

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 196/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

Smt. Sangeeta Goel, 41-A, Bhagat Vatika, Ajmer Road, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 2(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABTPG 9245 P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Devendra Kumar (Advocate)
राजस्व की ओर से/ Revenue by: Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख/ Date of Hearing : 29.10.2018.
घोषणा की तारीख/ Date of Pronouncement : 30/10/2018.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 23rd December, 2016 of Id. CIT (A)-1, Jaipur for the assessment year 2012-13. The assessee has raised the following grounds :-

1. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in passing order without providing proper opportunity of being heard, thus the order so passed is bad in law and deserves to be quashed.
2. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in confirming assessment order passed by Id. AO without considering the submission and evidence adduced by A/R of the assessee when assessee had categorically denied of giving any Power of Attorney in the name of A/R to authorize him to attend her case, therefore, order so passed based on the documents submitted by unauthorized person deserved to hold bad in law.

- 2.1. That, the Id. AO has further erred in ignoring the fact that assessee in her previous replies stated that her CA or A/R has submitted wrong documents/Xerox in support of his replies, thus order so passed deserves to be deleted in toto.

Without prejudice to the legal ground appeal on merits.

3. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in confirming the addition of Rs. 37,96,500/- made by Id. AO u/s 68 by alleging the amount as unexplained income arbitrarily. Appellant prays addition of Rs. 37,96,500/- confirmed by Id. CIT (A) may please be deleted.
 - 3.1. That the Id. CIT (A) has further erred in not appreciating the fact that assessee was not in the possession of sale deed, bills and vouchers which truly explains the sources deposit cash of Rs. 37,96,500/-, thus addition so made deserves to be deleted.
4. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in confirming the addition of Rs. 1,68,000/- made by Id. AO allegedly on account of undisclosed rental income on the basis of replies made by A/R who has no authority to testify for assessee and further by not providing proper opportunity to assessee of being getting heard, thus addition of Rs. 1,68,000/- may please be deleted.
5. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in confirming the addition of Rs. 34,56,400/- made by Id. AO on account of alleged unexplained deposits just on assumption and presumption basis and further without appreciating the submissions made and evidence adduced before the Id. AO during the assessment proceedings thus addition of Rs. 34,56,400/- may please be deleted.
6. That the appellant craves the right to add, delete, amend or abandon the ground of this appeal at the time or before the actual hearing of the case.

2. The assessee is an individual and proprietor of M/s. Rajwada Exports. She is also Director of M/s. Rajwada Handicraft Textiles Pvt. Ltd. The assessee filed her return of income on 20th March, 2013 declaring total income of Rs. 1,84,780/-. During the scrutiny assessment, the AO noted that the assessee has made cash

deposit of Rs. 37,96,500/- in the Savings Bank Account with Axis Bank Ltd. and also made deposits of Rs. 34,56,400/- through other modes. Accordingly, the AO asked the assessee to show cause as to why the cash deposits as well as the other deposits should not be added to the income of the assessee under section 68 of the IT Act. The assessee explained before the AO that the cash deposits are made from her withdrawal from the proprietorship concern, withdrawal of cash from the same bank account, proceeds of car sold during the year, jewellery loans taken by the husband and jewellery sold by the assessee herself. Thus the assessee explained that the total amount of Rs. 43,17,400/- was available with the assessee out of which the cash deposit of Rs. 37,96,500/- was made in the bank account. The AO did not accept this contention of the assessee as the assessee did not produce the supporting evidence showing the availability of cash and various transactions of sale and loan taken by the husband of the assessee. Further, since the assessee is not maintaining the proper accounts, therefore, the claim of withdrawal from the proprietorship concern i.e. M/s. Rajwada Exports was also denied. As regards the other deposits made by the assessee, the assessee submitted that the deposits were made through cheques and it was the amount received back from the persons to whom the assessee has given the amount. The assessee submitted that apart from the amounts given to the persons, namely, Shri Rajesh Goel, the assessee has also taken loans from Shri Sunil Pondrik, Shri Dinesh Verma and Shri Manoj Swami. However, the AO did not accept this explanation and made the addition of the said amount. The AO while completing the assessment has also made an addition on account of undisclosed rental income of Rs. 1,68,000/-. The assessee challenged the action of the AO before the Id. CIT (A). However, nobody had appeared before

the Id. CIT (A) despite various notices issued to the assessee and consequently, the Id. CIT (A) has confirmed the additions made by the AO while passing the impugned ex parte order.

3. Before us, the Id. A/R of the assessee has submitted that due to the disputes between the assessee and her previous Chartered Accountant, the Id. AR/CA Shri Satish Sareen neither attended the proceedings before the Id. CIT (A) nor filed the relevant documents in support of the claim of deposits made in the bank account. Thus the Id. A/R has submitted that the assessee could not produce the relevant evidence before the authorities below as the CA who was representing before the authorities below did not attend the proceedings and, therefore, the Id. CIT (A) has passed the impugned order ex parte. He has further contended that even otherwise the AO while making the addition has completely ignored the evidence produced by the assessee and the entries in the bank account itself were not properly considered by the AO. He has referred to the various entries in bank account and submitted that even the income-tax refund as well as savings bank interests was added by the AO treating the same as unexplained deposits. Further, the Id. A/R has submitted that there are contra entries in the bank account – one was payment of certain amounts to these persons and thereafter the assessee has received back the amount through cheques, the same is appearing on credit side. Therefore, making the addition of entire amount of deposit is not justified when there are contra entries of payments of the said amount prior to the said deposits in bank. Further, the Id. A/R has submitted that the assessee has explained the deposit of cash by giving the details of source of deposit as withdrawal from the Axis Bank to the extent of 9,88,900/-, the sale proceeds of car sold during the year of Rs. 13,82,000/-,

jewellery loan taken by the husband of the assessee from IIFL, withdrawal from Rajwada Exports of Rs. 1,89,000/- and sale of jewellery by the assessee herself of Rs. 5,77,500/-. As regards the deposits made through cheques, the Id. A/R has pointed out that the assessee has produced the copies of statements of accounts of the persons who have given the cheques and also explained that in some of the cases the assessee earlier advanced the money to these persons and it was subsequently received and, therefore, it was nothing but the money given by the assessee earlier was received back which cannot be added as income for want of source of deposit. The Id. A/R has further pointed out the assessee produced the confirmations of accounts of Shri Sunil Pondrik, Shri Dinesh Verma and Shri Manoj Swami from whom cheques of the respective amounts were received. However, the AO without even looking into the primary and basic facts of transactions recorded in the bank account, has treated the entire deposit as unexplained income of the assessee. As regards the rental income, the Id. A/R has submitted that the AO has made the addition on account of undisclosed rental income without even giving a show cause notice to the assessee or discussing the matter in the assessment order. Only in the computation of total income, the AO has added the said amount of Rs. 1,68,000/- by treating the undisclosed rent of Rs. 2,40,000/- and allowed the deduction under section 24 being 30%, the net undisclosed income was added at Rs. 1,68,000/-. Hence the Id. A/R has submitted that since the assessee could not produce the relevant supporting evidence due to the reasons and circumstances which were beyond the control of the assessee, therefore, one more opportunity may be granted to the assessee to present her case and produce the relevant supporting evidence.

4. On the other hand, the Id. D/R has submitted that despite the sufficient opportunities given by the AO as well as by the Id. CIT (A), the assessee did not furnish the relevant documents. Though the assessee has claimed the source of cash deposit in the bank, however, not a single document was produced by the assessee to prove the said claim and, therefore, the AO has rightly added the deposits made in the account to the income of the assessee. He has referred to the finding of the Id. CIT (A) and submitted that though the AO made the addition under section 68 of the IT Act, however, the Id. CIT (A) while passing the impugned order has modified the said order and treated the addition as made under section 69 of the Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. The AO while completing the assessment has made three additions as under :-

- (1) Rs. 37,96,500/- on account of cash deposit in the Savings Bank account with Axis Bank.
- (2) Rs. 1,68,000/- on account of undisclosed rental income.
- (3) Rs. 34,56,400/- on account of deposits in the bank through modes other than cash.

We find that the assessee has also explained the source of deposit before the AO, however, for want of supporting evidence the AO did not accept the explanation furnished by the assessee. Before the Id. CIT (A), none has appeared on behalf of the assessee despite various notices issued for the date of hearing on 03.08.2016, 29.08.2016, 10.10.2016 03.11.2016 and 21.12.2016, therefore, the Id. CIT (A) has

passed the impugned order ex parte. As regards the addition of Rs. 37,96,500/-, the assessee has explained the source of cash deposit as under :-

“Withdrawn from Axis Bank	Rs. 9,88,900/-
Car sold during the year	Rs. 13,82,000/-
Jewellery Loan from IIFC by husband	Rs. 11,80,000/-
Withdrawal from Rajwada Exports	Rs. 1,89,000/-
Jewellery sold as my stridhan	<u>Rs. 5,77,500/-</u>
Total :	Rs.43,17,400/- “ -----

We find that the AO as well as the Id. CIT (A) denied these explanations for want of evidence. However, the Id. CIT (A) in the finding has accepted the fact that the loan shown by the husband of the assessee in fact was taken by Shri Manoj Swami who is Accountant of the assessee. Therefore, the explanation of the assessee was not accepted. It may be a case of furnishing some incorrect details and documents in support of the claim of the assessee as we find that the assessee has claimed the source of other than cash deposits as loan from Shri Manoj Swami which was also denied by the authorities below. Once the Id. CIT (A) has found the fact that the said loan of Rs. 15 lacs was taken by Shri Manoj Swami from IIFL, then the source explained by the assessee to the extent of loan taken from Shri Manoj Swami cannot be rejected. However, we find that some confirmations filed by the assessee were rejected by the Id. CIT (A) due to the reason that the assessee has filed only photocopy. Thus it is clear that the issues were not properly examined by the authorities below and further the assessee also did not furnish the relevant evidence in support of the source of deposits made in the bank account. However, we note that neither the AO nor the Id. CIT (A) has even properly examined the bank account details and entries and the entire credit side of the bank account as income

of the assessee without even considering the fact that some of the entries are self explanatory being refund of income-tax and savings bank interest which cannot be added under section 68 or 69 of the IT Act. As regards the addition made on account of undisclosed rental income, we find that the AO neither issued show cause notice nor the matter is discussed in the assessment order as to how the AO estimated the rental income at Rs. 2,40,000/- and consequently made an addition of Rs. 1,68,000/- after allowing the deduction under section 24 of Rs. 72,000/-. The Id. CIT (A) has confirmed all these additions ex parte. Having regards to the facts and circumstances of the case when these issues were not properly examined by the authorities below and the assessee has also not explained the reasonable cause for not furnishing the relevant material evidence as well as reason for not appearing before the Id. CIT (A), we, in the interest of justice set aside these issues to the record of the AO for fresh examination and denovo adjudication of these issues. Needless to say that the assessee be given a proper opportunity of hearing as well as to file the relevant evidence in support of the claim.

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

Order is pronounced in the open court on 30/10/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 30/10/2018.

Das/

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

1. The Appellant- Smt. Sangeeta Goel, Jaipur.
2. The Respondent – The ITO Ward 2(2), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 196/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

