

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

Pawan Kumar Meena 720, Balaji Nagar Near Rangbadi, Kota	बनाम Vs.	ITO, Ward-1(2), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AITPM6382L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vinod Gupta (CA)
राजस्व की ओर से / Revenue by : Shri Varindar Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 30/01/2019
उदघोषणा की तारीख / Date of Pronouncement: 15/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 30.01.2018 for AY 2009-10 wherein the assessee has raised the following grounds of appeal:-

- "1. Impugned assessment order passed u/s 250/147/148 is bad in law and on facts being against the principal of natural justice and for many more other reasons.*
- 2. Under the facts and circumstances, Id. CIT(A) has erred by sustaining the initiation of proceeding u/s 147/148 of the Income tax Act, 1961. The initiation of proceeding is illegal and unjustified.*
- 3. Under the facts and circumstances, Id. AO has erred in making addition of Rs. 12,45,000/- by treating cash deposited in savings bank*

account as unexplained income u/s 69 of the Income Tax Act, further, CIT(A) has erred by sustaining the same. The addition sustained is unjustified, illegal or excessive.

4. Under the facts and circumstances, Id. AO has erred by not considering that cash withdrawals from bank was available for deposition of cash in bank account, further, CIT(A) erred by not considering the same.

5. Under the facts and circumstances, the Id. AO has erred by determining total income of the appellant to be Rs. 13,88,790/-. Further, CIT(A) has erred by confirming the same.

6. Under the facts and circumstances, the Id. AO has erred by initiating penalty proceeding under section 271(1)(c) of the Income Tax Act, 1961.”

2. Briefly stated, the facts of the case are that proceedings u/s 147 were initiated in case of the assessee on the ground that there were cash deposits of Rs. 23,43,500/- in his saving bank account and the same were not verifiable as the return of income was not filed by the assessee and income to the extent of Rs 23,43,500 has escaped assessment. In response to the notice issued u/s 148, the assessee filed his return of income declaring total income of Rs. 1,43,790/- which includes Rs. 1,34,540/- as business income u/s 44AF of the Act. The Assessing Officer after given the benefit of Rs. 11,00,000/- shown as withdrawals in the previous financial year has brought to tax the balance amount of cash deposits of Rs. 12,45,000/- as unexplained income u/s 69 of the Act. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the findings of the Assessing Officer. Now, the assessee is now in appeal before us.

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

4. In Ground No. 2, the assessee has challenged the initiation of proceedings u/s 147 of the Act. During the course of hearing, the Id. AR submitted that from the perusal of reasons recorded by the Assessing Officer before issuance of notice u/s 148, it can be noted that the case of the assessee was reopened due to cash deposition of Rs. 23,43,500/- in his saving bank account. It was submitted that in the reasons so recorded, neither bank name nor account number in which such amount was deposited is mentioned. It was further submitted that the entire basis of re-opening of case is non-filing of return therefore cash deposit is not verifiable. In this regard, it was submitted that the assessee was engaged in the retail business of building material and was not required to file return of income as his income was below taxable income. It was further submitted that the deposit of cash itself in the bank account of the appellant does not establish any live nexus between the information and formation of belief that it represents income and, hence, there was escapement of income. It was further submitted that the factum per se of cash deposits in the bank account could not be made a basis for holding the view that income had escaped assessment. It was submitted that the AO has merely acted upon the AIR information and has not applied his own mind nor any efforts were made to verify the information rather he acted in a purely mechanical manner. In support, reliance was placed on the various Co-ordinate Bench and High Court decisions.

5. Per contra, Id. DR supported the order of the lower authorities and submitted that the cash deposits were made in the saving bank account of the assessee and the AO thus has the tangible material to form the belief that income in the hands of the assessee has escaped taxation. It was submitted

that the factum of cash deposits beyond a prescribed threshold which has triggered the automatic sharing of information by the bank with the AO through the AIR is clearly a tangible piece of information which linked the cash deposits with the bank account which is in the name of and operated by the assessee and which is not disclosed by the assessee in his return of income. It was submitted that once cash is found deposited in the bank account of the assessee, the presumption is that such deposits belong to the assessee and it is for the assessee to demonstrate that such deposits are out of his regular business transactions and/or have been reported in his return of income. In absence of any return of income so filed by the assessee wherein he has disclosed his saving bank account, the Assessing officer is well within his right and jurisdiction to form a belief that such deposits are in nature of income which has escaped taxation. It was submitted that such prima facie belief is sufficient enough for the Assessing officer to assume jurisdiction u/s 147 where the assessee has not filed his return of income. It was accordingly submitted that there is no basis for challenging the initiation of proceedings u/s 147 as contended by the Id. AR.

6. Heard both the parties and perused the material available on record. We find that it is a case where return of income has not been filed by the assessee and pursuant to notice u/s 148, he has filed his return of income. Prior to such notice u/s 148, there is no past history of the assessee where he has filed any return of income wherein he has disclosed the savings bank account. For the first time, the matter was opened for the reason that there are cash deposits worth Rs 23,43,500 in his saving bank account which have escaped taxation. It is therefore a case of assessment and not reassessment and for the purposes of assumption of jurisdiction u/s 147, what is required is that the Assessing officer should have reasons to believe any income chargeable to tax has escaped assessment. It has also been provided in explanation to section 147

that where no return of income has been furnished by the assessee although his total income during the previous year exceeded the maximum amount which is not chargeable to income- tax, it will be deemed to be a case where income chargeable to tax has escaped assessment. Once cash deposits of Rs 23,43,500 is found deposited in assessee's saving bank account which has not been disclosed to the Revenue authorities, formation of a prima facie belief on part of the Assessing officer that such deposits have escaped taxation cannot be faulted. There is sufficient material in possession of the Assessing officer in form of cash deposits in his savings bank account and the factum of such cash deposits and the bank account belonging to the assessee has not been disputed before us. It is also a fact that the assessee has not filed his return of income for the year under consideration and such bank account thus has not been disclosed to the Revenue authorities. Therefore, there is a sufficient nexus between the material and formation of belief that income has escaped taxation. The argument of the Id AR that the whole of deposits cannot be regarded as income and therefore the assumption of jurisdiction is vitiated under law is not correct. To our mind, so long as there is an element of income which has escaped taxation and which exceeds the maximum amount which is not chargeable to tax, the same is sufficient enough to uphold the jurisdiction so invoked by the AO u/s 147 of the Act. At the stage of assumption of jurisdiction u/s 147, what is required is formation of a prima facie view that certain income which find mention in the reasons so recorded has escaped taxation and the Assessing officer is therefore not required at that stage to firm up his belief in terms of exact quantum of income which has escaped taxation. Once the jurisdiction is assumed, the quantum of income is a matter of examination and the assessee will also get an opportunity to explain his position and provide the necessary explanation. Therefore, we donot see any infirmity in assumption of jurisdiction u/s 147 by the AO. The decisions relied upon by the Id AR are distinguishable and are rendered in the

context of peculiar facts and circumstances of the case where the assessee has already filed his return of income and therefore, doesn't support the case of the assessee. In the result, ground of appeal is dismissed.

7. Now coming to Ground Nos. 3 and 4 wherein the assessee has effectively challenged the addition of Rs. 12.45 lacs on merits by treating cash deposits in his saving bank account as unexplained and taxable u/s 69 of the Act.

8. During the course of hearing, the Id. AR submitted that out of cash deposits of Rs. 23,45,000/- during the year under consideration, an amount of Rs. 11 lacs have been considered as available out of cash withdrawals in March, 2008 and the remaining amount of Rs. 12,45,000/- have been brought to tax as unexplained income in the hands of the assessee. It was submitted that undisputed facts are that during the year under consideration, there were cash withdrawal of Rs. 23,59,881/- which have not been denied and evident from the bank statement and same has been included in cash flow statement so submitted by the assessee. The cash flow statement from bank is a factual statement and not under any doubt. Out of said withdrawal of Rs. 23,59,881/-, it was submitted that alleged unexplained amount of Rs. 12.45 lacs have been deposited. The Id. AO based upon presumption as evident from his findings that "might have been utilized" that withdrawal has been used for business purpose and other needs. The Id. AO has not come to the conclusion that explanation offered is false rather he choose to proceed with presumption and without any material or basis. No alternative use have been specifically pointed out. It was accordingly submitted that the contention of the assessee that out of the cash withdrawals, the amount has been re-deposited in the bank account should be accepted. In support, reliance was placed on the various Co-ordinate Bench decisions. It was further submitted that the assessee is a retail businessmen who has filed his income tax return u/s 44AF of the Act and

therefore, the assessee is not under any obligation to explain each and every entry of the bank. Reliance was placed on the Hon'ble Punjab & Haryana High Court decision in case of CIT vs. Surinder Pal Anand (*ITA No. 156 of 2010, vide order dated 29.06.2010*). It was submitted that the Assessing Officer has alleged that certain payments have been made to certain persons/firms through cheque and these are related to the business. Even otherwise, even for sake of argument, if we look at entire turnover as received in cash and purchases also in cash, the withdrawal is available for re-deposition. It was further submitted that the assessee is a retail trader and does not require to maintain books of accounts, the deposition and withdrawal utmost can reflect sale and purchase which is already part of the declared turnover. In support, reliance was placed on the Co-ordinate Bench in case of Chittar Singh Gurjar vs. ITO (*ITA No. 594/JP/2016 vide order dated 26.09.2016*) and in case of ITO vs. Pushpendra Kuamr Jain (*ITA No. 289/JP/2012 vide order dated 01.01.2016*).

9. Per contra, the Id. DR relied on the finding of the lower authorities and it was submitted that the assessee is advancing contradictory theories. While on the one hand, he has filed his return of income based on total receipts of Rs. 26,04,500/- and offered profit @ 5% u/s 44AD, on the other hand he seeks to get re-deposits considered against the cash withdrawal when, in reality these were several cheques shown as issued to particular persons as highlighted by the AO in his order. Further, once there are no supporting evidences, a self prepared cash book could not be accepted as the basis to treat the deposits as explained. Under the circumstances the theory of reintroduction of the cash again as the explanation to reduce the unexplained amount cannot be accepted and therefore, the addition of Rs. 12,45,000/- being unexplained income should be confirmed.

10. Heard both the parties and perused the material available on record. We find that out of deposits of Rs 23,45,000, deposits to the extent of Rs 11 lacs has been found explained as made out of withdrawals in the month of March 2008. Regarding the remaining amount found deposited, we find that the Revenue has accepted the turnover of the assessee from his business of supply of building material to the tune of Rs 26,04,540, therefore, the source of deposits to the extent of Rs 12,45,000 found deposited in the bank account can reasonably be held from such business and thus stand duly explained. Regarding the cheque withdrawals/payments made by the assessee to the tune of Rs 14,46,384, we find that there is an equivalent amount of cheque deposits to the tune of Rs 14,60,241 in the bank account which again reasonably explain such cheque payments as made out of cheque deposits. In the result, we hereby delete the addition to the extent of Rs 12,45,000 so sustained by the Id CIT(A). In the result, the ground of appeal is allowed.

11. Ground No. 5 is general in nature which does not require any separate adjudication. Ground No. 6 is regarding initiation of penalty proceedings, the same is not arising out of the present proceedings and the same is dismissed.

In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 15/04/2019.

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:- 15/04/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Pawan Kumar Meena, Kota
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Kota
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. 615/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

