

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. 04/JP/2014
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Subhash Chand Soni Prop. M/s Ramniwas & Sons Jaipur	बनाम Vs.	ITO Ward- Dausa
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AOCPS1629F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 10/01/2019
उदघोषणा की तारीख / Date of Pronouncement: 25/03/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-22, Alwar dated 13.11.2013 wherein the assessee has raised the following grounds of appeal.

- "1. That Id. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the addition of Rs. 1000/- in respect of interest on saving bank account even when the same has already been included in the profit & loss account as other income.*
- 2. The Id. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the addition of Rs. 22,55,000/- made by the AO by treating the deposit in Saving Bank A/c as unexplained.*
- 3. The Id. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the addition of Rs. 4989/- made by the*

AO by treating the closing balance in saving bank account as unexplained investment.

2. During the course of hearing, Ground No. 1 & 3 were not pressed hence these grounds are dismissed as not pressed.

3. The only ground of appeal thus relates to addition of Rs. 22,55,000/- made by Assessing Officer by treating the deposit in Saving Bank A/c maintained with Malviya Urban Co-operative Bank as unexplained.

4. Briefly, the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that there are cash deposits of Rs. 22,55,000/- in the saving bank account maintained with Malviya Urban Co-operative Bank. After seeking the explanation of the assessee and also taking into consideration the statements of some of the persons from whom the assessee claimed to have received the amount, the AO made the addition of Rs 22,55,000 u/s 68 of the Act. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has since confirmed the said addition and now the assessee is in appeal before us.

5. During the course of hearing, the Id. AR submitted that the assessee has received a total sum of Rs. 16,01,575/- from various persons for the purpose of carrying out transaction on NCDEX stock exchange on their behalf, the assessee acted as an agent of such persons and the amount received from them were deposited in his bank account and thereafter the assessee invested the same on their behalf on NCDEX. It was submitted that during the course of assessment proceedings, affidavits of such persons were submitted in order to substantiate the genuineness of the transaction undertaken by the assessee. Further, the AO also issued notices

u/s 131 to 5 persons and they also confirmed the payment made by them to the assessee and it was accordingly submitted that the assessee has proved the identity of the persons from whom the amount was received. Further, the assessee also submitted the client financial account statement issued by the broker indicating the receipts from assessee's bank account. It was submitted that the tax authorities have not been appreciated the fact that the assessee was from a very small town of Dausa where not every person has the knowledge and the skills to get into commodity transactions, for that reason they normally choose any person engaged in such business to act on their behalf and it was submitted that as the assessee was simply lending his name to the transaction whereas the actual investor and the beneficiary were the person who had given cash to the assessee. It was further submitted that non maintenance of vouchers cannot be held against the genuineness of transaction. It is common place for people of small income group to pool their savings and make investments, these transaction are mostly done on trust with no major documents being maintained, also the fact that all the person who had paid cash to the assessee confirmed the same by way of affidavits and some of them were issued summons by the Assessing Officer and their statements were recorded where they have confirmed the transactions.

6. It was further submitted that other source of cash deposit is the jewellery amounting to Rs. 1,32,200/- sold by the assessee and details depicting the sale amounting to Rs. 95,900/- is as under:-

S. No.	Date	Name	Address	Amount	PB page
1.	15.07.2008	Babulal Anil Kumar Soni	Sarrafa Bazaar, Mehwa Dausa	51,100	26
2.	15.04.2008	Kaushal	Sarrafa Bazaar,	32,500	27

		Kumar Tanu Kumar Soni	Mehwa Dausa		
3.	28.05.2008	Jagdamba Jewellers	Sarrafa Bazaar, Ganesh Chauk, Mehwa Dausa	12,300	28
Total				95,900	

7. It was further submitted that other source of deposit is the amount transferred from other bank account maintained by the assessee amounting to Rs. 5,21,225/- as well as from cash in hand of the assessee. The details of the transfer from SBBJ Bank, Mahuwa is as under:-

Bank : SBBJ, Mahuwa		
Date	Amount	PB
07.01.2009	55,000	30
29.01.2009	80,000	30
19.02.2009	12,460	30
09.03.2009	1,00,000	1
Total	2,47,460	

Further, the assessee has received cheques from M/s Fortune (MCX Company) totaling to Rs. 2,45,000/- and the assessee was having opening balance of Rs. 62,606/- in the said account and it was accordingly submitted that the addition made by the Assessing Officer deserves to be deleted.

8. Per contra, the Id. DR relied heavily on the findings of the lower authorities. It was submitted that the assessee has been given sufficient opportunity not just during the assessment proceedings but also during the

appellate proceedings and the remand report of the AO has been called twice by the Id. CIT(A) and our reference was drawn to the remand report dated 14.08.2013, the contents thereof reads as under:-

"1. *Received from clients in business of speculation 16,01,575/-*

a) The assessee has filed ITR 4 (In paper mode) on 31.03.2010, wherein there is specific column in schedule 'BP' for mention of profit/loss from speculation business but the assessee has shown blank this column.

b) In the computation of total income submitted during assessment proceedings no profit/loss shown from speculation business.

c) In the schedule AIR of ITR4 the assessee has not mentioned the details of cash deposits in SB Account with Malviya Urban Co-operative Bank, Jaipur in the relevant column of code no. 001.

d) This bank account has not been shown by the assessee in return of income, in computation of total income and in balance sheet also which were filed during assessment proceedings.

e) For running a speculation business in MCX/NCDEX there is requirement of terminal, for which at least one computer is required. There is no computer in the fixed assets shown in the balance sheet of the assessee.

f) No records/vouchers of transactions (sauda) by so called clients regarding purchase/sales by these persons in any of the commodity (gold/silver/agricultural produces etc.) have been produced by the assessee. The assessee has failed to produce even a single voucher of MCX/NCDEX trade made by his clients or at his own.

g) If there was genuine transactions by clients, there should be some order register, record of advance deposits for making sauda on their behalf and a regular flow of transactions for certain period which establish that the client is regularly making speculation transactions where sometimes he gains and sometimes loses, but no such record have been produced by the assessee.

All these facts suggest that the assessee intended to conceal this particular bank account from the income-tax department even though his case was under scrutiny. When he came across the fact that the department is having information regarding cash deposits of Rs. 22,55,000/- in his bank account then only he filed revised return of income/computation of total income on 24.11.2011 wherein he mentioned loss from speculation business of Rs. 1,32,582/-. The assessee concocted a story that he was also engaged in speculation business in the course of which some clients gave him cash with regard to losses incurred in their accounts which was deposited in the SB account with Malviya Urban Co-operative Bank.

2. Received from sale of jewellery Rs. 1,32,200/-

The assessee was specifically asked to submit the complete records related to acquisition and sale of jewellery but he could not. It was submitted by the assessee that there were old ancestral ornaments of his family which were sold in cash at his own shop and no vouchers are with him. He further submitted that these ornaments were sold to agriculturist and he is having no details of that persons. The above version indicates that the above is only a story and there is no justification for it with the assessee. Being a trade person since 20-25 years in this goldsmith line, it cannot be believed that assessee is so innocent that he would have not taken any

vouchers/records/details of the persons or the transactions made for sale of his own jewellery. The assessee should have disclosed capital gain on account of these transactions in his return of income, if these were the real transactions. The assessee has not shown capital gain even in the revised return of income filed during assessment proceedings.

From the above discussion it should be held that there was no actual sale of jewellery and the arguments given by the assessee are nothing but an afterthought.

3. Transfer from other bank accounts- Rs. 5,21,225/-

Regarding transfer entries of Rs. 5,21,225/- in the bank account of the assessee with Malviya Urban Co-operative Bank, Jaipur this is factually incorrect. There is only one entry of Rs. 67500/- dated 28.04.2008 by way of clearing from Anil Soni. There is no other credit entry by way of clearing/transfer. The assessee and his AR submitted that out of cash deposits of Rs. 22,55,000/- in this account there are deposits of Rs. 2,47,460/- (55000 dt. 07.01.2009, 80000 dt. 29.01.2009, 12460/- dt. 19.02.2009 and 100000/- dt. 09.03.2009) are out of withdrawals from SBBJ, Mahuwa account and remaining deposits are out of cash in hand with assessee from his proprietary business. Regarding deposits in SBBJ, Mahuwa it was submitted by the assessee that source of these deposits are cheques received from M/s Fortune (MCX Company). There was opening balance of Rs. 62,606/- also in this bank account.

The assessee was also asked to submit his personal balance sheet as on 31.03.2008 but he could not submit the same for the reasons best known to him. On the date of hearing (02.08.2013) he sought further time for submission of balance sheet which has been

denied by the undersigned as there was sufficient period already allowed.

In view of detailed discussion as supra, the submission/explanation submitted by the assessee during appellate proceedings deserves to be rejected.”

9. We have heard the rival contentions and perused the material available on record. It is a trite law that where amount is found deposited in the assessee's bank account, the onus is on the assessee to provide the necessary explanation to explain the source of such deposits. In the present case, the assessee has stated that an amount of Rs 16 lacs was received from various persons for commodity trading on their behalf on MCX/NCDEX. In support, affidavits of these persons were submitted and some of the persons have been issued summons by the AO and their statements were recorded. The findings of the lower authorities on review of such affidavits and statements is that these persons are man of no means and thus lack the creditworthiness vis-à-vis the amount which has been shown as invested by them. Further, the lower authorities have held that there are no documentation in support of the fact that the assessee has carried out the transactions on behalf of these persons. The onus therefore has shifted back to the assessee and the latter has to demonstrate that these persons have the creditworthiness to invest and he has actually carried out the transactions on their behalf. Merely routing the funds from the assessee's bank account to the broker's account establishes only the movement of funds from assessee's account to the broker's account, it doesn't establish that the initial funds so found deposited in the assessee's bank account have been received from these persons and are not assessee's own funds. We accordingly confirm the following findings of the Id CIT(A) which is reproduced as under:-

"7.10 Having considered the material available on record, I find that the appellant has not been able to prove the sources of cash deposits made in the bank accounts for the purposes of carrying out transactions of commodity trading on NCDEX. Further, there is no evidence that these transactions were carried out as a business activity on behalf of certain clients. The AO has given ample opportunities in the course of remand proceedings not once but twice to the appellant to substantiate its claim. This issue has already been discussed above in the remand report of the AO which has been reproduced for the sake of convenience. But, the appellant has failed fully and squarely on this account. The so-called clients of the business who are stated to have given cash for deposition in the bank account is only an after thought and they are man of no means as may be seen from the level of income stated. This plea has been taken to avoid the onus which lay upon the appellant to prove the sources of deposits in cash. These transactions and bank accounts were not disclosed in the ITR filed by the appellant and also no evidence of any regular business activity was found by the AO. The submissions made by the appellant are only a reflection of an afterthought and are aimed to cover up the transactions which could not be disclosed. The remand report of the AO clearly reflects the status of the affairs in this regard."

10. Regarding sale of old jewellery, the assessee has produced evidence to the extent of Rs 95,900 and to that extent, the addition is deleted.

11. Regarding transfer from other bank accounts, we find that there are cheque deposits of Rs 2.45 lacs in SBBJ relating to MCX trading and there are equivalent withdrawals of cash and to that extent, deposit of cash in Malviya Urban Corporation Bank from where such transactions were

undertaken stood explained. Thus, source of cash deposit of Rs 2.45 lacs stood explained and addition to that extent is deleted.

In the result, appeal of the assessee is partly allowed.

Pronounced in the Open Court on 25/03/2019.

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:- 25/03/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Subhash Chand Soni, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-Dausa
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. 04/JP/2014}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

