

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. 741/JP/2019
निर्धारण वर्ष/Assessment Year : 2010-11

Smt. Manisha Gaba W/o Sh. Virendara Pal, 4-G22, Pratap Nagar, Housing Board Alwar 301001.	बनाम Vs.	The ITO, Ward-1(5), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABUPG 7662 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri. P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Ashok Khanna (JCIT)

सुनवाई की तारीख / Date of Hearing : 24/07/2019
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 25.03.2019 of CIT(A), Alwar for the assessment year 2010-11. The assessee has raised following grounds of appeal as under:-

"1.0 That the Id. Assessing Officer has erred in law as well as on the facts and circumstances of the case in making an addition of Rs. 451000.00 and the Id. CIT(A) Alwar has erred in sustaining a sum of Rs. 301000.00 out of the same.

2.0 That the Id. Assessing Officer has erred in law as well as on the facts and circumstances of the case in making and addition of Rs. 82805.00 and the Id. CIT(A), Alwar has erred in sustaining the same.

3.0 That the assessee reserves its right to add, alter, modify, amend all or any of the grounds of appeal before or at the time of hearing of appeal.”

2. Ground no. 1 is regarding the addition sustained by the Id. CIT(A) to the extent of Rs. 3,01,000/- on account of deposit made in the bank account. The AO received AIR information regarding the deposit in the saving bank account of the assessee. The AO noted that the assessee has deposited Rs. 1,51,000/- on 08.08.2009 on the day when the saving bank account with Bank of Baroda was opened by the assessee and an amount of Rs. 1,50,000/- was withdrawn by the assessee on 10.08.2009. Subsequent the assessee has also deposited Rs. 3,00,000/- on 20.02.2010. Thus, the AO made addition of Rs. 4,51,000/- by treating the same as unexplained deposit made in the bank. On appeal, the Id. CIT(A) has accepted the source of past saving to the extent of Rs. 1,50,000/- from the business of beauty parlor in the past several years done by the assessee and thereby the balance amount of Rs. 3,01,000/- was confirmed.

3. Before the Tribunal, the Id. AR of the assessee has submitted that the Id. CIT(A) has accepted the fact that the assessee was running a beauty parlour in the past several years however, the saving from the said activity was accepted only to the extent of Rs. 1,50,000/- as against the entire deposit made by the assessee. The Id. AR has further contended that the assessee has running the beauty parlour and boutique since the year 1992 and till August, 2008 for 17 years therefore, the claim of saving from beauty parlour activity of Rs. 3,00,000/- is reasonable against which the Id. CIT(A) has accepted only Rs. 1,50,000/-. The Id. AR has further contended that when a sum of Rs. 1,50,000/- was withdrawn by the assessee prior to the subsequent deposit of Rs. 3,00,000/- then only pick credit should have been considered for the purpose of addition. Thus, the Id. AR has submitted that the estimation made by the Id. CIT(A) is without any basis and the addition to the extent of Rs. 3,00,000/- may be deleted.

4. On the other hand, the Id. DR has submitted that the assessee has not declared any income from the beauty parlour in the past and therefore, the claim of saving from the said activity is without any documentary evidence. However the Id. CIT(A) has accepted the saving to the extent of Rs. 1,50,000/- which is very reasonable and proper. He has relied upon the order of the authorities below.

5. Having considered the rival submissions as well as relevant material on record it is noted that the AO made addition of Rs. 4,51,000/- by considering the total deposit made by the assessee being Rs. 1,51,000/- at the time of opening of the account on 08.08.2009 and Rs. 3,00,000/- on 20.02.2010. There is no dispute that a sum of Rs. 1,50,000/- was withdrawn from the bank account on 10.08.2009 therefore, while considering the deposit made in the bank account as unexplained the withdrawal made by the assessee of Rs. 1,50,000/- is also required to be taken into account. Though there is a time gap of the said deposit however, once income is added on account of the deposit then the withdrawal cannot be ignored as both the deposit as well as withdrawal transactions are during this financial year. Therefore, even if taking pick credit the said amount of Rs. 1,50,000/- is required to be taken into consideration. Thus, the addition made by the AO to the extent of the said amount of Rs. 1,50,000/- is not sustainable.

5.1 Further, the Id. CIT(A) has accepted the fact that the assessee was running a beauty parlour and boutique for last about 17 years and accepted the saving of the assessee of the past years but only to the extent of Rs. 1,50,000/-. The Id. CIT(A) has estimated the saving without referring the basis therefore, in the facts and circumstances of the case

when the assessee's activity of running of beauty parlour and boutique for so many years is not dispute then the saving of Rs. 3,00,000/- as claimed of the assessee is reasonable and proper.

5.2 Accordingly, in the facts and circumstances of the case as discussed above the addition sustained by the Id. CIT(A) is deleted.

5.3 Before parting with the issue it is to be noted that the decision in case of Bhawani Singh vs. ITO dated 13.09.2018 in ITA No. 407/JP/2017 as relied upon by the authorities below cannot be applied to the facts of the present case when in the said case the withdrawal from the bank was made by the assessee at the time of purchasing of the land and the assessee claimed that only part amount was utilized for purchase of land and balance was with the assessee. In the said case the Tribunal noted that the assessee has claimed the utilization of the withdrawal amount only to the extent of the purchase consideration shown in the title document and not actual amount of purchase consideration and further there was a time gap of 2-3 years between the transaction of purchase of land and subsequent deposit in the bank account. Hence the said decision cannot be applied in the case of the assessee.

6. Ground no. 2 is regarding the claim of cost of improvement of Rs. 1,82,805/-, while computing the capital gain on sale of land, was denied by the AO as well as the Id. CIT(A).

7. I have heard the Id. AR as well as Id. DR and considered the relevant material on record. The assessee has claimed to have purchased the plot No. D-323, Surya Nagar, Alwar on 17.08.2005 and thereafter the assessee has incurred expenditure on improvement of levelling of land and also some foundation construction. The assessee produced the bills regarding purchase of sand of 75 tractor trollies and 22 tractor trollies of stones. The AO as well as the Id. CIT(A) denied the claim of cost of improvement on the ground that no such averment were made in the sale deed revealing the fact of cost of improvement. Except the bill on plain paper the assessee has not produced any other documents in support of the claim. The AO has also not conducted any inquiry whether any work of improvement was carried out at the site prior to the sale of the plot of land on 20.08.2009. Therefore, in the fact and circumstances of the case when neither the assessee has produced the conclusive evidence for carrying out the improvement work nor the AO conducted a proper inquiry to rebut the claim of the assessee it is proper to allow the claim of the assessee on

some estimate basis. Accordingly, a sum of Rs. 40,000/- is allowed on account of cost of improvement on estimate basis.

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- Smt. Manisha Gaba, Alwar.
2. प्रत्यथी / The Respondent- The ITO, Ward-1(5), Alwar.
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. 741/JP/19)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar