

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल रॉव, 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. 153/JP/2017  
निर्धारण वर्ष / Assessment Year : 2011-12.

Shri Balkrishan Sharma S/o Sh. Ramchandra Sharma, Village:Shyampura,Tehsil: Bansur, Alwar.	बनाम Vs.	The Income Tax Officer, Ward : Behror.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. BXRPS 6009 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Satish Gupta (CA)

राजस्व की ओर से / Revenue by : Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 17.12.2019.  
घोषणा की तारीख / Date of Pronouncement : 19/12/2019.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 6<sup>th</sup> January, 2017 of Id. CIT (A), Alwar for the assessment year 2011-12. The assessee has raised the following grounds :-

- " 1. On the facts & circumstances of the case and in law also Id. Lower authorities grossly erred in initiating reassessment proceedings u/s 147 of the Income Tax Act, 1961.
2. On the facts & circumstances of the case and in law also Id. A.O. grossly erred in not taking prior approval of superior authority in the case hence the entire proceedings are abinitio void.

3. On the facts & circumstances of the case and in law also Id. Lower Authorities grossly erred in making and confirmation addition of Rs. 10,15,641/- on account of unexplained money.
4. On the facts & circumstances of the case and in law also Id. Lower Authorities grossly erred in making and confirming addition of Rs. 14,460/- on account of commission income."

**Ground nos. 1 & 2 are regarding validity of initiation of proceedings under section 147/148 of the IT Act.**

2. At the time of hearing, the Id. A/R of the assessee has submitted at Bar that the assessee does not press ground nos. 1 & 2 of the appeal and the same may be dismissed as not pressed. The Id. D/R raised no objection if the ground nos. 1 and 2 of the assessee's appeal are dismissed as not pressed. Accordingly, ground nos. 1 and 2 of the assessee's appeal are dismissed being not pressed.

**Ground No. 3 is regarding the addition made by the AO on account of deposits made in the bank account of the assessee.**

3. The Id. A/R of the assessee has submitted that the assessee is running a Wine shop belonging to Shri Sanjay Poonia, a contractor and licensee of the Wine Shop. The Id. A/R has further submitted that the deposits made in the bank account of the assessee are in respect of the transactions of Wine shop and belong to Shri Sanjay Poonia. However, since the assessee is running the said shop, therefore, the transactions are carried out through the bank account of the assessee. The Id. A/R has referred to the affidavit of Shri Sanjay Poonia and submitted that once Shri Sanjay Poonia has admitted this fact in the affidavit filed before the AO and the AO

has also accepted this fact by sending letter to the AO of Shri Sanjay Poonia for making the addition on protective basis in his hand, the addition made in the hands of the assessee is not justified. Thus the Id. A/R has submitted that when the transactions of deposits in the bank account pertains to the Wine shop business of Shri Sanjay Poonia, then the same cannot be assessed as income of the assessee. Hence, the Id. A/R has submitted that the addition made by the AO on account of deposits in the bank account of the assessee is not justified when the assessee has brought on record the correct facts and also the affidavit of Shri Sanjay Poonia. Alternatively, the Id. A/R of the assessee has submitted that even if the addition is to be made on account of deposits in the bank account, it ought to have been only peak deposits and not the entire deposits made during the year.

4. On the other hand, the Id. D/R has submitted that the AO issued notice under section 133(6) to Shri Sanjay Poonia in response to which he has filed an affidavit admitting the transactions of Wine shop. However, he has not admitted all the transactions of deposit of cash in the bank account of the assessee. Therefore, in the absence of his admission of the entire deposits made in the bank account of the assessee by Shri Sanjay Poonia, the AO is justified in making the addition as prima facie the bank account of the assessee is tangible material to show that the assessee has deposited the amounts in the bank account. As regards the plea of peak deposits, the Id. D/R has submitted that the assessee has not explained the source of the deposits and utilization of the amount withdrawn from the bank, therefore, the same cannot be accepted.

5. We have considered the rival submissions as well as the relevant material on record. The AO has initiated the proceedings under section 148 based on the

information that the assessee has deposited a sum of Rs. 56,36,350/- in his savings bank account held with OBC Bank, Alwar. During the assessment proceedings, the assessee has submitted that the assessee has maintained separate cash book for the business owned by Shri Sanjay Poonia running a Wine shop and all the cash received and paid on behalf of the owner has been entered in the cash book. The assessee produced the cash book along with the bank statement and claimed that all the cash deposits in the bank account were belonging to the owner of the Wine shop. The AO issued a notice under section 133(6) to Shri Sanjay Poonia, in response Shri Sanjay Poonia filed an affidavit and admitted the ownership of the Wine shop and all the transactions of Wine shop belong to his business. He has also stated in the affidavit that the deposits in the assessee's savings bank account related to his Wine shop business. This fact is duly recorded by the AO in the assessment order, however, the AO has not accepted the explanation of the assessee on the ground that in his affidavit he has admitted the transactions relating to the Wine shop business and not the entire cash deposits in the bank account of the assessee. It is pertinent to note that once Shri Sanjay Poonia has admitted that the Bank Account of the assessee with OBC Alwar is used for the Wine shop business owned by him and all the transactions in the said bank account are in relation to his business, then there is nothing to give a different interpretation of the said statement made in the affidavit by Shri Sanjay Poonia. The AO has given some extraneous reasons for not accepting the said affidavit. However, the AO has admitted the fact that the income is also required to be assessed in the hands of Shri Sanjay Poonia and accordingly information was forwarded to the concerned AO for initiating the proceedings of protective assessment in the hands of Shri Sanjay

Poonia. All these facts clearly established that the assessee has discharged his onus to explain the source of deposits made in the bank account. The Id. CIT (A) while passing the impugned order has sustained the addition in para 7.3.2 as under :-

" 7.3. I have gone through the assessment order as well as submissions made by the appellant. Following facts have emerged ;

1. That the appellant is having a saving bank account in his name maintained at Oriental Bank of Commerce, Alwar.
2. That total cash amount of Rs. 56,36,350/- was found deposited during the period under consideration in his saving bank accounts.
3. That the appellant has claimed that the cash deposits were on account of retail liquor sale on behalf of Sh. Sanjay Poonia and that he was doing this liquor sale business on his behalf only.
4. The he has filed an affidavit from Sh. Sanjay Poonia in favour of his claim.
5. That the A.O had issued notice under section 133(6) of the Act to Sh. Sanjay Poonia. Sh. Sanjay Poonia admitted a transaction of merely Rs. 5,55,000/- with the appellant during the year under consideration.
6. That the A.O. has asked the appellant to produce Sh. Poonia for the verification of the transaction. The appellant was not able to produce him.

7.3.2. I have considered the above mentioned facts. When a cash is found deposited in the bank account of the assessee, the onus lies on him to give conclusive proof of the genuineness of such cash transaction. In this case, although the assessee is found to be in possession of the cash deposits in his own bank accounts but he denied the ownership of the cash deposits. He claimed that the cash deposits belonged to Sh. Sanjay Poonia. But Sh Poonia did not come forward for examination before the AO. Neither the appellant has given any details as to whether such cash deposits found in the bank account of the appellant is shown in the return of income of Sh. Sanjay Poonia. The A.O.

has rightly rejected the claim of the assessee while giving a detailed reasoning on page 5 & 6 of the assessment order. Going by the factual matrix of the case, I do not find any reason to interfere with the order of the AO on this issue. Accordingly, the addition of Rs. 10,15,641/- is sustained. Appellant's ground of appeal is dismissed on this issue."

Thus it is clear that the amount of Rs. 5,55,000/- as mentioned by the Id. CIT (A) in the impugned order is not mentioned in the affidavit filed by Shri Sanjay Poonia. Therefore, this is only an assumption on the part of the authorities below that he has accepted the transactions of only Rs. 5,55,000/-. In case the AO was not satisfied with the explanation and affidavit of Shri Sanjay Poonia, then steps ought to have been taken to verify the facts by examining Shri Sanjay Poonia by issuing notice under section 131 of the IT Act. Instead of taking up further enquiry or verification, the AO has made the addition which is not justified. Accordingly in the facts and circumstances of the case where the AO has accepted the fact that the Wine shop belongs to Shri Sanjay Poonia and the transactions relating to the Wine shop are the business transactions of Shri Sanjay Poonia and not the assessee, then the affidavit of Shri Sanjay Poonia cannot be rejected wherein he has admitted all the transactions in the bank account of the assessee are related to his business. In these facts and circumstances, the addition made by the AO is highly arbitrary and not justified and the same is deleted.

**Ground No. 4 is regarding the addition sustained by the Id. CIT (A) on account of commission income.**

6. The Id. A/R of the assessee has submitted that the AO has made the addition of Rs. 38,460/- on account of commission income on the ground that TDS of Rs. 3,847/- was deducted on the commission income which has not been claimed by the assessee in the return of income filed by him. The Id. A/R has submitted that the assessee has already declared the commission income in the return of income filed under section 139(1) of the Act. Therefore, the addition made by the AO is without considering the income offered by the assessee to tax.

7. On the other hand, the Id. D/R has submitted that the Id. CIT (A) has already deleted the addition to the extent of commission income declared by the assessee. She has relied upon the order of the Id. CIT (A).

8. We have considered the rival submissions as well as the relevant material on record. The AO has made the addition of Rs. 38,460/- on the basis of TDS of Rs. 3847/- deducted on account of commission income. We find that the Id. CIT (A) has accepted the fact that the assessee has already declared the commission income of Rs. 24,000/- and accordingly granted the relief to that extent. The relevant finding of the Id. CIT (A) in para 6.3 are as under :-

" 6.3. I have gone through the assessment order as well as submissions made by the appellant and find that out of total commission income of Rs. 38,460/- the assessee had declared commission income of Rs. 24,000/-. Therefore, only balance amount of commission i.e. Rs. 14,460/- escaped the assessment. Accordingly the addition on understatement of commission is reduced to Rs. 14,460/-. Thus, the appellant's ground of appeal on this issue is partly allowed."

Nothing has been brought before us to controvert the fact that the balance amount of Rs. 14,460/- on account of commission income was offered by the assessee to tax. Hence, we do not find any error or illegality in the order of the Id. CIT (A).

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19/12/2019.

Sd/-

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

Sd/-

( विजय पाल राँव )  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2019.

das/

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

1. अपीलार्थी / The Appellant-Shri Balkrishan Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO, Ward Behror.
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. 153/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar