

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

श्री विजय पॉल 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.379/JP/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Devendra Singh Chouhan Jalepur Road, Vill. Barrod, Behror	बनाम Vs.	The Income Tax Officer, Ward-Behror
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: ALLPC3629F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No.573/JP/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Devendra Singh Chouhan Jalepur Road, Vill. Barrod, Behror	बनाम Vs.	The Income Tax Officer, Ward 1(3), Alwar
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: ALLPC3629F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar
& Isha Kanoongo (Adv.)
राजस्व की ओर से / Revenue by : Shri Ajay Malik (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 24/01/2018
उदघोषणा की तारीख / Date of Pronouncement: 02/02/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are appeals filed by the assessee against the order of Id. CIT(A)-Alwar dated 24.03.2017 for Assessment Year 2009-10 and order dated 29.03.2016 for AY 2011-12. In its appeal for AY 2009-10, the assessee has taken the following grounds of appeal:-

"1. Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the learned Assessing Officer in passing the order u/s 147/144 of the Income Tax Act, 1961 which is void ab-initio deserves to be quashed.

2. Under the facts and circumstances of the case, the learned CIT(A) has erred in sustaining the addition of Rs. 32,38,490/- u/s 69A of the Income Tax Act, 1961 made by the learned Assessing Officer without considering the submission of the assessee during the appellate proceedings.

3. Under the facts and circumstances of the case, the learned CIT(A) has erred in sustaining the addition of Rs.32,38,490/- without examining the correctness of claim of the assessee that the amount deposited in bank relates to other persons who have applied for liquor contract and Demand Drafts were prepared for the same by those persons."

2. Regarding ground No. 1 of the assessee's appeal, the same was not pressed during the course of hearing. Hence, the same is dismissed as not pressed.

3. Regarding ground Nos. 2 and 3 of the assessee's appeal, briefly stated, facts of the case are that during the year under consideration, cash amounting to Rs.32,38,490/- was found deposited in the bank account maintained by the assessee at PNB, Barrod (Behror). A notice dated 17.12.2013 u/s 148 was issued and served on the assessee after recording reasons u/s 147 of the Act. The assessee did not file any return of income in compliance of the notice u/s 148 of the Act. Subsequently, the AO issued a notice u/s 142(1) of the Act and thereafter, the assessment was completed u/s 147 read with section 144 of the Act. Regarding the source of cash deposit in the bank account, the assessee in his sworn statement recorded u/s 131 of the Act on 29.01.2015 during the course of assessment proceedings, in response to Question No. 5, has stated that the source of cash deposit in his

bank account were from K.C.C, diary loan and sale of agriculture land by his father but no evidences were produced before the AO in support of his claims during the course of assessment proceedings. A further opportunity was provided to the assessee and specific show-cause issued which remain uncomplined with. The Assessing Officer referring to the Hon'ble Supreme Court's decision in case of CIT V.K. Chinnathamban (2007) 160 Taxman 459/292 ITR 682 (SC), Hon'ble Madras High Court in case of CIT V.K. T.M.S. Mohamood (1997) 92 taxamnn 169/228 ITR 113 and Hon'ble Supreme Court decision in case of Chuharmal v. CIT (1988) 172 ITR 250 (SC) held that the assessee has nothing to say regarding the source of cash deposit in his saving bank account. Hence the said cash deposits remained unexplained and the same was treated as unexplained money deposited in his saving bank account from his undisclosed sources and the same was considered as income of the assessee u/s 69A of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and submitted that the assessee belongs to agricultural family and during the FY 2008-09, he was working as sales man with a wine Contractor. It was further submitted that some known persons of the assessee had deposited cash in his bank account for making application in favour of Jila Aabkari Adhikari for obtaining wine contract. It was submitted that the cash was mainly deposited in the month of Feb for making demand draft for application for obtaining wine contract and in the month of March, most of the demand draft was cancelled due to non allotment of wine contract and all the cash was withdrawn by the respective persons who deposited cash in the assessee's bank account. It was submitted that at the time of assessment proceedings, it was not possible for the assessee to file affidavit of the persons who have used assessee's bank account for depositing cash in his bank account and permission was accordingly sought for submission of affidavit of persons in this regard.

5. The Id. CIT(A) called for the remand report from the Assessing Officer. In his remand report, the Assessing Officer stated that 11 persons appeared with their ID Proof and their statements were recorded wherein they admitted that they have deposited money in bank account of Sh. Devendra Singh in the month of Feb 2009 for making demand draft for application in favour of Jila Abkari Adhikari for obtaining wine contract. They admitted that in the month of March, demand draft were cancelled due to non allotment of wine contract and cash withdrawn by them. The statement of the assessee was also recorded wherein he admitted that Rs. 2,00,000/- was deposited by him in his bank account on 10.03.2009. The AO accordingly held that an amount of Rs. 27,50,000/- was deposited in the assessee's bank account on various dates by the above named persons and it was stated that the details/documents furnished by the assessee before the Id CIT(A) was self explained.

6. The Id. CIT(A), after considering the assessee's submission, the remand report of the AO as well as the statement of the assessee recorded u/s 131 of the Act during the course of assessment proceedings, held as under:-

"5.5.3 It is important to note that the appellant had never filed income tax return. The appellant had ignored notices sent under section 148 of the Act and subsequently several notices served on him u/s 142(1) of the Act to file details. All these points show appellant's apathy towards the income tax proceedings at the assessment level. I have also taken into account that the appellant had recorded his statement under oath u/s 131 of the Act on 29/01/2015, where he has given an entirely different account of sources of the cash deposits as mentioned in para 5.5 above. A statement made on oath u/s 131 of the Act is to be taken in the right earnest. The appellant during appellate proceedings has taken an entirely different story about the source of the same cash deposits. Shifting stands taken by appellant with diametrically

different source about the cash deposits has casted a very reasonable doubt about the actual source of the cash deposits. Therefore, the genuineness of the source as put forward during appellate proceedings is in serious doubt particularly when compared with the sworn statement made by the appellant u/s 131 of the Act during assessment proceedings. Accordingly, the AO has rightly added the amount of Rs. 32,38,490/- as unexplained cash deposits. Therefore, the addition of Rs. 32,38,490/- is confirmed and the appellant's ground of appeal on this issue is dismissed."

7. During the course of hearing, the Id. AR vehemently argued the matter and relied on the written submissions reproduced as under:-

"3. Cash deposits made by various persons for making application in favour of Jila Abkari Adhikari:-

During the year under consideration, various persons deposited amount in the bank account under consideration for the purpose of making application for obtaining wine contract to Jila Abkari Adhikari. On perusal of the bank account of the assessee mainly cash was deposited in the month of February for making Demand Draft for applying to the Jila Abkari Adhikari for obtaining wine contract and in the month of March most of the Demand Draft was cancelled due to non allotment of wine contract and all the cash was withdrawn by the respective persons by whom it was deposited. The Affidavits of the various persons who deposited the money for obtaining the license and to whom the amount was returned on non allotment are produced.

4. Recognition in remand report of the deposits made for applying to obtain the wine contract by various persons -

In the remand proceedings, various persons who deposited the money in assessee's account were produced personally along with their ID, Address proof and bank statements and copy of Pan card and income

tax returns(if any) to support their credit worthiness. In the remand Report it is recorded and admitted by these various persons that they deposited money in account of the assessee for making demand draft for applying to Jila Abkari Adhikari to obtain wine contract. The amount of upto Rs. 27,50,000/- was admitted to be explained by the Learned Income Tax Officer Behror in the Remand Report. The remaining amount of Rs. 4,88,490/- was considered unexplained. A copy of Remand Report is produced.

The Learned CIT(A) has erred in his decision and has totally ignored the remand report and the evidences given thereof in support which were confirmed by the Assessing Officer in the remand report. Also the affidavits of Sh. Bhawani singh for Rs. 1,00,000/-, Sh. Rajveer Singh for Rs. 1,50,000/-, Sh. Narendra Singh for Rs. 1,00,000/-, Sh. Tara Chand for Rs. 2,00,000/- and Sh. Lai Chand Kumawat for Rs. 75,000/- were presented but not considered.

The Hon'ble ITAT is humbly requested to consider and treat the above mentioned amount of Rs. (27,50,000/- + 6,25,000/-) 33,75,000/- as explained amounts in the interest of justice.

5. No benefit/credit of cash withdrawals given:-

It is submitted that the Learned Assessing Officer and Learned CIT(A) have erred in taking into consideration the entire cash deposits as income of the assessee. Although the assessee failed to appear before the Learned Assessing Officer even then a duty was cast upon the Learned Assessing Officer to determine the income of the assessee judiciously. While doing so it has expected of him to give credit of the cash withdrawals against cash deposits. If it was done there would

have remained only unexplained cash to the extent of Rs. 3,88,490/-. In considering the balance amount of Rs. 3,88,490/- the fact was ignored that upto the month of January 2009 the assessee only deposited amount of Rs. 3,28,740/- and the cash withdrawals made by him was Rs. 4,81,500/-. The Hon'ble ITAT is humbly requested to consider and treat the above amount of Rs. 32,38,490/- as explained and admit our appeal in the interest of justice.

6. It is also pertinent to mention that the Learned Assessing Officer did not make any enquiry whether the amount deposited was utilized for any other purpose or for making investment or for incurring expenditure for the assessee's own purpose. It is clear from the bank statement that all the cash deposits were utilized only for the purposes of making demand drafts for submitting application for obtaining wine contracts in the name of different different persons and the subsequent event support the contention of the assessee when the contract was not allotted to the respective applicants, the demand drafts were cancelled and cash was withdrawn and returned to the same persons. This fact was confirmed by the each applicant in the sworn affidavit submitted during the appellate proceedings and in remand report this fact was endorsed by the Learned Assessing Officer. Therefore under such circumstances no addition can be confirmed on this account."

8. The Id DR is heard who has relied on the order of the lower authorities.

9. We have heard the rival contentions and perused the material available on record. On perusal of the assessee's bank statement of the account maintained with PNB, it is observed that there are entries of cash deposits, issue of cheques for making drafts and other payments, cancellation of draft, cancellation charges levied by the Bank and issue of self cheques for cash

withdrawals during the period February 2009 to March 2009. During the course of remand proceedings, various persons have appeared before the AO and their statements were recorded by the AO. The AO in his remand report has stated that in their statements, these persons have admitted that they have deposited money in bank account of Sh. Devendra Singh in the month of Feb 2009 for making demand draft for application in favour of Jila Abkari Adhikari for obtaining wine contract and in the month of March, demand drafts were cancelled due to non allotment of wine contract and cash withdrawn by them. The statement of the assessee was also recorded during the remand proceedings wherein he admitted that Rs. 2,00,000/- was deposited by him in his bank account on 10.03.2009.

10. There is however, no finding in the remand proceedings regarding the retraction of the statement of the assessee recorded on oath under section 131 of the Act during the course of assessment proceedings. It appears from the perusal of records that the said statement has not been retracted and continue to hold good even during the course of the appellate proceedings and basis that the Id CIT(A) has held that:

"I have also taken into account that the appellant had recorded his statement under oath u/s 131 of the Act on 29/01/2015, where he has given an entirely different account of sources of the cash deposits as mentioned in para 5.5 above. A statement made on oath u/s 131 of the Act is to be taken in the right earnest. The appellant during appellate proceedings has taken an entirely different story about the source of the same cash deposits. Shifting stands taken by appellant with diametrically different source about the cash deposits has casted a very reasonable doubt about the actual source of the cash deposits. Therefore, the genuineness of the source as put forward during appellate proceedings is in serious doubt particularly when compared with the

sworn statement made by the appellant u/s 131 of the Act during assessment proceedings.”

11. As per the findings of the Id CIT(A), the genuineness of the source as put forward during appellate proceedings is in serious doubt especially in light of the earlier statement of the assessee recorded u/s 131 of the Act. The question is whether the doubt in the mind of the Revenue authorities can be a basis for making the addition in the hands of the assessee. No doubt the assessee has earlier made a statement providing a different explanation regarding the source of cash deposits, however, given the transaction details in the PNB bank account, the statement of which is on record and on perusal of which, it is noted that there are cash deposits as well as withdrawals and at the same time, there are cheque payments for issue of bank drafts and subsequent cancellation thereof, the subsequent explanation of the assessee to the extent that cash deposits were used for making the bank drafts and their subsequent cancellation cannot be ignored. However, the question still remains as to whom the cash belongs and for whom the demand drafts were issued and in whose favour and purpose. It is at this stage that the statements of the various persons come in the picture and the same needs to be examined to determine their creditworthiness and genuineness of the transaction in terms of bidding by them for the wine contract and the payment routed through the assessee's bank account for making the demand drafts as so claimed during the appellate proceedings. Further, the statements of these persons have to be examined taking into consideration the specific entries of cash deposit and withdrawal recorded in the bank account of the assessee. The onus is clearly on the assessee to demonstrate the same at first place regarding each of these entries of cash deposit and withdrawal as the cash is found deposited in his bank account. We, however, find that there is no specific explanation offered by the assessee regarding each of these entries and the onus cannot be said to be fully discharged. It

appears that the AO has also merely relied on the statements of these various persons without carrying out any further examination determining their creditworthiness and genuineness of the transaction in terms of bidding for the wine contract and the payment routed through the assessee's bank account and no specific findings have been recorded by the AO during the remand proceedings. There has to be a specific finding determining one-to-one correlation with the cash deposit, subsequent demand draft and thereafter cancellation thereof and withdrawal of cash in respect of each of the persons as claimed. Once the same is determined to the satisfaction of the AO, the contention of the assessee that the cash found deposited in his bank account doesn't belong to him but belongs to above stated third persons can be accepted. During the course of hearing, the Id AR submitted that the assessee may be provided a suitable opportunity and he shall be in a position to provide the necessary correlation and explanation along with supporting documentation, as may be required. We are accordingly setting aside the matter to the file of the AO to examine the same afresh in light of above discussions. Needless to say, the assessee shall cooperate in the timely completion of the proceedings and submit the necessary information/documentation as may be desired by the AO.

12. In ITA No. 573/JP/2016, similar ground of the appeal has been taken against the addition of Rs. 57,48,150 in respect of cash deposited in the saving bank account of Punjab National Bank account of the assessee. Our findings and directions contained in ITA No. 379/JP/17 shall apply *mutatis mutandis* to this appeal as well.

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 02/02/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-

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

Jaipur

Dated:- 02/02/2018

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Shri Devendra Singh Chouhan, Alwar
2. प्रत्यर्थी / The Respondent- ITO Ward 1(3), 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. 379/JP/2017 & 573/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.