

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-'B' 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. 965/JP/2017
निर्धारण वर्ष/Assessment Year :2012-13

Ms. Renu Agarwal C-46, Geeta Apartment, Vidhansabha Colony, Murlipura, Jaipur	बनाम Vs.	Income Tax Officer Ward 4(3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHXPA9435B		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Ms. Shivangi Sandhani (CA)
राजस्व की ओर से / Revenue by : Shri Anoop Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 13/02/2019
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)-2, Jaipur dated 18.09.2017 for AY 2012-13 wherein the assessee has taken the following grounds of appeal:-

- "1. The learned Commissioner of Income Tax (Appeal) erred in law as well as on facts while confirming the additions of Rs. 13,50,000/- out of total additions of Rs. 14,00,000/- by AO.*
- 2. The learned Commissioner of Income Tax (Appeal) erred in law as well as on facts while confirming additions of Rs. 1,81,550/- by AO under the head Freight and Loading and unloading Expenses.*
- 3. The learned Commissioner of Income Tax (Appeal) erred in law as well as on facts while confirming addition of Rs. 34,005/- by AO 10% of the expenses under the head office Expenses, Petrol Expenses,*

Refreshment Expenses, Repair and Maintenance Expenses, Travelling Expenses and Mobile Expenses.

4. The learned Commissioner of Income Tax (Appeal) erred in law as well as on facts while confirming addition of Rs. 40,000/- by AO on account of House Hold Expenses.”

2. In Ground No. 1, the assessee has challenged the addition of Rs. 13,50,000/- out of total addition of Rs. 14,00,000/- by the AO. Briefly stated, the facts of the case are that during the year under consideration, an amount of Rs. 14,00,000/- was introduced as fresh capital by the assessee. The source of the fresh capital has been explained by the assessee as gift of Rs. 11 lacs from her two brothers, Sh. Sanjay Kumar Gupta and Shri Mukesh Kumar Agarwal and the remaining amount of Rs. 3 lacs was claimed to be out of assessee's own past savings. The Assessing Officer however, added the entire amount of Rs. 14,00,000/- as unexplained cash credit in the hands of the assessee stating that the donors were not produced and even the summons issued u/s 131 remained uncomplied with and therefore, the genuineness and creditworthiness of the donors were proved, and further, no corroborative evidence was filed in support of past savings by the assessee.

3. On appeal, the Id. CIT(A) on perusal of the notarized gift deed held that these gift deeds though prove the identity of the donors but not the creditworthiness of the donors. Further, no convincing reasons for their non-attendance were submitted by the assessee. In view of the same, the gifts remained uncorroborated, genuineness and creditworthiness of the donors could not be proved either before the AO or in the present proceedings. Regarding source of the past saving of Rs. 3 lakhs, the Id. CIT(A) held that no corroborative evidence in the form of bank account, IT returns have been submitted by the assessee. However, considering that the assessee has been

doing small business and working since long as claimed, an amount of Rs. 50,000/- was found acceptable and the balance additions of Rs. 2.5 lakhs was confirmed. Against the said findings of the Id CIT(A), the assessee is now in appeal before us.

4. During the course of hearing, the Id. AR reiterated the submissions made before the lower authorities. It was submitted by the Id. AR that the source of Rs. 11 lakh has been explained by the assessee as gifts received from her two brothers and in support, copy of the notarized gift deeds have been filed before the lower authorities which have not been disputed. It was further submitted that the summons issued u/s 131 were duly served on the assessee's brothers, however, due to fear of the Income tax department, they could not appear before the lower authorities. At the same time, they have submitted that where so required, they can appear before the Assessing Officer and confirm the fact of the gift so given by them to the assessee and in support, copy of the affidavit of Sh. Sanjay Kumar Gupta and Shri Mukesh Kumar Agarwal were submitted. Regarding source of the past savings of Rs. 3 lakhs, the Id. AR submitted that the assessee is running her business since 2009 in the name of M/s Prabha Enterprises and has filed her tax returns and given her past earnings, the source of Rs. 3 lakhs is reasonably explained.

5. We have heard the rival contentions and pursued the material available on record. It is not in dispute that the assessee has received cash gift of Rs. 6,00,000/- from Shri Sanjay Kumar Gupta and Rs. 5,00,000/- from Shri Mukesh Kumar Agarwal. Both are brothers of the assessee and in support, copy of the gift deeds have been submitted before the lower authorities. On perusal of the gift deeds, it is noted that they have stated that the gift has been made out of their natural love and affection for their sister and out of their own funds and they have also disclosed their permanent account number.

The identity of the donors is thus clear and the transaction by way of gift to the assessee is also corroborated by way of the two gift deeds, the contents thereof not been disputed by the Revenue. The only dispute relates to creditworthiness of these two donors and in support, they have submitted that gift have been made out of their past savings and where so required, they can appear before the Assessing Officer and provide the necessary explanation. The Id. DR has not raised any specific objections where the matter is set aside to the file of the Assessing Officer. In view of the same, we set aside the matter to the file of the AO to examine and seek the explanation of these two donors in support of gift so made to the assessee. Further, the assessee is also directed to file copy of her past tax returns and fund flow statement in support of her claim of the past savings which have been introduced as capital during the year. In the result, the ground of appeal is allowed for statistical purposes.

6. In Ground No. 2, the assessee has challenged the sustenance of adhoc disallowance of Rs. 10% of the freight and loading and unloading expenses. Briefly stated, the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that the assessee did not maintained proper vouchers of these expenses and payments were made in cash and therefore an amount of Rs. 1,81,550/- being 10% of their expenses were disallowed. On appeal, the same has been confirmed by the Id. CIT(A).

7. During the course of hearing, the Id. AR submitted that the freight and loading and unloading expenses are part of the direct expenses as so reflected in the assessee's trading and profit & loss account. It was further submitted that during the course of assessment proceedings, the Id. AO has examined the variation in the gross profit rate so declared by the assessee and after examination of the books of accounts, trading results so declared by the assessee was accepted. It was accordingly submitted that when the gross

profit rate so declared by the assessee was accepted, there was no basis with the Assessing Officer to separately disallow freight expenses and loading and unloading expenses. We agree with contentions so advanced by the Id. AR and the adhoc additions so made by the Assessing Officer is hereby deleted and the ground of appeal is allowed.

8. In Ground No. 3, the assessee has challenged the adhoc disallowance of 10% of office expenses, petrol expenses, refreshment expenses, repairs and maintenance expenses, traveling expenses and mobile expenses. During the course of assessment proceedings, the AO observed that the assessee did not maintain proper and complete vouchers of these expenses and the payments were made in cash. Further, in absence of any record of mobile calls personal use of mobiles by the assessee cannot be ruled out and he disallowed 10% of these expenses. During the course of hearing, the Id. AR submitted that the no specific expenditure has been highlighted by the Assessing Officer which has not been incurred for the purposes of the business. Therefore, the disallowance of 10% of the office and other expenses is purely on adhoc basis. In our view, there is no basis for adhoc disallowance of expenses and the disallowance so made is hereby directed to be deleted and the ground of appeal is allowed.

9. In Ground No. 4, the assessee has challenged the addition of Rs. 40,000/- by the AO on account of house hold expenses. In this regard, the Id. AO observed that the assessee has not withdrawn any amount for house hold expenses and looking to the basic need for living and other house hold expenses, an amount of Rs. 40,000/- was estimated and the same was added to the total income of the assessee. On appeal, these additions were confirmed by the Id. CIT(A) holding the same to be reasonable.

10. During the course of hearing, the Id AR submitted that the assessee is unmarried and is staying with her parents and siblings at village Kishore Pura. It was submitted that her household need and other expenses were made by her brothers and there was no necessity for her to withdraw any amount for the incurring house hold expenses and all her earnings have been retained in the business. It was further submitted that the Assessing Officer has disallowed 10% of the office and other expenses holding the same to be incurred for personal use and has further made adhoc addition towards household drawings which has resulted in double taxation in the hands of the assessee. We find that the Revenue has not highlighted the basis for arriving at the figure of Rs 40,000. Where any identifiable personal expenditure has been incurred by the assessee and the assessee fails to explain the source of the same, the same can be brought to tax as unexplained expenditure. But, merely because there are no withdrawals, the incurrence of household expenses cannot be assumed and determined on estimated basis. The assessee has given a reasonable explanation for not withdrawing the amount as she is staying with her parents and brothers who are also taking care of her expenditure. The said explanation is not disputed by the Revenue. In view of the same, the addition so made towards household expenses is hereby directed to be deleted and the ground of appeal is allowed.

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

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- Ms. Renu Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward 4(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. 965/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

