

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री विजय पाल राव, 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 No. 1169/JP/2019
निर्धारण वर्ष/Assessment Year : 2012-13

Sumitra Devi Agrawal A-280, Shivaji Marg, Nehru Nagar, Jaipur.	बनाम Vs.	ITO, Ward-4(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABYPA1325K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Pallavi Joshi (Adv.)
राजस्व की ओर से / Revenue by : Man Mohan Kandpal (JCIT)

सुनवाई की तारीख / Date of Hearing : 29/11/2019
उदघोषणा की तारीख / Date of Pronouncement: 03/12/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 24.07.2019 wherein the assessee has taken following sole ground of appeal:-

"On the facts and in the circumstances of the case, the Id. CIT(A) has erred in holding that the assessee has not filed any linkage/proof that withdrawal made last year remained and was utilized during the year for deposit in the capital account and thereby confirming the addition of Rs. 7,50,500/-."

2. Briefly stated, the facts of the case are that the assessee is engaged in trading of mustard oil, mustard cake, general grocery etc. During the year under consideration, she has introduced capital of Rs. 7,50,500/- in her business and the source of such capital introduction has been explained as withdrawals made by the assessee from her capital account of the previous financial year. However, the AO did not accept the submission of the assessee for the reason that the withdrawals made during the preceding financial year were deposited in the current financial year have no weight because in his view, the withdrawals may have been utilized for some other purposes and it cannot be retained by the assessee in anticipation of proposed capital introduction during the year under consideration. Accordingly, an amount of Rs. 7,50,500/- was added as income from other sources u/s 69 of the Act. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has sustained the said addition and now the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that the assessee is an old lady and has withdrawn a sum of Rs. 7,00,000/- in preceding financial year and Rs. 1,00,000/- in current financial year from her capital account and the same has been reintroduced as capital in her business during the year under consideration. It was submitted that being an old lady, she used to keep cash with her for emergency requirement and the same was available at the beginning of the financial year. It was further submitted that the AO did not bring any evidence or material that withdrawals of preceding financial year were utilized elsewhere and in the assessment order, he has stated that the withdrawals may have been utilized for some other purposes. It was

accordingly submitted that it was a mere suspicion on part of the Assessing Officer that cash so withdrawn was not available and mere suspicion cannot be made the basis for making the addition in the hands of the assessee. Further, in support of the fact that there were withdrawals made on various dates in the preceding financial year amounting to Rs. 7 lac and same was available at the beginning of the financial year and which was reintroduced in the capital account during the year under consideration, copy of capital account of previous financial year and an affidavit of the assessee was also submitted. It was accordingly submitted that the addition so made by the AO may be directed to be deleted. Further, in support of the proposition that merely because there is time gap between withdrawals and deposits, no addition can be made in absence of any cogent material in possession of the Assessing officer, the Id AR has placed reliance on the following decisions:-

- ACIT vs Baldevraj Charla and Ors. (2009) 121 TTJ 366 (Delhi)
- S.R. Venkatta Ratnam vs. Cit (1981) 127 ITR 807 (KAR)
- ITO vs. Mrs. Deepali Sehgal (ITAT Delhi), ITA No. 5660/Del/2012
- Kolli Gopi Krishna vs. DCIT (2015) 42 ITR (Trib) 638(Hyderabad)

4. Per contra, the Id. DR is heard who has relied on the findings of the lower authorities. It was submitted that the assessee has failed to submit any material to prove that cash so withdrawn in the previous financial year was available at the beginning of the financial year which was reintroduced in the capital account during the year under consideration. Accordingly, the addition made by the AO should be confirmed.

5. We have heard the rival contentions and perused the material available on record. The limited issue under consideration is whether the assessee has reasonably explained the source of capital introduction during the year or not. We find that there are cash withdrawals on 4 different dates in the latter half of immediately preceding financial year totalling to Rs. 7 lac from the assessee's capital account and also there is a withdrawal of Rs. 1 lac during the current financial year. We therefore find that there is no dispute that the withdrawals have been made by the assessee in the preceding financial year as well as current financial year from her capital account. Even the Assessing officer has also not disputed that these withdrawals have been made by the assessee from her capital account. Regarding the availability of cash so withdrawn at the time of reintroduction of capital during the year, the Assessing officer has raised an apprehension that withdrawals might have been utilized for some other purposes and it cannot be retained by the assessee in anticipation of proposed capital introduction during the year under consideration. In her support, the assessee has submitted that being an old lady, she had kept the amount so withdrawn with her for emergency requirement, the same was not utilized elsewhere, was available with her at the beginning of the financial year and was used for reintroduction of capital and has also submitted an affidavit in support of her contentions. We therefore find that the finding of the authorities below is in the realm of suspicion and conjectures as the source of capital introduction has been reasonably explained by the assessee as out of her withdrawals from her capital account in the latter half of immediate past financial year which were available at the beginning of the financial year as well as from the current financial year

withdrawals and the addition so made by the Assessing officer is hereby directed to be deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 03/12/2019.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 03/12/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sumitra Devi Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(4), 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. 1169/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar