

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. 283/JP/2013
निर्धारण वर्ष / Assessment Year : 2009-10

| | | |
|---|-------------|-------------------------|
| Shri Rakesh Kumar Sharma, Plot No. 7, Shri Mahalaxmi Villa, Opp. Mansarovar V.T. Road, Jaipur | बनाम Vs. | ITO, 2(4), Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AYYPS7056E | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Arun Gangwal (CA)
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 19/06/2018
उदघोषणा की तारीख / Date of Pronouncement: 08/08/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-01, Jaipur dated 18.12.2012.

2. Firstly, Ground no. 2 was not pressed during the course of hearing. Hence the same is dismissed as not pressed.

3. Regarding Ground No. 1 wherein the Id. CIT(A) has confirmed the addition of Rs. 871813/- as unexplained expenditure u/s 69C of the Act, the Id. AR has submitted as under:-

"1. The assessee filed its return of income on 15-04-2009 declaring an income of Rs. 243400/-. The said return had been filed showing the business income of Rs. 243400/- under Section 44AF of the Act.

2. Assessee was not required to maintain regular books of account as the return had been filed under Section 44AF of the Act as the turnover was below Rs. 40 lacs. It was Rs. 27,23,500/- only. The learned assessing officer has not disputed the turnover and depositing of the cash into bank account. The assessing officer made an addition of Rs. 18,35,000/- in respect of the cash deposited in the bank account during the year, in Rajasthan Bank, (ICICI Bank) Mansarovar, Jaipur as unexplained cash u/s 69 of the IT Act 1961. The cash amounting to Rs. 1835000/- was deposited out of cash sale amounting to Rs. 2723500/- when turnover and depositing of the cash was not disputed and accepted by the learned A.O. and CIT (Appeal)-1, then question of unexplained cash cannot be arise. Addition of Rs. 18,35,000/- by AO was neither justful nor genuine to add supported by affidavit of Rakesh Kumar Sharma.

3. The CIT (Appeal)-1, Jaipur has made and try to interference through cash flow statement which was not discussed by A.O. is not concerned with as the case was very much related with unexplained cash deposited in to bank account u/s 69 of the I.T. Act, 1961. The learned CIT(Appeal)-1 confirming the addition of Rs. 871813/- as unexplained expenditure u/s 69 of the Income Tax Act, 1961.

4. *The above addition of Rs. 18,35,000/- were been added by learned AO as unexplained cash deposited u/s 69 of the Income Tax Act, then confirming of the addition as unexplained expenditure should not be arise. Furthermore the ITO Ward 2 (4), filed one application u/s 154 to the learned CIT (Appeal)-1 that this confirming amount of Rs. 871813/-appear as typographical error need to be rectify. The application u/s 154 by learned A.O. filed shown in paper book page no. 28 submitted before the bench.*

5. *Section 44AF of the Act was inserted by Finance Act, 1997 w.e.f. 1.4.1998. Sub-section (1) of Section 44AF clearly provides that where an assessee is engaged in the business of retail trade, income shall be estimated at 5% of the gross receipts paid or payable to the assessee in the previous year on account of such business or a sum higher than the aforesaid sum as may be declared by the assessee in his return of income notwithstanding anything to the contrary contained in Sections 28 to 43C of the Act. This income is to be deemed to be the profits and gains of said business chargeable of tax under the head profits and gains of business. However, the said provisions are applicable where the gross receipts paid or payable does not exceed Rs. 40 Lacs.*

6. *Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax 5% of the gross receipt itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts. Learned Assessing Officer with reference to any material on record, could not show*

that the cash deposits amounting to Rs. 18,35,000/- were unexplained or undisclosed income of the assessee.

7. *Appellant has relied on the decision of Hon. Jaipur ITAT in the case of Uma Soni vs. ITO Ward 2(3), Jaipur, Appeal No. ITA 260/JP/2013.*

8. *Appellant has relied on the decision of Hon'ble Punjab & Haryana High Court in the case of CIT v. Surinder Pal Anand. ITA No. 156 of 2010."*

4. The relevant findings of the Id. CIT(A) is contained at para 4.3 of his order which is reproduced as under:-

"4.3 I have carefully perused the order of the AO and the submissions of the AR and on account of inadequacy of both, the assessment record was called for. On perusal of the details filed during the course of assessment proceedings a cash flow statement was prepared as follows:

Cash available/inflow

| | |
|------------------------------------|-----------------------|
| <i>Cash balance b/f as per B/s</i> | <i>Rs.8,09,590/-</i> |
| <i>Sales during the year</i> | <i>Rs.27,23,500/-</i> |
| <i>Total cash available</i> | <i>Rs.35,33,090/-</i> |

Cash Outflow

| | |
|---|-----------------------|
| <i>Purchases + expenses as per the P&L a/c</i> | <i>Rs.24,33,078/-</i> |
| <i>Loan repayment as per bank statement with ICICI Bank Ltd. Jaipur and admitted in statements taken on 16/11/2011.</i> | |
| <i>Surender -Shah on -14/0-8/-2008 -</i> | <i>Rs.70,000/-</i> |
| <i>Kumawat on 18/08/2008</i> | <i>Rs.50,000/-</i> |

| | | |
|--|-----------------------|-----------------------|
| <i>Surender Sharma on 27/08/2008</i> | <i>Rs. 1,00,000/-</i> | |
| <i>Lalaram on 21/01/2009</i> | <i>Rs.80,000/-</i> | |
| <i>Kumawat on 03/03/2009</i> | <i>Rs.64,000/-</i> | |
| <i>Kishore on 23/03/2009</i> | <i>Rs.4,00,000/-</i> | <i>Rs.17,64,000/-</i> |
| <i>EMI repayment for vehicle loan to HDFC during this A.Y.</i> | | <i>Rs.30,825/-</i> |
| <i>House hold withdrawals as per B/s</i> | | <i>Rs.82,140/-</i> |
| <i>LIC payment & tuition fees as per B/s</i> | | <i>Rs.94,860/-</i> |
| <i>Investment in purchase of shop</i> | | <i>Rs.6,86,880/-</i> |
| | <i>Total</i> | <i>Rs.50,91,783/-</i> |
| <i>Difference: Rs.35,33,090/- (cash available)</i> | | |
| <i>less Rs. 50,91,783/- (cash outflow)</i> | | <i>Rs.15,58,693/-</i> |

The submissions of the AR of the appellant are accepted that as per section 44AF of the I.T. Act, the assessee was not required to maintain the books of account since the total sales during the year were only Rs.27,23,500/-. The entire sales were deposited in the Bank of Baroda, Mansarovar according to the appellant. A balance sheet has also been filed showing cash balance of Rs.8,09,590/-. No supporting evidence regarding this cash balance available with the assessee has been filed. However, even if the balance sheet is accepted then it is seen, that the cash outflow during the year was more than the total cash available with the appellant during the year by Rs.15,58,693/- as per the details above. The appellant has not furnished any explanation regarding this difference either during the course of assessment proceedings or during the course of appellate proceedings.

Therefore, the amount of Rs. 8,71,813/- is confirmed as unexplained expenditure u/s 69C."

6. We have heard the rival contentions and perused the material available on record. The Id CIT(A) has returned a finding that the assessee was not required to maintain the books of account since the total sales during the year were only Rs.27,23,500/- and the same were deposited in the Bank of Baroda, Mansarovar. The source of cash so found deposited in the said bank account amounting to Rs 18,35,000 is thus clearly established as business receipts which have been duly offered to tax. Regarding shortfall in cash and unexplained expenditure of Rs 871813, the Id AR has submitted that the same was not the subject matter of addition by the AO and the Id CIT(A) without giving an opportunity to the assessee has unilaterally worked out the cash flow statement which cannot be sustained in the eyes of law. It was further submitted that even on merits, the cash flow statement so drawn is not correct and addition so made by the Id CIT(A) cannot be sustained as the Id CIT(A) has only considered the transactions relating to repayment of loan and has not considered the transactions relating to amount taken on loan by the assessee during the year under consideration and where the same is also considered, there would not be any negative cash flow and thus no basis for addition towards the unexplained expenditure. It is a case where the Id CIT(A) has brought to tax unexplained expenditure which was not the subject matter of assessment proceedings and enhanced the income of the assessee. The contention of the Id AR regarding non-grant of opportunity before bringing to tax the unexplained expenditure remain uncontroverted before us. In the result, without getting into merit of the said addition, in view of non-grant of opportunity by the Id CIT(A), the said addition is hereby deleted. In the result, the ground of appeal is allowed.

7. Regarding Ground No. 3 wherein the assessee has challenged the action of the Id. CIT(A) in confirming the addition of Rs. 36,50,000/- as unexplained investments towards purchase of shop, the Id Id. AR has submitted as under:-

"1. The Assessing Officer was clearly wrong in treating the said investment as unexplained and further upheld by learned CIT(A)-1, Jaipur.

2. The shop were purchased in Krishi Upaj Mandi, Jaipur by paying Rs. 36,50,000/- All payment except Rs. 50000/- was paid through account payee pay order. The detail of sources of above payment is as under:-

i) Rs. 24,00,000/- were been taken by father namely Shri Hanuman Sahai Sharma. The payment was made through account payee pay order amounting to Rs. 9,00,000/- Rs. 10,00,000/- and Rs. 5,00,000/-. The copy of bank statement was also submitted. The source of investment was also explained that Shri Hanuman Sahai Sharma is farmer and mainly doing and believing in cash. He received Rs. 18,00,000/- in the year 2008 in cash as agriculture income Batwara Nara among their brother. Moreover he sold some of his agriculture land in 2005 and received Rs. 28,95,000/-in cash as supported his affidavit also.

ii) Rs. 3,75,000 were been taken from Shri Raj Kumar Jain through account payee pay order amounting to Rs. 1,50,000/- and Rs. 2,25,000/- Address and PAN No. of Shri Raj Kumar Jain is as under:-

*Raj Kumar Jain
Plot No. 18, Vinayak Enclave,
Patrakar road, Opp. V.T. Road,
Mansarovar, Jaipur*

PAN : ABPPJ4475J

iii) Rs. 4,25,000/- were been taken by Shri Kishore Singh Rathore through account payee pay order Address and PAN No. is as under

*Kishore Singh Rathore
Plot No. 1, Vinayak Enclave,
Patrakar Road, Opp. V.T. Road,
Mansarovar, Jaipur
PAN : ABOPR3736K*

iv) Remaining Rs. 4,50,000/- was given by Rakesh Kumar Sharma out of his income and savings.

3. Appellant has produced copies of Bank draft before the AO in support of amount given by Shri Raj Kumar Jain and Shri K S Rathore and Bank statement copies together with Bank draft copies of father Shri Hanuman Sahai Sharma.

4. Assessee has explained the source of investment during the statement recorded by the learned Assessing Officer.

5. The Assessing Officer hypothetically draw inferences and assume that there has been some illegality in the assessee's transaction in the absence of any material in its possession. Whereas the appellant furnishes details regarding the alleged lenders/ creditors etc, it is up to the department to peruse the matter further to examine these."

8. The relevant findings of the Id. CIT(A) is contained at para 6.3 which is reproduced as under:-

"63. I have carefully perused the order of the AO and the submissions of the AR and the assessment records of the appellant and I do not concur with the submissions of the AR on the basis of following grounds:

1. As per the register sale deed dated 03/03/2009 the payment received by the seller namely Smt. Renuka Agarwal had been shown as follows:

| <i>Date</i> | <i>Pay Order No.</i> | <i>Bank Name</i> | <i>Amount</i> |
|-------------------|----------------------|--|-----------------------|
| <i>27/01/2009</i> | <i>083313</i> | <i>UCO Bank, Rajat Path, Mansarovar</i> | <i>Rs.9,00,000/-</i> |
| <i>24/02/2009</i> | <i>083357</i> | <i>UCO Bank, Rajat Path, Mansarovar</i> | <i>Rs.10,00,000/-</i> |
| <i>02/03/2009</i> | <i>413625</i> | <i>The Bank of Rajasthan Ltd. Mansarovar</i> | <i>Rs.4,00,000/-</i> |
| <i>02/03/2009</i> | <i>413627</i> | <i>The Bank of Rajasthan Ltd. Mansarovar</i> | <i>Rs.1,50,000/-</i> |
| <i>02/03/2009</i> | <i>413628</i> | <i>The Bank of Rajasthan Ltd. Mansarovar</i> | <i>Rs.2,25,000/-</i> |
| <i>02/03/2009</i> | <i>083367</i> | <i>UCO Bank, Rajat Path, Mansarovar</i> | <i>Rs.5,00,000/-</i> |
| <i>02/03/2009</i> | <i>131804</i> | <i>Indian Overseas Bank, M.I. Road</i> | <i>Rs.4,25,000/-</i> |
| <i>-</i> | <i>Cash</i> | <i>-</i> | <i>Rs.50,000/-</i> |
| | | <i>Total</i> | <i>Rs.36,50,000/-</i> |

From the above it is seen that the payments were made directly to the seller from the aforementioned bank accounts through pay order.

The appellant has not been able to furnish clearly the identity or the financial capacity in the case of these bank holders from where the pay orders were made.

2. *In the case of the payments made from UCO Bank, Rajat Path, Mansarovar, it was submitted that the bank account was in the name of the father of the appellant Shri Hanuman Sahai Sharma who was 82 years old. It was also submitted that the deposits were from his agricultural income. On perusal of the Khasra Girdavari filed during the course of assessment proceedings it is seen that the land was not in the name of his father. Neither have any records regarding the expenditure or sale of the crop been furnished. A 'Batwaranama' has been filed allegedly by Shri Chittarmal younger brother of Shri Hanuman Sahai Sharma wherein it has been mentioned that "मैं छितरमल पुत्र स्व. मोरु जाती ब्रह्मण और मेरा छोटा भाई हनुमान (माना) हम दोनों भाई लगभग 15, 16 साल तक खेती मजदूरी सिर में की थी जिसकी बड़ा भाई होने के कारण लेन देन का काम मेरे पास था जो आज दिनांक 06.04.2008 को पाँच आदमियों के सामने मेरा सगे भाई हनुमान को हिसाब समझा दिया है। दो भाई अनपढ़ होने के कारण लिखित में कोई हिसाब नहीं होने कारण पाँच आदमियों के सामने 18,00,000 अठारह लाख रुपये खेती में अनाज सब्जी मजदूरी में इसके हिस्से के रुपये नगद संभला दिया है।*

This appears to be a self serving document since there is no clarity as to how this income was earned. If the partition was being done amongst 5 brothers as mentioned in this Partition Deed then total cash available for partition with them was Rs.90 lakhs. It is not clear why only Shri Hanuman Sahai Sharma was given this amount. How was this huge income earned, where was it kept? This document is held to be invalid evidence since it has not even been notarized and was probably drafted after the scrutiny proceedings were initiated in the case of the appellant. Thus it is held to be invalid/inadvisable evidence.

3. *There are other obvious contradictions in the explanations regarding the loan allegedly given by the father of the appellant. During*

the course of appellate proceedings it has been submitted that loan of Rs.24,00,000/- was taken by the appellant from his father Shri Hanuman Sahai Sharma. Even if this Batwaranama is accepted then Shri Hanuman Sahai Sharma had only Rs.18,00,000/-. There is absolutely no explanation regarding the balance Rs.6,00,000/-. Moreover, Rs.19,24,000/- was deposited in the bank account no explanation has been given regarding the balance deposits in the bank.

Considering the fact, that the ownership of agricultural land was not clearly his individual hands as per the Khasra Girdavari there is no valid substantiating evidence regarding ownership of Rs.18,00,000/- in the hands of Shri Hanuman Sahai Sharma.

4. Regarding the balance amount alleged to have been received from Shri Rajkumar Jain and Shri Kishore Singh Rathore the fact that the appellant did not even know their addresses when his statement was taken u/s 131 shows that these alleged loans were not genuine. Their addresses and PAN have been filed during the course of appellate proceedings but no application for accepting new evidence was filed U/R 46A of the Income Tax Rules. Moreover, at no stage have their confirmations been filed. It is held that the genuineness of these loans remained unexplained, and the appellant was unable to discharge the onus to prove the financial capacity of the creditors and the genuineness of these transactions.

Thus it is held that the appellant failed to furnish any satisfactory explanation regarding his source of income and investment in the shop of Rs. 36,50,000/- at C-32, Rajdhani Krishi Upaj Mandi, Kukas, Jaipur and so the addition of this amount to the income of the appellant u/s 69 is confirmed."

9. We have heard the rival contentions, perused the material available on record. Firstly, it is noted that out of Rs 36.50 lacs, Rs 4.5 lacs have been

paid by the assessee out of his own past and current savings and through issue of pay order from his bank, hence, the source of investment to that extent is not in doubt. Regarding Rs 24 lacs, the assessee has explained that he has received the same from his father and the pay orders were directly issued in the name of the buyer from his father's bank account and in support, he has submitted the bank statement of his father and source of his agricultural income. Similar is the position regarding Rs 3.75 lacs received from Raj Kumar Jain and Rs 4.25 lacs from Kishore Singh Rathore whose bank details, the pay order details which were directly issued in the name of the buyer from their respective bank accounts, address and PAN details have been duly submitted. In view of the same, the initial onus cast on the assessee regarding explaining the nature and source of investment has been satisfied in the instant case. Hence, the addition made under section 69 is hereby deleted and ground of assessee's appeal is allowed.

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

Order pronounced in the open Court on 08/08/2018.

Sd/-

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

Sd/-

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

Jaipur

Dated:- 08/08/2018

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Sh. Rakesh Kumar Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Jaipur
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. 283/JP/2013)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.