आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष

BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 726/JP/2019
निर्धारण वर्ष/Assessment Year : 2010-11

Shri Tejraj Simlot, Shastri Nagar, Shyam Marg, C-96, Jaipur.	बनाम Vs.	The ITO, Ward-4(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BQDPS 5929 L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Smt. Suhani Maharwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri Rajendra Singh (JCIT) &
Shri Raj Mehra (JCIT)

सुनवाई की तारीख/ Date of Hearing : 22/07/2019
उदघोषणा की तारीख/ Date of Pronouncement : 26/07/2019

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 22.03.2019 of the ld. CIT(A)-2, Jaipur for the assessment year 2010-11. The assessee has raised solitary ground of appeal as under:-

"1. On the facts and in the circumstances of the case, Ld.AO erred in treating the cash deposit in saving bank account as unexplained money U/s 69A and accordingly erred in adding 189100/- as an

income of assessee however Ld. CIT(A) reduced the addition to Rs. 171000/- which is illegal, unjustified and liable to be quashed."

2. The assessee is an individual and did not file any return of income U/s 139 of the Act. The Assessing Officer received AIR information showing deposit of cash in the bank account of Rs. 2,47,490/- apart from the commission income received during the year of Rs. 27,490/-. The AO accordingly reopened the assessment by issuing notice U/s 148 on 29.03.2017. In response to the notice U/s 148 of the Act the assessee filed his return of income on 24.06.2017 declaring total income of Rs. 1,59,900/-. During the course of assessment proceedings, the AO noted that there is cash deposit in the bank account of the assessee of Rs. 2,30,000/- on 29.06.2009. The AO asked the assessee to file the complete details of the cash deposit with supporting evidence. In response, the assessee filed only cash account showing opening balance. The AO was not satisfied with this explanation that the source of deposit is only from opening balance of cash in the hand of the assessee. The assessee further submitted a letter dated 14.08.2017 and explained the source of deposit as opening balance of Rs. 1,31,400/- and withdrawal from the bank. In support of the opening balance the assessee has also claimed the saving during the year from the month of April to June, 2009 and miscellaneous

gift received from various friends and relatives to the extent of Rs. 31,000/- as well as loan taken from the family member of Rs. 33,000/-. The AO accepted the saving during the year of Rs. 40,900/- and the balance amount of Rs. 1,89,100/- was treated as unexplained money U/s 69A of the I.T. Act. The assessee challenged the action of the AO before the ld. CIT(A) and reiterated his contention of opening balance, gift received as well as loan taken from the family member. The ld. CIT(A) accepted the loan of Rs. 18,000/- taken from Shri Lokraj Simlot brother of the assessee and granted relief to that extent. Thus, the balance addition of Rs. 1,71,000/- was confirmed by the ld. CIT(A).

3. Before us the Tribunal the ld. AR of the assessee has submitted that the assessee has filed the cash flow statement before the AO to show the opening balance of cash in the hand of the assessee of Rs. 1,31,400/-. Further, the assessee filed the confirmation and declaration regarding the gift receipt from various persons total amounting to Rs. 31,000/-. The ld. CIT(A) has accepted the loan taken from the brother however, the loan of Rs. 15,000/- taken from the wife was not accepted despite the assessee has filed confirmation as well as affidavit in support of the claim. Thus, the ld. AR of the assessee has submitted that when the assessee has discharged its onus to prove identity and creditworthiness of the loan

creditor as well as donor and also prove the genuineness by filing their confirmation as well as affidavits then, the addition made by the AO and sustained by the ld. CIT(A) is not justified. She has relied upon the Hon'ble Delhi High Court in case of CIT vs. Mayawati 338 ITR 563.

4. On the other hand, the ld. DR has submitted that except a cash flow statement the assessee has not produced any evidence to establish the opening cash in his hand as claimed by the assessee. Further, the assessee has shown loan as well as gift from various persons however, in the absence of any proof of income of donor as well as the loan creditor the claim of the assessee cannot be accepted. He has relied upon the orders of the authorities below.

5. Having considered the rival submissions as well as relevant material on record it is noted that in support of the source of deposit made in the bank account to the extent of Rs. 1,31,000/- as sustained by the ld. CIT(A) the assessee explained that he has received gift of Rs. 31,000/- from 7 persons on the occasion of marriage anniversary of the assessee. The identity of those donors is not in dispute as assessee filed the declaration of gift as well as their identity proof. The details of the gift received by the assessee from 7 persons are as under:-

Sr.no.	*Name*	*Amount*
1.	*Mahendra Shekhar Bhiwani*	*5000*
2.	*Girraj Shanker*	*5000*
3.	*Geeta Bhiwani*	*5000*
4.	*Yogeshwari Mathur*	*4000*
5.	*Madhubala Mathur*	*4000*
6.	*Santosh Mathur*	*4000*
7.	*Girraj simlot*	*4000*
	Total	*31,000/-*

From the details of the gift it is clear that very small and petty amount are claimed to have been received on the occasion of marriage anniversary which is not unusual on such occasion. Further, when the assessee has produced the declaration of these 7 persons confirming the gift to the assessee on the marriage anniversary as well as the assessee was also ready to produce these persons for verification of the AO then the assessee was discharged its onus to prove the identity and creditworthiness of the donors as well as genuineness of the transactions. In the absence of any contrary finding or material to so that these persons are not having the means to give the gift of such amounts the claim of the assessee cannot be rejected. Accordingly, in the facts and circumstances

of the case when the assessee was ready to produce these persons for examination of the AO the addition to the extent of Rs. 31,000/- is not sustainable.

5.1 As regards loan amount of Rs. 15,000/- claimed to have been received from wife once the confirmation and affidavits of the wife was filed then having regard to the quantum of loan of Rs. 15,000/- the creditworthiness of the wife cannot be disputed as the saving to the extent of such small money is not unusual. Therefore, in view of the fact that the assessee has produced confirmation and also offered to produce his wife for enquiry and examination the rejection of the claim is not justifiable without any contrary fact or material. Accordingly, the addition to the extent of Rs. 15,000/- sustained by the ld. CIT(A) is deleted.

5.2 As regards the opening balance claimed by the assessee it is noted that since the cash balance is not supported by any evidence which can be independently verified but the assessee has claimed that there was withdrawal from the bank in the earlier years to the extent of Rs. 1,31,400/-. The claim of the assessee cannot be accepted as the withdrawal was not in the recent past but there was a gap of 1-2 years in some of the withdrawal which cannot be accepted as available with the

assessee during the year. Accordingly, the said claim of opening balance in the absence of verifiable documentary evidence cannot be accepted.

5.3 Hence the addition of Rs. 46,000/- is deleted and balance is confirmed.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26/07/2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य /Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 26 /07/2019
*Santosh
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Tejraj Simlot, Jaipur.
2. प्रत्यथी/ The Respondent- The ITO, Ward-4(5), 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. 726/JP/19)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar