

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

Shri Ajit Singh Meena, S/o- Sh. Sardar Singh Meena, B-54, Somnath Nagar, Agra Road, Dausa.	बनाम Vs.	I.T.O., Ward- Dausa.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKFPM 3405 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 17/09/2019  
उदघोषणा की तारीख / Date of Pronouncement : 19/09/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 20/03/2019 of Id. CIT(A), Alwar for the A.Y. 2010-11. The assessee has raised following grounds of appeal:

- “1. The Id. CIT(A) has erred on facts and in law in upholding the validity of the order passed U/s 147 of IT Act, 1961.
2. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 8,33,087/- U/s 69A of the IT Act by treating the cash

*deposit in the bank account to this extent as unexplained income of the assessee.*

3. *The appellant craves to alter, amend and modify any ground of appeal.*
4. *necessary cost be awarded to the assessee."*

2. At the time of hearing, the AR of the assessee has stated at bar that the assessee does not want to press ground No. 1 of the assessee's appeal and the same may be dismissed as not pressed. The Id DR has raised no objection if ground No. 1 of the appeal is dismissed as not pressed. Accordingly, ground No. 1 of the assessee's appeal is dismissed being not pressed.

3. Ground No. 2 of the appeal is regarding the addition of Rs. 8,33,087/- sustained by the Id. CIT(A) U/s 69A of the Income Tax Act, 1961 (in short, the Act) on account of cash deposit in the bank account. The assessee is an agriculturist and not filed any return of income. The A.O. has issued a notice U/s 148 of the Act on the basis of the information that the assessee had deposited cash of Rs. 25,64,500/- in the bank account. In response to the notice U/s 148 of the Act, the assessee filed return of income declaring bank interest of Rs. 3,490/- and agricultural income of Rs. 3,05,200/-. The A.O. asked the assessee to explain the source of cash deposit made in the bank account. The

assessee submitted that the assessee is carrying out agriculture operation on the land of 35 bighas for last 8 to 10 years and therefore, deposit made in the bank account is out of agricultural income and cash balance with the assessee being savings of the earlier years. The assessee has claimed that there was opening cash balance of Rs. 5,28,398/- and agricultural income for the year of Rs. 3,05,200/- as well as cash withdrawals from the bank of Rs. 15,41,900/-. The assessee has also claimed that he has received advance against the crops of Rs. 1,85,200/-, thus the assessee has explained the source of deposits made in the bank account. The A.O. did not accept the said explanation of the assessee and made addition of Rs. 11,90,634/- as peak deposit by treating the same as unexplained income U/s 69A of the Act. The assessee challenged the action of the A.O. before the Id. CIT(A) and the Id. CIT(A) allowed the credit of opening balance in the bank account of Rs. 1,57,547/- and estimated agricultural income of Rs. 2.00 lacs. The addition of the balance amount of Rs. 8,33,087/- was sustained.

4. Before the Tribunal, the Id AR of the assessee has submitted that the assessee has no other source of income than the agricultural income. He has further contended that in respect of agricultural income, the assessee filed an affidavit of his uncle who has affirmed that the father of

the assessee expired in the year 1997 and since then the assessee is looking after 34 to 35 bighas of agricultural land of the family. The assessee also produced Jamabandi and Khasra Girdawari to show the agricultural land being used for agriculture purpose by the assessee. Thus, once the assessee has produced documentary evidence in respect of agricultural income then savings from the agricultural income for last 8 to 10 years at Rs. 5,28,398/- as on 01/04/2009 cannot be doubted. The assessee has claimed agricultural income of Rs. 3,05,200/- during the year which was estimated by the Id. CIT(A) at Rs. 2.00 lacs without any basis, therefore, the addition sustained by the Id. CIT(A) is not justified. The Id. AR has relied upon the decision of the Hon'ble Supreme Court in the case of CIT Vs Smt. P.K. Noorjahan 237 ITR 0570 and submitted that the Hon'ble Supreme Court has held that the A.O. has the discretion in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as income of the assessee U/s 69 of the Act. Thus, once the assessee has explained the source of deposit made in the bank account the A.O. has to exercise his discretion while considering the explanation offered by the assessee. He has emphasized the fact that when the assessee is not having any other source of income

than the agriculture then the explanation of the assessee cannot be rejected.

5. On the other hand, the Id DR has submitted that the assessee has claimed opening cash balance of Rs. 5,28,398/- as well as agricultural income of Rs. 3,05,200/- without producing any documentary evidence with regard to source of agricultural income as well as the opening balance. In absence of any documentary evidence, the amount shown in the cash flow statement is not acceptable. The A.O. has already allowed the credit of withdrawal of Rs. 15,41,900/- made by the assessee during the year out of the total deposits of Rs. 25,64,500/-, therefore, the A.O. has taken a reasonable and proper decision while making addition U/s 69A of the Act. The affidavit filed by the assessee is a self-serving document and cannot be considered as an evidence of source of deposit. Further the Id. CIT(A) has allowed the relief to the assessee on account of opening balance and agricultural income which was estimated reasonably. He has relied upon the orders of the authorities below.

6. I have considered the rival submissions as well as relevant material on record. After the impugned order of the Id. CIT(A), only dispute is regarding the opening cash balance of Rs. 5,28,398/- as well as the agricultural income claimed by the assessee at Rs. 3,05,200/- which was

estimated by the Id CIT(A) at Rs. 2.00 lacs. As regards the estimation of income by the Id. CIT(A), once the assessee has brought on record the fact that he is doing agriculture operation on a land measuring 34 to 35 bighas then the claim of the assessee of agricultural income of Rs. 3,05,200/- is not excessive but it is very reasonable and fair. The Id. CIT(A) has estimated the income at Rs. 2.00 lacs but without giving any basis how the agricultural income from the land of 35 bighas is estimated at Rs. 2.00 lacs. Therefore, in absence of any basis of estimating agricultural income of Rs. 2.00 lacs, the claim of agricultural income of Rs. 3,05,200/- cannot be rejected. Accordingly, the agricultural income claimed by the assessee at Rs. 3,05,200/- is allowed. Since the assessee is having agricultural operation for 8 to 10 years and the agricultural income for the year under consideration is Rs. 3,05,200/- then if the savings of the assessee out of his agricultural income per year is taken at Rs. 50,000/- for last 8 to 10 years then a savings of Rs. 5.00 lacs for the 10 years of agricultural income from a land of 34 to 35 bighas is not an abnormal claim of the assessee. Further the A.O. has not disputed the fact that the assessee is not having any other source of income but the agricultural income only, therefore, in the facts and circumstances of the case, the savings for last 8 to 10 years of the assessee cannot be

disputed and that too in toto. Hence, the claim of the assessee is allowed and the addition made by the A.O. and sustained by the Id. CIT(A) is deleted.

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

Order pronounced in the open court on 19<sup>th</sup> September, 2019

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

जयपुर / Jaipur

दिनांक / Dated:- 19<sup>th</sup> September, 2019

\*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Ajit Singh Meena, Dausa.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Dausa.
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. 785/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar