

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल रॉव, 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 Nos. 1493/JP/2018
निर्धारण वर्ष/Assessment Year : 2016-17.

M/s. Jai Amarnath Associates, 303, Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur.	बनाम Vs.	The DCIT, Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAEFJ 4733 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal (CA)

राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 29.08.2019.

घोषणा की तारीख / Date of Pronouncement : 02/09/2019.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 11.10.2018 of Id. CIT (Appeals)-4, Jaipur for the assessment year 2016-17. The assessee has raised the following grounds of appeal :-

- " 1. On the facts and in the circumstances and in law the Id. CIT (A) erred in sustaining the addition of Rs. 2,59,140/- made by Id. AO as undisclosed income of the assessee on a/c of alleged unexplained cash found during the course of search.
2. The assessee prays for leave to add, to amend, to delete, to modify the all or any grounds of appeal on or before the hearing of appeal."

2. The assessee is a partnership firm and derives income from financial brokerage. There was a search and seizure action under section 132 as well as the survey under section 133A of the IT Act on 7th January, 2016 on Shri Ramesh Chand Manihar Group to which the assessee belongs. During the course of search proceedings, a total cash of Rs. 15,59,085/- was found from the premises of the assessee at 303, Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur. In the statement recorded under section 132(4) of the Act, the source of cash found during the search was explained and was also accepted by the department. The assessee filed its return of income under section 139(1) of the IT Act on 28th September, 2016 declaring total income of Rs. 16,17,480/-. During the course of assessment proceedings, the AO proposed, inter alia, to make addition of Rs. 2,59,140/- being cash found during the survey proceedings at 203, Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur in case of M/s. Adventure Global Tour LLP, a sister concern of the assessee. The assessee explained before the AO that the said cash found at the premises of the business place of M/s. Adventure Global Tour LLP belongs to the said firm and also produced the cash book of M/s. Adventure Global Tour LLP. The AO rejected the said explanation of the assessee on the ground that during the search and survey action no such cash book was seized or impounded. Accordingly, the AO made the addition of Rs. 2,59,140/- to the total income of the assessee. The assessee challenged the action of the AO before the Id. CIT (A) and reiterated its contention that this cash found during the survey belongs to M/s. Adventure Global Tour LLP. However, the Id. CIT (Appeals) did not accept the said contention and confirmed the addition made by the AO.

3. Before us, the Id. A/R of the assessee has submitted that the cash found at the business premises of the assessee was duly explained during the course of search and seizure action and in the statement recorded under section 132(4). The AO has not made any addition on account of the cash found at the business place of the assessee. However, the AO has made the addition of cash of Rs. 2,59,140/- which was found during the survey proceedings at 203, Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur which is not the business premises of the assessee. He has referred to the copy of Panchnama at paper book page 1 and submitted that the authorized warrants were issued and executed in cases of M/s. Amarnath Associates, M/s. Jai Amarnath Associates (assessee), M/s. Amarnath Exim Linkers and the partners of these firms. Therefore, when the cash was found at 203, Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur and the assessee's business premises is different from the said premises, then the same cannot be treated as unexplained cash in the hands of the assessee. Further, there was no question asked by the department during the search as well as survey proceedings regarding the source of the said cash of Rs. 2,59,140/-. Though the AO has referred to the statements of Shri Rahul Maheshwari and Ms Khusboo Singh recorded during the search proceedings, however, there is no allegation even in those statements that the cash found at 203, Ratna Sagar, MSB Ka Rasta, Johari Baar, Jaipur belongs to the assessee. Thus the Id. A/R has submitted that when the assessee has explained the source of cash as belonging M/s. Adventure Global Tour LLP, a sister concern of the assessee and also produced the cash book of the said concern, then in the absence of any incriminating material the addition made by the AO in the hands of the assessee is not justified.

4. On the other hand, the Id. D/R has submitted that the cash book filed by the assessee of M/s. Adventure Global Tour LLP shows only the capital introduced by the partners and, therefore, in the absence of the said cash book found or seized during the search and survey proceedings, the same cannot be accepted in support of the explanation of source of cash. He has also questioned existence of said LLP as the ROC fees was paid only on 9th March, 2016. Thus this explanation of the assessee is only an afterthought and the cash book produced is nothing but a self serving document. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. We find that during the search and seizure action on 07.01.2016 the cash of Rs. 15,59,085/- was found at the premises of the assessee at 303 Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur. The assessee explained the source of the said cash and consequently in the assessment framed by the AO under section 143(3) read with section 153B(1)(b) of the Act, the AO has not even proposed to make any addition on that account. However, the AO proposed to make an addition of Rs. 2,59,140/- on account of unexplained cash found during the survey conducted at 203, Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur. We further note that though the entire proceedings of search and seizure as well as survey was conducted simultaneously at both the places, however, assessee was not confronted with the cash of Rs. 2,59,140/- found at 203, Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur at the time of statement recorded under section 132(4) of the Act. Further, no such query was raised by the department even to Shri Rahul Maheshwari and Ms. Khusboo Singh whose statements were referred by the AO in the assessment order. Therefore, there is no material on record to indicate that the cash

of Rs. 2,59,140/- was found at 203 Ratna Sagar, MSB Ka Rasta, Johari Bazar, Jaipur belongs to the assessee. It is also not in dispute that the premises at 203 Ratna Sagar, MSB Ka Rasta, Johari Bazar does not belong to assessee but it belongs to the other sister concern of the assessee. The assessee explained the source of cash as belongs to M/s. Adventure Global Tour LLP and also produced the cash book of the said concern to show the availability of cash with the said LLP. Once there is no incriminating material to show that the cash of Rs. 2,59,140/- found at 203 Ratna Sagar, MSB Ka Rasta, Johari Bazar belongs to the assessee and the said premises was not the business premises of the assessee and the assessee has explained the source of cash belongs to M/s. Adventure Global Tour LLP whose business premises is situated at 203 Ratna Sagar, MSB Ka Rasta, Johari Bazar, then in the absence of any contrary fact or material, the said explanation of the assessee cannot be brushed aside. Accordingly, in the facts and circumstances of the case, we are of the considered view that the assessee has discharged its onus in explaining the source of cash and the AO even failed to discharge his preliminary onus to establish that the cash found at a different premises not belonging to the assessee, belongs to the assessee. Thus the addition made by the AO is deleted.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 02/09/2019.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur
दिनांक / Dated:- 02/09/2019.
das/

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

1. अपीलार्थी / The Appellant- M/s. Jai Amarnath Associates, Jaipur.
2. प्रत्यर्थी / The Respondent-The DCIT, Central Circle-3, Jaipur.
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. 1493/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar