

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. 701/JP/2017
निर्धारण वर्ष / Assessment Year: 2011-12

Smt. Amita Yadav, 234, Prem Nagar, Jhotwara, Jaipur.	बनाम Vs.	I.T.O., Ward 2(1), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACBPY 0906 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal (FCA)
राजस्व की ओर से / Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 16/09/2019
उदघोषणा की तारीख / Date of Pronouncement : 14/10/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 05/07/2017 of Id. CIT(A)-1, Jaipur for the A.Y. 2011-12. The assessee has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, Ld. AO erred in confirming action of Ld. AO in completing assessment ids 147 r.w.s. 144 of the Income Tax Act, 1961, without providing sufficient opportunity of being heard, which is against the principles of natural justice, thus order passed by Ld. AO is bad in law and deserves to be quashed.*

2. *On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Rs. 15,53,579/- made by Ld. AO u/s 68 of the Income Tax ACT, 1961 without considering the submission filed and further without considering the additional evidences for the sole reason that the same were not filed alongwith prayer u/r 46A of Income Tax Rules, 1962. It is thus prayed that addition so made deserves to be deleted.*
- 2.1 *That the Ld. CIT(A) has further erred in not appreciating the source of deposit in bank account claimed as Gift and also confirmed by the respective donors, thus the entire addition of Rs.15,53,579/- deserves to be deleted.*
3. *That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”*

2. At the time of hearing, the Id AR of the assessee has stated at bar that the assessee does not want to press ground No. 1 of the appeal and the same may be dismissed as not pressed. The Id DR has raised no objection if ground No. 1 of the assessee's 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 addition made U/s 68 of the Income Tax Act, 1961 (in short, the Act) on account of cash deposited in the bank account of the assessee. The assessee is an individual and not having any regular source of income being a homemaker. The assessee did not file any return of income for the year under consideration. The A.O. on the basis of the ITS details, noted that

the assessee has deposited cash to the tune of Rs. 43,42,300/- and no return of income was filed by the assessee, accordingly, assessment was reopened by issuing notice U/s 148 of the Act on 26/09/2013. While completing the assessment U/s 144 r.w.s 147 of the Act, the A.O. made addition of Rs. 15,53,579/- out of the total amount of Rs. 43,42,300/- by holding the same as income from undisclosed sources. The assessee challenged the action of the A.O. before the Id. CIT(A) but could not succeed.

4. Before the Tribunal, the Id AR of the assessee has submitted that the assessee filed additional evidence before the Id. CIT(A) in support of the source of cash deposit made by the assessee to the tune of Rs. 15,53,579/-. However, the Id. CIT(A) has declined to admit the additional evidence filed by the assessee. The Id AR has submitted that the Id. CIT(A) has declined to admit the additional evidence on the ground that the assessee has failed to file an application under Rule 46A of the Income Tax Rules, 1962 (in short, the Rules) alongwith evidences. The Id AR has submitted that due to technical reasons, the Id. CIT(A) has rejected the evidence instead of considering the same on merits. Thus, he has pleaded that the additional evidence filed by the

assessee may be admitted and considered in support of source of deposits. The Id AR has relied on the following decisions:

- (i) State of Punjab & Another Vs Shamal Murari & Anr. AIR 1976 (SC) 1177
- (ii) Smt. Rani Kusum Vs. Smt. Kanchan Devi & Others AIR 2005 (SC) 3304.

5. On the other hand, the Id DR has submitted that the Id. CIT(A) given a finding that the assessee has failed to establish creditworthiness and genuineness of the gifts received from her father and father in law, therefore, the addition made by the A.O. was confirmed by the Id. CIT(A). The additional evidence which was sought to be produced before the Id. CIT(A) was not produced before the A.O. and the assessee has failed to explain the reasons for non-production of the same before the A.O. She has relied upon the orders of the authorities below.

6. I have considered the rival submissions as well as the relevant material on record. The A.O. has made addition of Rs. 15,53,579/- on account of deposit made in the bank account of the assessee. The assessee explained the source of the said deposit as gifts received from her father and father in law. The said amount was taken by the assessee for construction of the residential house. The assessee

produced additional evidence to establish the creditworthiness of her father and father in law, however, the Id. CIT(A) has declined to accept the said additional evidence and observe as under:

“(v) During the appellate proceedings, the appellant has filed 6 bills related to sale of agricultural produce by the father in law of the appellant. There is no doubt that the father in law of the appellant was having agricultural lands but that itself do not establish the agriculture income. It is noted from the assessment order that the appellant has not filed any bills of sale of agriculture produce before the AO, therefore, copies of the bills for sale of agriculture produce filed before me are nothing but additional evidence. It is noted that these were filed without even mentioning that these are additional evidence and also without making any application for their admittance as additional evidence in view of Rule 46A of the IT Rules, which cannot be allowed. It may be mentioned that it is not the right of the appellant to file additional evidence before the appellate authority without stating about the same and without justifying that why the same were not produced before the AO. Therefore, these sale bills could not be given any cognizance. It is further noted that Shri Gajraj Singh is not assessed to income tax. It is therefore, held that the appellant has failed to establish not only the genuineness of cash gift of Rs. 8.50 lac claimed to be received from her father in law but also his creditworthiness.”

The Id. CIT(A) has thus rejected the additional evidence produced by the assessee on the ground that the assessee has even not filed application under Rule 46A of the Rules to explain the reasons as to why the additional evidence was not produced before the A.O.. Thus, without conducting an enquiry to verify the genuineness of the said evidence by

calling a remand report from the A.O., the Id. CIT(A) has rejected the claim of the assessee. Hence, in the facts and circumstances of the case as well as in the interest of justice, the matter is set aside to the record of the A.O. to verify the additional evidence filed by the assessee and then decide the issue afresh after giving an opportunity of hearing to the assessee.

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

Order pronounced in the open court on 14th October, 2019.

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

जयपुर / Jaipur

दिनांक / Dated:- 14th October, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Amita Yadav, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 2(1), 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. 701/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar