

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B' 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. 386/JP/2018
निर्धारण वर्ष/Assessment Year : 2009-10

Income Tax Officer, Ward-Bhiwadi	बनाम Vs.	Smt. Manisha Tomar W/o Sh. Ajendra Tomar, A- 145, Ashiana Garden, Bhiwadi, Teh-Tijara, Distt.- Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHMPT4311J		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

राजस्व की ओर से/ Revenue by : Dr Ashwani (JCIT)
निर्धारिती की ओर से/ Assessee by : Shri S. K. Gupta (Advocate)

सुनवाई की तारीख/ Date of Hearing : 11/07/2019
उदघोषणा की तारीख/Date of Pronouncement: 16/07/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A), Alwar dated 08.01.2018 for A.Y 2009-10 wherein the Revenue has challenged the action of the Id. CIT(A) in deleting the addition of Rs. 73,50,000/- made by the AO on account of unexplained cash credits u/s 68 of the Act.

2. Briefly stated, the facts of the case are that the assessee was issued issued a notice u/s 148 dated 28.09.2016 on the basis of information in possession of the Assessing Officer that the assessee has deposited a sum of Rs. 73,50,000/- in her bank account during the F.Y 2008-09 and since the assessee has not filed her return of income, assessee's income to the extent of Rs. 73,50,000/- has escaped assessment. Subsequently, the assessee filed the return of income declaring total income of Rs. 1,74,565/- in response to notice

issued u/s 148 of the Act. During the course of assessment proceedings, the assessee submitted that the amount was withdrawn from her husband's bank account maintained with Axis Bank and subsequently deposited in her account. It was submitted that the assessee is engaged in the business of civil construction and the amount was withdrawn to pay to the workers and contractors and to meet other business expenditure and also to earn interest thereon.

3. The submission so filed was not accepted by the Assessing Officer. As per the Assessing Officer, the assessee has not established any necessity of cash for her business due to which the cash was borrowed from her husband. No specific requirement has been pointed out which leads the assessee to accept the loan from her husband. The assessee and her husband both are running contract business and both have their own bank accounts. In these circumstances, if assessee has any requirement of funds, she should have borrowed the loan through banking channel/cheque etc. In general business course, loans are given or taken through bank but in the case of assessee, loan was given in cash. It proves that assessee is trying to make a veil on her undisclosed income which was deposited as cash in her bank account through an afterthought story of loan received from her husband. It is not understandable as to why such huge cash on a particular date was withdrawn by the husband of the assessee and same was deposited in the bank account of assessee. Further, on certain dates i.e. 15/04/2008 and 13/06/2008 assessee could not prove any direct nexus between the amounts withdrawn from bank account of her husband and deposits made in her bank account. Therefore, it is not established that assessee has taken loan in cash from her husband. In view of the same, the Assessing Officer came to the finding that the assessee has not received any amount from her husband and deposited her own undisclosed income in bank as cash. Hence, addition on account of

unexplained cash credit as per section 68 of IT Act was made for Rs. 73,50,000/- to the total income of assessee.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). The Id CIT(A) has given a finding that the cash amount found deposited in the appellant's bank account directly corresponds with the identical cash amount withdrawn from the bank account of her husband, Sh. Ajender Tomar who is an existing income tax assessee and who has confirmed to have given the cash amount to his wife Smt. Manisha Tomar. Accordingly, the Id. CIT(A) held that the amount of Rs. 73.50 lakhs found deposited in the appellant's bank account has come from the bank account of Sh. Ajender Tomar, accordingly, the source of cash deposits is explained and the addition so made by the Assessing Officer was deleted. Against the said finding of the Id. CIT(A), the Revenue is now in appeal before us.

5. During the course of hearing, Id. DR submitted that the amount has been withdrawn from the current account maintained with the Axis Bank by the husband of the assessee and therefore, the same has been deposited in the savings bank account maintained with Axis Bank of the assessee. It was accordingly submitted that both husband and wife are maintaining their bank accounts with the same bank and the branch of the assessee and no plausible explanation has been submitted by the assessee which necessitated withdrawal of cash and subsequently, depositing the same in the bank account of the assessee. It was further submitted that even from the perusal of the bank statement of the assessee, it is not clear as to what purpose the money was borrowed by the assessee from her husband as the withdrawals again are mostly in cash. Further, nothing has been submitted by the assessee before the lower authorities and even before the Tribunal in support of the contention that money was borrowed to meet the business expenditure of the assessee. It was accordingly submitted that these were mere contentions which are not

supported by any facts which has been brought on record by the assessee and the theory of loan taken from the husband of the assessee cannot be believed and accepted. Drawing our reference to the current account statement of the husband of the assessee, it was submitted by the Id. DR, the findings of the Id CIT(A) that the amount withdrawn from the husband's bank account matches with the amount deposited in the assessee's bank account cannot be accepted as the Id. CIT(A) failed to appreciate the fact that these cash withdrawals were made by self-cheque issued by the husband of the assessee and not the cheque issued in favour of the assessee, therefore merely because the figures have been matching, the same cannot be held that the source of the amount deposited in the assessee's bank account matches with the withdrawals from the husband's bank account. It was further submitted that the findings of the Id. CIT(A) that the husband of the assessee has confirmed that he has given the cash amount to the assessee is also not borne out of the records as there is no such statement of the husband of the assessee which has been recorded either by the Assessing Officer or by the Id. CIT(A) and even there is no confirmation which has been filed and which is placed on record. It was accordingly submitted that the findings of the Id. CIT(A) are not emerging from the record and the same cannot be sustained and the same should be set-aside and the order of the Assessing officer should be sustained where he has stated that these unexplained cash deposits are assessee's own undisclosed income.

6. Per contra, the Id. AR reiterated the submission made before the lower authorities. It was submitted that once the source of the cash deposit in assessee's bank account has been duly matched with the cash withdrawals from her husband's bank, the source of such deposit has been duly explained and no addition should be made in hands of the assessee. It was further submitted that the amount has been borrowed by the assessee from her husband to meet her business expenditure. It was further submitted that even

where the contentions so advanced are not accepted, the whole of cash deposits cannot be brought to tax. He supported the findings of the Id. CIT(A)

7. We have heard the rival contentions and perused the material available on record. Merely identifying the person from whom the money has been received and carrying out matching of the transactions of cash withdrawals and subsequent deposits in the assessee's bank account doesn't absolve the assessee from her responsibility in its entirety as so stated under section 68 of the Act. The purpose for which the money has been received and the genuineness of the transaction is equally an important aspect which the assessee has to demonstrate to satisfy the initial onus cast on her. In our view, the identity, creditworthiness and genuineness of the transactions, all three requirements go hand-in-hand, however, among all the three, the genuineness of the transaction shall take precedence and the same should be demonstrated clearly when the same is called in question by the Revenue. In the instant case, the theory of borrowing the money in cash from time to time by the assessee from her husband for meeting business expenditure is not supported by any verifiable demonstrable evidence and therefore, the same cannot be accepted. At the same time, we find that once the Revenue has not disputed that the assessee is engaged in construction business and no independent source of such cash receipts has been determined, the nature of such cash receipts can reasonably be treated as undisclosed business receipts and only net profit arising thereon can be brought to tax. Before the Id CIT(A), the assessee has stated that she has reported net profit @ 8% of her turnover and has filed her return of income. However, there is no independent finding of the Id CIT(A) in this regard. In the result, we set-aside the matter to the file of the Assessing officer to verify the net profit which has been reported by the assessee for the year under consideration as the same has been accepted during the course of

assessment proceedings and apply the same to undisclosed business receipts amounting to Rs 73.50 lacs and which can be brought to tax.

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

Order pronounced in the Open Court on 16/07/2019.

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:- 16/07/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Income Tax Officer, Ward-Bhiwadi
2. प्रत्यर्थी / The Respondent- Smt. Manisha Tomar, Bhiwadi, Alwar
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. 386/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

