

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-A, JAIPUR

श्री विजय पाल 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. 990/JP/2018
निर्धारण वर्ष/Assessment Year :2008-09

Rajesh Kishore Sharma, Ward No. 13, Village & Post- Chomu Purohitan, Via Khatu Shyamji (Sikar)	बनाम Vs.	ITO Ward-3(3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BKOPS8716C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri G. M. Mehta (CA)
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 13/12/2018
उदघोषणा की तारीख / Date of Pronouncement: 28/02/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 23.05.2018 wherein the assessee has taken the following grounds of appeal.

"1. *Ld. CIT(A) had erred in law and on facts ignoring and not deciding the ground of appeal that action under section 147 by issuing notice u/s 148 of Act is bad in law since the appellant did not receive the notice u/s 148 of I.T. Act.*

2. *The Id. CIT (A) was not justified in sustaining addition of Rs. 7,86,000/- on account of two deposits of cash in bank, the sources of which were fully and truly explained during the first appellate stage by submitting the available supporting/documentary evidences in remand proceedings to the Id. AO who, without verifying them,*

preferred to sent a negative remand report to Id. CIT(A), on the basis of which order appealed against was passed.”

2. At the outset, it is noted that the appeal is delayed by 22 days. The assessee has submitted that the appeal could not be filed due to his bad health problem and in support an affidavit has been filed. After hearing both the parties, the delay in filing the appeal is hereby condoned.

3. Ground No. 1 was not pressed by Id. AR during the course of hearing. Hence, the same is dismissed as not pressed.

4. In Ground No. 2, the assessee has challenged the sustenance of addition of Rs. 7,86,000/- on account of two cash deposits in his bank account during the year. Briefly stated, the facts of the case are that the assessment in this case has been completed u/s 148 read with section 144 wherein the Assessing Officer has brought to tax an amount of Rs. 12,35,000/- as the assessee has failed to furnish the source of cash deposits in his bank account and in view of the deposits so made remaining unverified.

5. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). During the appellate proceedings before the Id CIT(A), the assessee submitted that he has deposited an amount of Rs. 6,50,000/- on 09.04.2007 in his bank account which was cash given by Smt. Shanti Devi an illiterate lady who wanted to purchase a piece of land, so she gave money to him to purchase the said piece of land. In support, an affidavit of Smt. Shanti Devi was also submitted. Further, the assessee submitted that he has given a cheque of Rs. 1,36,000/- to Sh. Kalyan Singh for deposit in his Kishan Credit Card in lieu of Rs. 1,36,000/- which was deposited in his

bank account. It was further submitted that rest all deposits were made out of earlier withdrawals from his bank account.

6. The Id. CIT(A) called for the remand report from the Assessing Officer. In his remand report, it was stated by the AO that a sum of Rs. 4,49,500/- can be considered to be deposited in the bank account out of earlier withdrawals made from the assessee's bank account and remaining cash deposits of Rs. 7,86,000/- remained unexplained as a story was concocted by the assessee to explain the source of cash deposits.

7. The Id. CIT(A) referred to the affidavit submitted by Smt. Shanti Devi wherein it is stated that Smt. Shanti Devi has sold an agriculture land on 04.04.2007 for a consideration of Rs. 8 lacs, out of which she had given a sum of Rs. 6,50,000/- to the assessee on the same date for purchase of another land and since the agreement for sale of land was cancelled subsequently, she had decided not to purchase land and had taken back her money from the assessee. The Id. CIT(A) stated that neither the date of cancellation nor any documentary evidence was filed by the assessee in this regard. The Id CIT(A) held that Smt. Shanti Devi belongs to Bawaria caste, which is notified as 'scheduled caste' as per the provisions of section 42(b) of Rajasthan Tenancy Act, 1955 and she cannot transfer her agriculture land to a non-schedule caste person, the purported buyer Shri Mahendra Kumar Shukla, who is a Brahmin by caste. Further, the Id CIT(A) held that the assessee has not filed any documentary evidence which may establish that she was owning any piece of agriculture land as on 04.04.2007 and mere furnishing an affidavit do not prove the creditworthiness of Smt. Shanti Devi and it is nothing but self-serving document and thus no cognizance could be given to it and addition of Rs 6.5 lacs so made by the AO was confirmed.

8. Regarding the source of cash deposit of Rs. 1,36,000/- in the bank account of the assessee on 12.04.2007, the Id CIT(A) held that though the assessee had stated that he had issued a cheque of Rs. 1,36,000/- to Shri Kalyan Singh on 11.04.2007 however, no evidence was filed which may establish that the amount of Rs. 1,36,000/- was transferred to Kisan Credit Card and was withdrawn on 11.04.2007 as claimed by the assessee. Accordingly, the addition of Rs 1,36,000 was also confirmed.

9. Regarding the remaining cash deposits of Rs 4,49,500, the Id CIT(A) taking cognizance of the AO's remand report wherein the latter has confirmed that cash deposits to the extent of Rs. 4,49,500/- were made out of earlier cash withdrawals from the said bank account, the addition was deleted.

10. Now, the assessee is in appeal before us in respect of addition of Rs 6,50,000 and Rs 1,36,000 totalling to Rs. 7,86,000/- which was sustained by the Id CIT(A). During the course of hearing, the Id. AR reiterated the submission made before the lower authorities. It was further submitted that regarding cash deposit of Rs. 1,36,000/-, Sh. Kalyan Singh has since expired and the same has been confirmed by his daughter Ms. Santosh Kanwar. Further, our reference was drawn to bank statement of the assessee wherein both the transactions of issuance of cheque No. 795021 dt. 11.04.2007 for Rs 1,36,000 and re-deposit of equal amount of cash in assessee's bank on next day on 12.04.2007 is clearly appearing and it was accordingly submitted that the affidavit given by daughter of late shri Kalyan Singh along with the bank statement of the assessee duly support the explanation so given by the assessee in support of deposit of Rs 1,36,000. Regarding source of cash deposit of Rs. 6,50,000/-, the Id AR

drawn our attention to the confirmation by way of affidavit submitted by Smt. Shanti Devi as well as copy of the agreement to sell which she has entered into with Shri Navneet Kumar Khorwal to sell her agriculture land for Rs. 8 lacs out of which she has received at Rs. 7 lacs and out of which, she has given Rs 6.5 lacs to the assessee for purchase another piece of land. It was submitted that in the said agreement to sell, the particulars of the agriculture land so owned by Smt Shanti Devi is clearly mentioned and the Id CIT(A) is not correct that there is nothing on record to suggest that she owned the agriculture land. It was accordingly submitted that the assessee has duly discharged his initial burden in terms of identity, creditworthiness of the Smt Shanti Devi and genuineness of the transaction and the source of cash deposit is thus clearly corroborated by the affidavit and the copy of agreement to sell entered into by Smt Shanti Devi.

11. The Id DR is heard who has relied on the findings of the AO and the Id CIT(A) which we have already considered and not been repeated for sake of brevity.

12. We have heard the rival contentions and perused the material available on record. It is a settled proposition that where deposits are found credited in the assessee's bank account, the onus is on the assessee to explain the source of such deposits. Regarding source of cash deposit of Rs. 1,36,000/-, the assessee has explained that he has issued a cheque in favour of late Shri Kalyan Singh in lieu of cash given by him. The said explanation is corroborated by the confirmation given by daughter of late Sh. Kalyan Singh and the bank statement of the assessee wherein both the transactions of issuance of cheque No. 795021 dt. 11.04.2007 for Rs 1,36,000 and deposit of equal amount of cash in assessee's bank on next day on 12.04.2007 is clearly appearing and the linkage is clearly

established. The addition of Rs 1,36,000 is accordingly directed to be deleted.

13. Regarding source of cash deposit of Rs. 6,50,000/-, the assessee's explanation is that he has received the said amount from Smt Shanti Devi who wanted to purchase a piece of land and later on, since the said transaction didn't materialise, he has refunded the amount to her. The said explanation is corroborated by the affidavit submitted by Smt. Shanti Devi. Further, in terms of source of cash in hands of Smt Shanti Devi, an agreement to sell has been submitted which she has entered into with Shri Navneet Kumar Khorwal (and not with Shri Mahendra Kumar Shukla as stated by the Id CIT(A)) on 4.4.2007 to sell her agriculture land for Rs. 8 lacs out of which she has received Rs. 7 lacs and the balance amount to be received at the time of registry. The contents of the agreement of sell remain uncontroverted before us. The source of cash deposit of Rs 6,50,000 is thus reasonably explained by the assessee and the initial burden cast on the assessee in terms of identity and creditworthiness of Smt Shanti Devi and genuineness of the transaction has been discharged. The addition of Rs 6,50,000 is thus directed to be deleted.

In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 28/02/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur
दिनांक / Dated:- 28/02/2019

***Ganesh Kr.**

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

1. अपीलार्थी / The Appellant- Rajesh Kishore Sharma Ward No. 13, Village & Post- Chomu Purohitan, Via Khatu Shyamji (Sikar)
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(3). Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 990/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

