

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. 238/JP/2018
निर्धारण वर्ष/Assessment Year :2009-10

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| Shri Shiv Prasad Parashar Choti Basti, Pushkar (Ajmer) | बनाम Vs. | Income Tax Officer, Ward 1(3), Ajmer |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BGAPP4554P | | |
| अपीलार्थी /Appellant | | प्रत्यर्थी /Respondent |

निर्धारिती की ओर से / Assessee by : Shri G. C. Jain (Adv.)
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 28/01/2019
उदघोषणा की तारीख / Date of Pronouncement: 08/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 01.12.2017 wherein the assessee has taken the following grounds of appeal:-

- "1. The learned Commissioner of Income-tax (Appeals) Ajmer grossly erred in Law and on facts in confirming the asstt. order dated 13-10-2016 without any cogent, valid and justifiable reasons;*
- 2. that the Id. CIT(Appeals) grossly erred in law and on facts in confirming the addition of Rs. 6,46,637/- made by the ITO in spite of the fact that complete details of source of investment in ICICI Prudential Life FDRs and others were furnished along with necessary evidence;*
- 3. that the Id. CIT(A) grossly erred in Law and on facts in not considering the contention of the appellant that the ITO wrongly made the impugned addition in asstt. year 2009-10 after taking into account*

the transactions of 2 years i.e. F.Years 2007-08 and 2008-09 (relevant to asstt. year 2008-09 and 2009-10) which is ab-initio, void & illegal.

4. that the order confirmed by the learned CIT(Appeals) is bad in law, based on surmises and conjectures, arbitrary and capricious, in-judicious and against the settled principal of law. As such the same deserves to be quashed."

2. Briefly stated, the facts of the case are that the Assessing Officer received certain information from the Dy. Director of Income-tax (Inv), Unit 5(1), Mumbai that the assessee has invested in the ICICI Prudential life Insurance policies during the period 2007 and 2008 and the assessee has paid 83% of premium amounting to Rs. 7.55 lakhs through cash and demand draft. The Assessing Officer further stated that the assessee has not filed any return of income for the subject assessment year and therefore, income to the extent of Rs. 7.55 lakhs has escaped assessment. Accordingly, notice u/s 148 of the IT. Act was issued by AO to the assessee on 30.03.2016 after seeking prior approval from the appropriate authority. In response, the assessee filed his return of income disclosing income of Rs. 135,900/-. During the course of assessment proceedings, the assessee was asked to submit source of the amount invested in the ICICI prudential life insurance policies. In response, the assessee submitted that he has received an amount of Rs. 404,183/- in terms of loan taken from the LIC of India during the FY 2007-08 and has received an amount of Rs. 6,46,637/- during the F.Y 2008-09 in respect of maturities of post office RD deposits, both totaling to Rs. 10,49,391/-. The Assessing Officer, thereafter, referring to the amount invested in the insurance policies amounting to Rs. 919,500/- during FY 2007-08 and an amount of Rs. 7,01,528/- during the FY 2008-09, held that the assessee has invested in policies by way of premium a total sum of Rs. 16,96,028/- in the life insurance policies which also include deposit of Rs 75,000 with UCO Bank. It was stated by the AO that

against the deposit of Rs 16,96,028, the assessee has shown the source of deposit totaling to Rs. 10,49,391/- only and therefore, there is short fall to Rs. 6,34,684/- the source of which remained unexplained and a show-cause was accordingly issued to the assessee. After considering the submission of the assessee though not founding the same acceptable, the AO brought an amount of Rs. 6,46,637/- to tax as amount invested in deposits and LIC premiums during the year under consideration for which the source remaining unexplained invoking the provisions of section 69 of the Act. On appeal, the Id. CIT(A) has confirmed the said addition and now, the assessee is in appeal before us.

3. We have heard the rival contentions and pursued the material available on record. It is noted that the Assessing has adopted a consolidated approach wherein he has clubbed the amount invested by way of premium in the insurance policies as well as deposits in two FYs 2007-08 and 2008-09 and thereafter, has examined the source of such investments and to the extent of such source remaining unexplained, the same has been brought to tax as unexplained investment u/s 69 of the Act. It is a settled legal proposition that each year is an independent assessment year and what can be brought to tax during the year is the income which has accrued/arisen or which has been received by the assessee during the financial year relevant to the assessment year. Further, even under the deeming provisions of section 69 so invoked by the AO, it is provided that where in the financial year, the assessee has made investments which are not recorded in the books of accounts and the assessee offers no explanation or the explanation so offered is not found satisfactory, the value of such investment may be deemed to be the income of the assessee for such financial year. Therefore, what has to be seen is the investment and/or deposits which has been made by the assessee during the financial year 2008-09 relevant to impugned assessment year and the assessee's explanation

regarding the source of such investment and whether the same is found satisfactory in the facts and circumstances of the present case. In the financial year 2008-09, the assessee has invested an amount of Rs. 7,01,528/- in various insurance policies of the ICICI Prudential insurance company and has explained that the source of such investment is out of Rs. 6,45,208/- which has been received during 2008-09 in terms of maturity of RD accounts with the post office. Therefore, to the extent of Rs. 6,45,208/-, the amount of premium paid towards life insurance policies has been duly explained. Regarding the balance amount of Rs. 56,320/-, it is noted that there is opening balance of Rs 24,226 in various bank accounts of the assessee which can be reasonably taken as source of such investments and therefore, to that extent, the amount of investment has been duly explained. Therefore, what remains is an amount of Rs 32,094 in respect of which the explanation of the assessee that source of such investment is out of the withdrawals from his accounts is not found satisfactory as such withdrawals have happened in earlier financial years and not during the financial year under consideration and it cannot be determined that such withdrawals were available with the assessee during the year under consideration. Accordingly, the addition to the extent of Rs. 32,094/- remained unexplained which is hereby sustained and the Assessing Officer is hereby directed to delete the balance addition of Rs 614,543/-.

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

Pronounced in the Open Court on 08/04/2019.

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:- 08/04/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Shiv Prasad Parashar, Ajmer
2. प्रत्यर्थी / The Respondent- The ITO, Ward-1(3), Ajmer
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. 238/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

