

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 612/JP/2018
निर्धारण वर्ष / Assessment Year :2009-10

Shri Raja Daga, 9, Raj Bhawan Road, Civil Line, Jaipur.	बनाम Vs.	I.T.O., Ward 2(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGTPD 0397 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.L. Jain (Adv.)
राजस्व की ओर से / Revenue by : Shri Rajendra Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 24/05/2019
उदघोषणा की तारीख / Date of Pronouncement : 30/05/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Kota dated 15/03/2018 for the A.Y. 2009-10 in the matter of order passed U/s 143(3) read with Section 147 of the Income Tax Act, 1961 (in short the Act).

2. In this appeal, the assessee is aggrieved for reopening of assessment U/s 147 of the Act and also against the action taken by the Id. CIT(A) in upholding the peak credit addition of Rs. 4,34,019/- in respect of cash deposit in the bank account.

3. We have gone through the orders of the authorities below and found from the record that as per AIR information available on the system it was noted that the assessee had deposited cash and paid Rs. 37,46,736/- against credit card bills for the F.Y. 2008-09 relevant to A.Y. 2009-10 under consideration. From the record of the ITO, Ward 2(3), Jaipur it was noticed that the assessee had not filed his return of income for the assessment year under consideration. Hence, the above payment against credit card bills and cash deposited in Axis bank Ltd. by the assessee was not verifiable. Therefore, notice U/s 148 was issued on 23/03/2016 by the ITO Ward 2(3), Jaipur after recording reasons and taking prior approval from the Pr.CIT-1, Jaipur.

4. During the course of reassessment proceedings, the A.O. added entire amount of cash deposited in the bank account amounting to Rs. 24,70,500/- on the plea that the assessee could not explain the source of deposit.

5. By the impugned order, the Id. CIT(A) upheld the addition of peak credit to the bank account amounting to Rs. 4,34,019/- against which the assessee is in further appeal before the ITAT.

6. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record

that in so far as the reopening is concerned, we are satisfied that there was sufficient reason to believe before the A.O. that there was escapement of assessment of income to the extent of cash amount deposited in bank account. After following the proper procedure, the A.O. issued notice U/s No. 148 of the Act and thereafter reassess the income of the assessee after adding Rs. 24,70,500/- in respect of cash found/deposited in the Axis Bank account. It was the contention of the assessee before the lower authorities that the assessee was doing business of trading of wedding cards and also the business of furnishing anterior work. The business of wedding card was under the name of Lovely Agencies on which the assessee has offered 8% of the gross receipt amount of Rs. 9,51,603/- Thus in the computation of income filed alongwith return the assessee has offered Rs. 76,128/- U/s 44AD of the Act. However, with respect to its business of interior designing and decoration, the assessee had shown profit of Rs. 60,580/- under the head income from other sources. The contention of the Id AR was that the cash deposited in the bank account was out of the sale proceeds of these business activities. So far as the business of trading of wedding cards is concerned, we found that the assessee has already offered 8% of the gross receipt U/s 44AD of the Act. However, income of Rs. 44,860/- has been offered with respect to its business of decoration and interior

designing. In this respect, as per the P&L account placed on record, the assessee had shown gross receipt of Rs. 27,89,580/-. As per computation of income, the assessee had offered income of Rs.44,860/- on such activity of furnishing and decoration. Since the assessee could not produce bills and vouchers etc. in respect of the expenditure incurred in any of these businesses, therefore, the A.O. added entire amount of cash deposited in the bank account, which was restricted by the Id. CIT(A) to the peak credit in the bank account.

7. We found that the assessee was a small trader and under presumptive scheme, not supposed to maintain books of account. So far as the business of selling of wedding cards was concerned, the assessee has already offered income of Rs. 76,128/- by applying 8% on the gross receipts of Rs. 9,51,603/- U/s 44AD of the Act. In respect of income receipt on decoration and furnishing, the assessee had shown only profit of Rs. 44,860/- and since the assessee has failed to produce any of the bills and expenditure incurred for such business, the income declared by the assessee cannot be accepted.

8. Considering the facts and circumstances of the case, we found that entire amount deposited in the bank account was out of the sale proceeds of wedding cards and business of decoration and furnishing. Thus the

cash of Rs. 24,70,500/- so deposited was out of the sale proceeds of his businesses of furnishing and decoration, which was more than the amount of cash so deposited in the bank account. Business of interior decoration cannot be treated as trading activity so as to take profit at 5% of gross receipts. Therefore, in all fairness, we direct the A.O. to compute profit @ 10% of gross receipt of Rs. 27,89,580/- in respect of amount received from decoration and furnishing. Thus, the profit works out to be Rs. 2,78,958/-. Accordingly, we direct the A.O. to compute the income of the assessee is as under:

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|-------|---|----------------------|
| (i) | Profit on wedding card business as offered by the assessee amounting to | Rs. 76,128/-. |
| (ii) | Income from decoration and furnishing amounting to | Rs. 2,78,958/- & |
| (iii) | Interest income amounting to | <u>Rs. 15,720/-.</u> |
| | Total amounting to | Rs.3,70,806/-. |

In view of the above, we direct the A.O. to restrict the addition to the above extent in place of peak credit computed by the Id. CIT(A).

9. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 30th May, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur
दिनांक / Dated:- 30th May, 2019

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

***Ranjan**

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

1. अपीलार्थी / The Appellant- Shri Raja Daga, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 612/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar