

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

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

**ITA No.328/Ind/2014
Assessment Year: 2008-09**

Sanjay Agarwal Siswa Bazar, Maharajganj Uttar Pradesh (Appellant)	<u>बनाम/</u> Vs.	ACIT-3(1) Bhopal (Revenue)
P.A. No.ABMPA1402F		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, ARs
Respondent by	Shri V.J. Boricha, DR
Date of Hearing:	16.08.2018
Date of Pronouncement:	21.08.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-2, Bhopal dated 6.1.2014 pertaining to the assessment year

2008-09. The assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case the impugned orders passed by the Ld. lower authorities are contrary to law, materially incorrect and unsustainable in law as well as on facts. All the finding and conclusions of the ld. lower authorities are also contrary to the material, opposed to the facts, equity and law.*
2. *That the ld. lower authorities have erred and were not justified in holding that the appellant is the owner of the cash which was found in the suitcase while travelling in train and thereby making addition of Rs.5,34,700/- u/s 68 of the Income Tax Act.*
3. *The arbitrary findings and conclusion drawn by the ld. lower authorities are grossly wrong and based upon assumption and presumption also opposed to the facts and law. Therefore the addition made by the ld. AO and sustained by the ld. CIT(A) may please be deleted.*
4. *That ld. lower authorities have erred and were not justified in not considering the submission and the decisions quoted by the appellant judiciously.*
5. *That the appellant craves leave to add amend or to modify any ground(s) on or before the date of hearing.*

2. Only effective ground in this appeal is against making addition of Rs.5,34,700/- u/s 68 of the Income Tax Act, 1961 (hereinafter called as 'The Act'). Briefly stated the facts are that case of the assessee was reopened for assessment and the assessment u/s 143(3) r.w.s. 147 of

the Act was framed vide order dated 30.12.2009. It is noticed by the assessing officer that during a search by the Railway police, the assessee was found in possession of a sum of Rs.5,34,700/-. The explanation of the assessee in respect of this sum belonged to his father-in-law, who was also travelling in the same train, which he was carrying to give as gift to his daughter i.e. wife of the assessee. The A.O. did not accept this explanation and added this amount in the income of the assessee. The assessee had preferred an appeal before the Ld. CIT(A), who sustained the addition. Ld. Counsel for the assessee submitted that the assessee is a State Government employee working in Janpath Panchayat. The assessee was found to be carrying cash of Rs.5,34,700/- on 10.9.2007 while travelling in train Revachal Express by Government railway police. The cash was released on the direction of the court. Ld. Counsel reiterated the

submissions as made in the written submissions. The submissions of the assessee are as under:

SUBMISSIONS

1. Cash seized was Gift from wife's family

- a. As evident from the facts of the cases narrated above, the brother in law of appellant Shri Vikas Jalan, withdrew money from his proprietorship concern- 'Khatu Shyam Enterprises' amounting to Rs. 2,500,00/- and Rs. 2,75,000/- on 31.08.07 and 07.09.07 respectively. (Total Rs. 5,25,000/-)
- b. The delivery of above cash amount was being made through father Shri Omprakash Jalan who was travelling in same train –Rewanchal Express. Since, he did not have a confirmed reservation; he handed over the money to his son-in-law Shri Sanjay Agrawal having confirmed birth.
- c. The aforesaid amounts were debited in the books of accounts maintained by Shri Vikas Jalan. The following documents are being produced in support of his contention :-
 - i. Capital account from audited books of 'Khatu Shyam Enterprises' **PB 50**
 - ii. Statement recorded u/s 131 of Shri Vikas Jalan, **(PB 21-22)**
 - iii. Cash book of 'Khatu Shyam Enterprises.' **(PB 69-80)**
 - iv. Affidavit from Shri Omprakash Jalan before the upper court, Khurai dated 10/09/07 **(PB 63-64)**
- d. Out of the total cash seized of Rs. 5,34,700/- only Rs. 9,700/- belong to assessee. His Statement were recorded by ITO(Investigation) Jabalpur, wherein the assessee has adequately and properly explained. **(PB 163-172, specific reply to Q3 on PB 164)**

2. Land ownership before seizure of cash:-

- a. The appellant invested in land with 'Danish Grah Nirman Society' before he was seized with the alleged undisclosed cash. The appellant was arrested on 10.09.07 and was in custody till 12.09.07, when his bail application got cleared. The land allotment letter dated 11.09.07 as well as the Receipt issued by the society towards land cost payment and the cash book of the proprietorship concern 'Khatu Shyam Enterprises' were produced before the Session court on 12.09.07. This proves that the land was already acquired by the appellant and his wife jointly.
- b. The Cheque no 704216, dated 28.08.2007 amounting to Rs. 2,91,585/- was presented by the 'Danish Grah Nirman Society' in their bank account and it was cleared on 13th Aug. It is pertinent to note that 11 years back, the banking system took atleast 2 days to clear a cheque and thus, appellant being in custody from 10.09.07 till 12.09.07 (Friday to Sunday) cannot sign and get the cheque cleared from his account same day. The counterfoil of the deposit slip is also dated 11.09.07 which is enclosed on pg. no
- c. Smt. Ekta Agrawal drew a sum of Rs. 3,00,000/- on 22.08.07 vide draft no 062016 from her account with the firm M/s Sitaram & Sons Siswa bazaar district Maharajaganj (U.P) and deposited the same in joint account with husband in State Bank of India, Arera

Colony, Bhopal. The copy of the draft enclosed on pg no..... proves that the withdrawal was done only for investment in bank.

3. **Evidences produced along with BAIL application**The appellant and his father in law, narrated all these facts as well as produced the following supporting evidence at that time itself, thus, this allegation of Id authorities that it was a afterthought is not correct:-

- Possession letter from 'Danish Housing Society' dated 11.09.07. (PB 66)
- Receipt from 'Danish Housing Society' dated 10.09.07 (PB 67)
- Cash book of 'Khatu Shyam Enterprises' from 30.08.07 to 08.09.07. (PB 69-80)

4. The Statement of appellant recorded u/s 131(1) dated 24.01.08 are on PB 163-172, in his reply to Que3, PB 165 and PB 166, he stated that:-

“बीना में RPF व GRP के जवानों ने मेरी बर्थ पर आकर मुझे जगाया व बताया की मेरे पास अवेध अस्त्र शास्त्र रखे होने की सुचना है. उन्होंने मेरे सूटकेस में क्या सामान है , इसकी पूछताछ की , मैंने उन्हें बताया की सूटकेस में कोई शस्त्र नहीं है, इसमें जो रुपये है वोह मेरे ससुर के है इ | उन्होंने सूटकेस अपने कब्जे में ले लिया और आस पास के यात्रियों के सामन के पास भी अस्त्र शस्त्र की छानबीन करते रहे. उन्होंने मुझे स्टेशन से उतरने के लिए कहा तो मैं वह उतर गया। मेरे ससुर उसी ट्रेन से भोपाल पहुंच गए. भोपाल पहुंच कर उन्होंने मुझे मेरी बोगी में ढूंढा, न मिलने पर मुझे फ़ोन लगाने की कोशिश की, किन्तु मेरा मोबाइल पुलिस के लोगो ने बंद कर दिया था , इसलिए बात नहीं हो सकी. कुछ देर पश्चात घर पहुंच कर मेरा इंतज़ार किया और सुचना मिलने पर लगभग दोपहर १२.३० बजे वापस बीना पहुंचे।

बीना में पुलिस ने मुझसे पूछताछ की, मैंने उन्हें साड़ी जानकारी बताई किन्तु उन्होंने मेरे बयान को उचित ढंग से नहीं लिखा व दबाव देकर हस्ताक्षर करा लिए।

Thus, the findings of Id CIT(A) that as per GRPF records, the appellant didnot even name his father-in-law who is allegedly travelling with him is notcorrect, since the appellant's statement were recorded on 24.01.08, wherein heclaimed that his statement were taken forcefully.

5. **Addition cannot be based on Suspicion:**

The Id only on the basis of general findings, without directing to any specific instances have drawn inference that the cash seized from the assessee was his unexplained money, but not cash gift received by wife. Like the allegation that earlier also there were gifts in the family, but they were done through bank accounts.

The appellant take support from the landmark judgement – **Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax [1954] 26 ITR 775 (SC)**

In which it was held –“that in making the assessment under section 23(3) he is not entitled to make a pure guess and make an assessment without reference to any evidence or any

material at all and there must be something more than bare suspicion to support the assessment under section 23(3). The rule of law on this subject has been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. CIT [1944] 12 393. In the instant case, the Tribunal violated certain fundamental rules of justice in reaching its conclusions.

3. On the contrary, the Ld. D.R. opposed the submissions and supported orders of the authorities below.

4. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. We find that both the authorities below have not accepted the explanation given by the assessee. The authorities have acted merely on suspicion. On the contrary, the father-in-law of the assessee has categorically owned up the money. The authorities below without appreciating the evidences submitted by the father-in-law of the assessee, proceeded to make addition and confirmed the same. The Ld. Counsel for the assessee has taken us through various documents demonstrating that wife of the assessee was in process of purchasing a property. It is also on record that father-in-law of the

assessee was having sufficient money to give such gift to his daughter. Under the facts of the present case, we are of the view that the assessing officer and the Ld. CIT(A) have not considered the explanation of the assessee and have proceeded merely on the basis of suspicion. Hence, the A.O. is directed to delete this addition.

5. In the result, the appeal filed by the assessee is allowed.

Order was pronounced in the open court on 21.08.2018.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 21/08/2018

VG/SPS

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

By order

Sr. Private Secretary, Indore