

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. 1420/JP/2018
निर्धारण वर्ष/Assessment Year : 2010-11

Smt. Namrata Mewara (Smt. Ragini Mewara) B-97, Sushant Appartments, Sushant Lok Phase-I, Gurgaon.	बनाम Vs.	The ITO, Ward-1, Kishangarh.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ALLPM2529C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Abhishek Sharma (ACIT)

सुनवाई की तारीख / Date of Hearing : 01/10/2019
उद्घोषणा की तारीख / Date of Pronouncement : 01/11/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 17.09.2018 of Id. CIT(A), Ajmer for the assessment year 2010-11.

2. There is delay of 3 days in filing the present appeal the assessee has filed a petition for condonation of delay which is supported by the affidavit.

3. I have heard the Id. AR as well as Id. DR and perused the contents of application and affidavit filed by the assessee for seeking condonation of delay of 3 days in filing the present appeal. The Id. AR of the assessee

has explained that the last date of filing the appeal was 07.12.2018 and the assessee is residing in Gurgaon and the appeal papers were received in the office of Authorized Representative through courier only on 07.12.2018 in evening therefore, the appeal could be filed on 10.12.2018 as 08.12.2018 & 09.12.2018 were closed holidays being Saturday & Sunday. Thus, the Id. AR has submitted effectively there is one day delay in filing the present appeal. He has thus, submitted that due to the delay in receipt of papers through courier the appeal could not be filed on 07.12.2018 and therefore, it was filed on the next working day i.e. 10.12.2018. The reasons explain by the assessee are found to be reasonable and accordingly I am satisfy the assessee was having a reasonable cause for a delay of 3 days in filing the present appeal hence, the same is condoned.

4. The assessee has raised the following ground:-

"1. Under the facts & circumstances of the case, the notice issued u/s 147 and the consequent order passed u/s 144/147 is illegal & bad in law.

2. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 12,91,570/- made by AO u/s 69A of the IT Act by treating the cash deposit in bank account as unexplained without providing adequate opportunity of hearing.

2.1 The Ld. CIT(A) has further erred on facts and in law in confirming the addition by not allowing the credit of withdrawal made in cash from the same bank account which is a source of deposit in the bank account .

3. The appellant craves to amend, alter and modify any of the grounds of appeal.

3. Necessary cost be awarded to the assessee."

5. Ground no. 1 is regarding the validity of reopening of the assessment. The assessee is engaged in the business of handicrafts and textile. The assessee filed her return of income for the year under consideration on 22.06.2010. The AO issued a noticed U/s 148 on 30.03.2017 after recording the reasons that the assessee has not filed any return of income U/s 139(1) of the IT Act and as per information available on record from ITS data, the assessee has made cash deposits of Rs. 12,91,573/- in her saving bank account with Oriental Bank of Commerce. On the basis of the above information available on record the AO formed the belief that the income assessable to tax has escaped assessment and accordingly issued notice U/s 148 of the Act on 30.03.2017. The assessment was completed U/s 147 read with Section 144 of the Act whereby the AO has made addition of Rs. 12,91,573/- U/s 69A of the Act. The assessee challenged the action of the AO before the Id. CIT(A) and also raised objections against the validity of initiation of proceedings U/s 147/148 of the Act however, the Id. CIT(A) upheld the validity of reopening of the assessment.

6. Before the Tribunal, the Id. AR of the assessee has submitted that the AO has issued notice U/s 148 of the Act on the basis of AIR information and on the basis that the assessee has not filed her return of income for the year under consideration U/s 139(1) of the Act. The Id. AR has pointed out that in doing so the AO has ignoring the fact that the bank account on the basis on which the assessment was reopened in the name of Ragini Mewara whereas the notice U/s 148 was issued in the name of Smt. Namrata Mewara. The Id. AR has pointed out that the assessee filed her return of income on 22.06.2010 and therefore, at the time of recording the reasons ignoring this crucial fact means that the assessment was reopened without application of mind and without consideration of relevant facts. Thus, the Id. AR has submitted that the very reasons for reopening the assessment that the assessee has not filed return of income is incorrect and consequently the notice U/s 148 of the Act is illegible and bad in law. In support of his contention, he has relied upon the various decisions as under:-

1. Sh. Kulwant Singh vs. ITO in ITA No. 841/JP/18 dated 20.12.2018.
2. PCIT Vs. RMG Plyviny (I) Ltd. (2017) 156 DTR 79 (Del.)(HC).
3. Ashwani Kumar Vs. ITO in ITA No. 129/Asr/2015 dated 23.02.2016.

Hence, Id. AR has submitted that the reopening is bad in law and liable to be quashed.

7. On the other hand, the Id. DR has submitted that the assessee has changed her name during the year under consideration whereas the as per PAN data the name of assessee is Ragini Mewara and therefore, the AO has issued notice U/s 148 of the Act on the basis of the information that the assessee has not filed any return of income U/s 139(1) of the Act. The return of income filed by the assessee under a changed name was not reflected in the data base information and therefore, the said fact recorded in the reasons recorded is based on the record and there is no question of ignoring the fact. He has relied upon the order the authorities below.

8. I have considered the rival submissions as well as relevant material on record. There is no dispute that the alleged return of income was filed by the assessee on 22.06.2010 in the name of Ragini Mewara whereas the cash was deposited by the assessee in the bank account in her changed name Smt. Namrata Mewara. The Assessing Officer has issued notice U/s 148 of the Act on the basis of the information of deposit of cash in the bank account therefore, the non availability of the return of income filed by the assessee under a different name with the Assessing Officer is due to the change of name by the assessee and the same was not updated in the PAN data base. Since this fact was not available in the PAN data base due to the reasons of change of name and therefore, the AO has mentioned in reasons recorded that the assessee has not filed her return

of income. None considering the fact of filing the return of income is due to the reasons that the assessee filed the return of income under different name and the bank account was opened in a different name. Accordingly when there was information of deposit of cash in the bank account of the assessee under a different name then prima facie it constitute a tangible material to form the belief that the income assessable to tax has escaped assessment. Hence, I do not find any reasons to interfere with the order of the Id. CIT(A) qua this issue.

9. Ground nos. 2 & 2.1 are regarding addition made by the AO on account of deposit made in cash in the bank account of the assessee which was confirmed by the Id. CIT(A). The Id. AR has submitted that from the bank account it can be noted that there are regular deposits and withdrawals in cash. The deposits are made at different places i.e. jodhpur, Ajmer Jaipur etc. whereas the withdrawal is made at Gurgaon whereas the assessee resides. The bank account itself indicates that sale proceeds were deposited in this bank account and amount was withdrawn for making payment for purchases and expenses. Therefore, the entire deposit in the bank account cannot be considered as income but only a reasonable profit rate on such deposit can be assessed as income of the assessee. The Id. AR has further pointed out that the assessee has already declared income of Rs. 2,61,722/- in the return of income which give a

rate of 20.17% on deposit of Rs. 12,91,573/-. Thus, the Id. AR has pleaded that when the assessee has already declared a reasonable income in the return of income then no addition is warranted on account of deposits made in the bank account. He has further pointed out that in the remand report, the AO has rejected the claim of deposit being the sale proceeds on the ground that no supporting evidence regarding purchase and sale of textile and handicraft items has been furnished whereas the assessee has already declared the income from the said business in the return of income filed U/s 139(1) of the act. Alternatively, the Id. AR has submitted that in any case only peak deposit in the bank account can be considered for addition U/s 69A of the Act instead of the entire deposit made during the year and ignoring the withdrawal made by the assessee.

10. On the other hand, the Id. DR has submitted that the assessee has failed to produce any supporting evidence that the deposits were made from sale proceeds. Even no evidence was produced regarding any purchase of textile and handicrafts material. He has further contended that the assessee has not complied with various notices issued by the AO and therefore, the stand of the assessee cannot be accepted. He has relied upon the orders of the authorities below.

11. I have considered the rival submissions as well as relevant material on record the limited issues raised in this appeal by the assessee is

whether the entire deposits made in the bank account is liable to be assessed as income by the assessee or only the profit element in the turnover would be assessed to tax. There is no dispute that the assessee filed return of income U/s 139(1) of the Act however, due to change of name the said income was not considered by the AO in the proceedings U/s 147/148 of the IT Act. The assessee is in the business of textile and handicrafts and the particulars of the deposits and withdrawals made in the bank clearly manifest a regular pattern of deposits at different places and withdrawals were made by the assessee at Gurgaon which shows that the deposits were made in the bank account of the assessee on account of sale proceeds. Therefore, I find merits and substance in the contention of the Id. AR that deposits made in the bank account represents the sale proceeds of the assessee and hence the entire deposit cannot be assessed to tax but a reasonable profit can be estimated on such turnover of the assessee. The assessee has already declared the income on account of textile and handicrafts business. Hence, the AO is directed to estimate the income of the assessee by applying a reasonable and proper net profit on such turnover. In any case when there is a corresponding withdrawal from the bank then the entire deposit cannot be considered as unexplained deposits ignoring the withdrawal made by the assessee before the subsequent deposit. However, I find merits in the contention that the

deposits represents sale proceeds and turnover of the assessee and hence, the matter is set aside to the record of the AO for estimation the income of the assessee by applying for some reasonable and proper basis being GP/NP on such turnover.

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

Order pronounced in the open court on 01/11/2019.

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

जयपुर / Jaipur

दिनांक / Dated:- 01/11/2019

*Santosh

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

1. अपीलार्थी / The Appellant- Smt. Namrata Mewara, Gurgaon.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-1, Kishangarh.
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. 1420/JP/18)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar