Rs. 1,15,000 was deposited in cash on 15-06-2010 and Rs. 18,000 was deposited on 20-03-2011. The sources of cash deposited are stated to be on account of cash withdrawal of Rs. 65,000 from the bank account on various dates and further amount is on account of savings of pocket money from her husband and occasional gift received. Further, cash deposit of Rs. 18,000 is out of money received from father-in-law.*

4.6 *Having considered the evidence placed on record, I find that the transactions of fund transfer between the savings account of the Proprietor and business account have been repetitive in nature and have not been completely reflected in the accounts books. These transactions have not been routed through the capital account of the proprietor. It is seen from the copy of the savings account filed by the*

appellant in the course of appellate proceedings that there have been frequent transactions between the two accounts, for instance, Rs. 1 lac has been transferred in the savings accounts on 31-07-2010 and Rs. 2 lacs on 04-01-2011. Similarly, there have been transactions of transfer of funds to M/s Swastik Enterprises of Rs. 7 lacs on 23-01-2010 from the saving account of the proprietor (which though falls in the preceding year). Thus, I hold that appellant has failed to explain the sources of credits and AO was justified in treating the amount of Rs. 10 lacs credited in the capital account on account of bank transfers from the savings accounts as unexplained income of the appellant.

4.7 *Further, I find that as regards, the contribution of Rs. 1,33,000 in cash by the proprietor in the capital account is concerned, the appellant has failed to furnish any supporting evidence to substantiate its contentions. The explanation furnished in this regard is vague and too generalized and is self serving in nature. The appellant has failed to bring on record any evidence with regard to the accumulation of cash and sources thereof. No confirmation, sources of income, etc. of the other persons has been filed to substantiate the contentions. Thus, I hold that appellant has failed to explain the sources of cash*

credits in the capital account and AO was justified in treating the amount of Rs. 1,33,000 credited in the capital account as unexplained income of the appellant.

4.8 Thus, I confirm the addition of Rs. 11,33,000 made by the AO on account of unexplained income introduced in the capital account of the appellant."

5. Now the assessee is in appeal before me. The Id AR of the assessee has reiterated the arguments as made before the lower authorities and prayed to allow the appeal.

6. The Id Sr. DR has vehemently supported the order of the lower authorities.

7. I have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the authorities below. From perusal of the order of the Id. CIT(A), it transpires that there is no clear cut finding regarding the source of capital in proprietary concern and also in the savings bank account of the assessee. In absence of such vital facts, this issue cannot be decided in either way, therefore, in the interest of justice and equity, I feel it appropriate to remand the issue to the file of the Assessing Officer.

On the other two small issues, the Id AR submitted that there may also be restored to the file of the Assessing Officer as the same needs same verification at the level of Assessing Officer prior to taking any decision on these issues. After hearing both the sides, the issues raised in the ground No. 2 and 3 of the appeal with regard to the claim of deduction U/s 80C of the Act and disallowance out of various expenses are also restored back to the file of the Assessing Officer.

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

Order pronounced in the open court on 07/03/2017.

Sd/-

(भागचंद)

(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07th March, 2017

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Meena Garg, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-2(2), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 152/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar