

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. 1050/JP/2017  
निर्धारण वर्ष / Assessment Year : 2009-10

Vinod Sain, 33, Karni Colony, Ward No. 1, Harmada, Jaipur- 302013	बनाम Vs.	ITO Ward-7(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BWPPS0957J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sanjeev Mathur &  
Shri Satish Ajmera (CA)  
राजस्व की ओर से / Revenue by : Shri A. K. Mehla (JCIT)

सुनवाई की तारीख / Date of Hearing : 07/03/2019  
उदघोषणा की तारीख / Date of Pronouncement: 18/03/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 31.10.2017 for A.Y 2009-10 wherein the effective ground relates to sustenance of addition of Rs. 13,75,000 without considering the fact that the said amount stood explained to the AO himself and in not considering the statement of Rajendra Kumar Sain before the AO.

2. Briefly stated, the facts of the case are that the assessment in this case was completed u/s 147 read with section 143(3) vide order dated 23.03.2015 wherein the Assessing officer has brought to tax an amount of Rs. 13,75,000/- as unexplained deposit found deposited in the bank account of the assessee.

3. During the course of assessment proceedings, the assessee's explanation was sought and in his response, the assessee submitted that the said amount was given by his cousin brother Sh. Rajendra Kumar Sain as the latter wanted to purchase a house. In order to verify the said explanation so submitted by the assessee, statement of Sh. Rajendra Kumar Sain was recorded by the Assessing officer during the course of assessment proceedings, wherein in response to question No. 7, he has stated that he has given the said amount to the assessee for purchase of a residential house. However, the AO did not accept the said explanation for the reason that Sh. Rajendra Kumar Sain was also having a bank account maintained with Bank of Baroda. Accordingly, a show cause was issued to the assessee during the course of assessment proceedings. In response, the assessee submitted that Sh. Rajendra Kumar Sain is educated upto 5<sup>th</sup> class and like other uneducated villagers, he is afraid of operating his bank account and given that he wanted to purchase a residential house, he has given an amount of Rs. 13,75,000/- to the assessee out of the sale proceed of agriculture land. However, the AO did not find the said explanation acceptable and brought to tax the amount of Rs. 13,75,000/- as unexplained deposit in the hands of the assessee. Being aggrieved, the assessee carried the matter in appeal before Id. CIT(A) who has confirmed the said addition.

4. During the course of hearing, the Id. AR reiterated the submissions made before the AO and submitted that in his reply to the AO, the assessee stated that such amount belongs to his cousin Sh Rajendra Kumar Sain. It was submitted that Shri Rajendra Kumar Sain along with his brother and sister sold their Agriculture Land situated at Tehsil Amer on 19.04.2008 for a total consideration of Rs 22,40,000/-received in cash, out

of such amount, Mr Rajendra Kumar Sain gave an amount of Rs 9,00,000/- to the assessee on 23.04.2008 and Rs 4,75,000/- on 24.04.2008 to keep the money on his behalf. The assessee deposited such sum on the same day in his bank account. It was submitted that the AO made an addition merely on the ground that Mr. Rajendra Kumar Sain, cousin of assessee himself had the bank account. In answer to question no.1 of the statement recorded by the Ld A.O, Mr Rajendra Kumar Sain has stated that he is educated upto 5<sup>th</sup> class, and we submit that all villagers, who are not very educated are afraid of operating Bank accounts and so the fact that Mr. Rajendra Kumar Sain was himself having the bank account does not have any relevance on the source of funds. The AO has nowhere stated from where the appellant could have got the funds and has merely stated that the income is undisclosed. It was submitted that there is no infirmity in someone having a small bank account, operation of which he does not really understand due to his lack of education and being a villager, and giving the amount to his Senior cousin as the amount also includes the share of his sister, to keep it safe for him and to return as and when required by him. It was further submitted that Mr. Rajendra Kumar Sain in his reply to the question No 7 of his statement u/s 131 of Income Tax Act, 1961 before the Assessing Officer has specifically stated that he has given Rs. 13,75,000/- out of the sale proceed of agriculture land to the assessee as he wanted to purchase a house. The source of the amount of Rs. 13,75,000/- has also been established and assessee has discharged the onus completely regarding source of source. The sale of Agriculture land by Rajendra Kumar Sain took place on 19/04/2008 and the amounts were deposited in the Bank on 23<sup>rd</sup> April and 24<sup>th</sup> April 2008 respectively. It was further submitted that Mr Rajendra Kumar Sain has also confirmed in his reply to question No 7 that the said amount of Rs. 13,75,000/- had also been returned by the assessee to him by 5/07/2008 from which Mr

Rajendra Kumar Sain purchased a plot for Rs. 11,51,000 on 18/07/2008 and he required some money for the marriage of his sister. It was accordingly submitted that the assessee has proved that the said amount does not belong to him nor it is undisclosed income or investment and has fully discharged the onus and the addition so made by the AO and sustained by the Id CIT(A) be deleted.

5. The Id DR is heard who has relied on the orders of the lower authorities.

6. We have heard the rival contentions and perused the material available on record. It is a settled legal proposition that where an amount is found deposited in assessee's bank account, the onus is on the assessee to explain the source of such deposits and provide the necessary explanation. During the course of assessment proceedings, the assessee has submitted that the amount of Rs 13.75 lacs found deposited in his bank account belongs to his cousin brother, Rajendra Kumar Sain. In order to verify the veracity of such explanation, the AO has summoned Rajendra Kumar Sain and his statement was recorded u/s 131 of the Act. In his statement, he has categorically admitted that he has given the amount to the assessee out of sale proceeds of their agricultural land. He has also stated the purposes of giving such deposit to the assessee and also the fact that the said amount has subsequently been refunded back by the assessee to him. The explanation regarding source of deposit in assessee's bank thus stand corroborated by the statement of Rajendra Kumar Sain to whom such money belongs and the latter has also explained the source of such deposits in his hand which arise out of sale of their agricultural land holding. In our view, in light of these undisputed facts which have not been disputed by the Revenue, the onus cast on the assessee stood discharged and the source of deposits in the assessee's bank account is

thus fully explained. We accordingly direct the Assessing officer to delete the addition so made in the hands of the assessee.

In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 18/03/2019

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:- 18/03/2019

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Vinod Sain, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 7(4), 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. 1050/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

