

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. 944/JP/2017
निर्धारण वर्ष / Assessment Year : 2014-15

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| Shri Mahendra Singh Charan 26, Shiva Colony, Delwara Road, Bhind Kali Mata Mandir, Beawar. | बनाम Vs. | The ITO, Ward- 2, Beawar. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABNPC 9269 M | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Sunil Porwal (C.A.)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/09/2019
उदघोषणा की तारीख / Date of Pronouncement: 20/09/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 03.10.2017 of the Id. CIT(A), Ajmer for the Assessment Year 2014-15. The assessee has raised following ground:-

"Under the facts & circumstances that the Ld. CIT(A) has erred in confirming the issues below:-

- (1) Addition of Rs. 15,38,000.00 as unexplained investment u/sec. 69.*
- (2) Any other matter with the prior permission of chair."*

2. The only issue arises in this appeal of the assessee the addition made by the AO on account of deposits made in the bank account U/s 69 of the Act. The assessee filed his return of income on 31.07.2014 showing the income from salary of Rs. 4,52,490/- received from M/s Shree Cement Ltd. The AO has received an AIR information showing the deposit of cash in the bank account of the assessee of Rs. 52,31,000/-. The AO was asked the assessee to explain the source of the cash deposited in the bank account. The assessee filed the cash flow statement as well as peak cash credit statement by showing the withdrawals and deposits in the bank account which was not accepted by the AO on the ground that the assessee has not filed the supporting evidence in respect of the amounts shown in the cash flow statement. Consequently the AO has made the addition of Rs. 15,38,000/- as unexplained investment U/s 69 of the Act on account of cash deposited in the bank account. The assessee challenged the action of the AO before the Id. CIT(A) and also filed the additional evidence along with an application under Rule 46A of the Income Tax Rules however, the Id. CIT(A) after calling remand report from the AO has declined to admit the additional evidence produced by the assessee.

3. Before the Tribunal, the Id. AR of the assessee has submitted that since the assessee is a salaried person and was not able to produce the supporting evidence to show that the amounts given in the cash flow statement produce before the AO therefore, the assessee after collecting all the relevant evidence which includes the bank statements of the person from whom the loans were

taken through banking channel and also to reconcile the details of the deposit as well as equal withdrawals from bank account of creditor. He has pointed out that the assessee has filed all the details regarding the amount received from the various persons as well as peak balance statement. The Id. AR has submitted that when the assessee produced the supporting evidence in the shape of bank statements showing the withdrawals and deposits and corresponding transaction of deposit in the bank account of the assessee then the said additional evidence ought to have been admitted for verification and consideration in support of the source of the deposit in the bank account of the assessee. Thus, the Id. AR has pleaded that the additional evidence produced by the assessee may be admitted and may be sent to the AO for verification and consideration in support of the claim of source of deposits. He has referred to the various bank account statements of the loan creditors and also the entries in the assessee bank account to reconcile entries in the account of the assessee as well as in the bank account of the loan creditors.

4. On the other hand, the Id. DR has submitted that the assessee did not file any evidence in support of the claim except the cash flow statement even before the Id. CIT(A). The assessee has produced some additional evidence without explaining the reasons as to how the same was not produced before the AO. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as relevant material on record. The AO made the addition on account of deposits made in the bank

account of the assessee as the assessee did not produce supporting evidence. Before the Id. CIT(A), the assessee produce the additional evidence in the shape of sale agreement with one Shri Tarun Delawat and claim to have received advance. The assessee also produced Income Tax return of Shri Tarun Delawat, his bank statements to show the withdrawals of money. Similarly the assessee also produce the confirmation and PAN details of M/s Mahender Singh Palsaniya and Sultan Singh Bajiya along with the bank account statements showing proof of payment. The assessee has produced the bank accounts statements for credit taken from Cooperative Bank and also HDFC bank loan of Rs. 6,95,000/-. Therefore, as far as the bank account statements produced by the assessee and the evidence for taking the loan from Cooperative Bank and HDFC Bank all these documents are not prepared by the assessee but these are third parties documents which can be independently verified and there is no scope of any manipulation. Similarly, the assessee has also produced confirmation of one M.K. Joshi and Padma Manihar regarding the loan taken. The Id. CIT(A) sent all these appeal of additional evidence to the AO for remand report and after the remand report has rejected the claim and confirmed the addition in para 4.3 is as under:-

"4.3 I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. I have already held above that the additional evidences furnished by the appellant during the course of appellate proceedings are not admitted. The AO while working out the peak credit of Rs. 15,38,000/- has already considered all the evidences furnished before him by the appellant during the course of

assessment proceedings. I have gone through the assessment order carefully. In view of the facts discussed by the AO in the assessment order and the documents/ explanation furnished by the appellant before the AO, I am of the considered view that the AO has rightly made the addition of Rs. 15,38,000/- u/s 69. Accordingly, the addition of Rs. 15,38,000/- made by the AO is hereby confirmed."

It is pertinent to note that in the remand report proceedings the AO has conducted an extensive enquiry and also recorded statements of the various loan creditors. Once the AO has conducted the inquiry and recorded the statements of the loan creditors and verified the evidence produce by the assessee then without considering these statement and evidence already examined by the AO the rejection of the additional evidence by the Id. CIT(A) is not justified. The Id. CIT(A) has specifically rejected the additional evidence in para 3.1 is as under:-

"3.1 I have gone through the rejoinder dated 14.09.2017 of the appellant carefully. It is seen that the appellant has not filed any application under Rule 46A for admission of additional evidences. In the rejoinder dated 14.09.2017 filed by the appellant also, the appellant has not been able to show that the case of the appellant was covered under any of the clause of Rule 46A(1). The argument of the appellant that evidences furnished by the appellant during the course of appellate proceedings are not additional evidence, is not acceptable because these evidences are not produced before the AO even though the AO has granted sufficient opportunity to the appellant to furnish these evidences vide letter dated 30.09.2016. hence, the evidence, which were not produced before the AO during the course of assessment proceedings are not admitted under rule 46A."

Since, the additional evidence filed by the assessee can be verified independently and most of them are the bank account statements of the creditors their confirmations which can be independently verified without any scope of manipulation by the assessee then the said additional evidence was required to be verified and considered while deciding the issue of source of deposit made in the bank account. Accordingly, in the facts and circumstances of the case this issue is set aside to the record of the Assessing Officer for deciding afresh after consideration the additional evidence produced by the assessee.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 20/09/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20/09/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Mahendra Singh Charan, Beawar.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 2, Beawar.
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. 944/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar