

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' 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. 1127/JP/2019
निर्धारण वर्ष /Assessment Year :2010-11

Sh. Umesh Kumar Pujari S/o Sh. Balmukand Pujari Pujari Ki Gali Ward No. 8, Laxmangarh, Sikar-321607	बनाम Vs.	The ITO, Ward 4(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AQRPP3754B		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. K. L. Moolchandani (AR)
राजस्व की ओर से / Revenue by : Sh. K. C. Gupta (JCIT)

सुनवाई की तारीख / Date of Hearing : 01/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 02/07/2020

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 23.07.2019 wherein the assessee has taken a sole ground of appeal as under:-

"On the facts and in the circumstances of the case, the learned CIT(A) has factually and legally erred in dismissing the appeal filed by the appellant and confirming the addition of Rs. 4,96,650/- made by the Id. AO on account of the alleged unexplained bank deposits, without appreciating the facts of the case in right perspective. Thus the addition so made and confirmed by the Authorities below deserves to be deleted."

2. During the course of hearing, the Id. AR submitted that the appellant is a "Pujari", performing religious rituals and other functions. Besides, he had also done side business on petty scale, having turn-over in the vicinity of Rs.4-5 lac. At the given point of time, he was 41 years old and was having nominal income below taxable limits. The re-assessment proceedings were however initiated u/s 147/148 of the Act on the basis of information that the appellant had deposited RS. 6,20,000/- in his bank account with Oriental Bank of Commerce, Laxmangarh. In compliance to such notice, the appellant had filed his return of income showing income of Rs.1,31,538/-, which included his income from business for Rs.70,500/- and income from Puja Path etc. for Rs.55,200/-. It was further informed that there was no cash deposit of Rs.6,20,000/- as alleged in the reasons. In fact, he had deposited cash of Rs.3,10,000/- only on 15.6.2009 as evident from the copy of bank account submitted herewith. During the course of assessment proceedings, on being enquired about another saving bank account if any, it was informed by the appellant that he had another Saving Bank account with Baroda Raj. Kheshtriya Gramin Bank, Laxmangarh (A/c No. 76550100047720) but no cash whatsoever was deposited in this Bank. There was a credit entry of Rs.1,30,000/- on account of LC in this account. Accordingly, the appellant had explained the source of cash deposit of Rs.3,10,000/- out of his past savings and sale proceeds during the year. The Id. AO had however, junked such explanation and had proceeded to finalize the re-assessment proceedings ex-parte u/s 144 without pointing out any failure on the part of the appellant and had added the entire credit entries of Rs. 4,96,650/- (Rs.3,10,000/- on account of cash deposit on 15.6.2009 & credit Balance of 1,36,784/-including opening credit balance) without considering the contention of the appellant regarding his past savings and receipt of bank remittance. Obviously the addition so made in ex-parte order was bad in

law and deserved to be quashed summarily. Accordingly, an appeal was filed before the Id. CIT (A)-2, Jaipur.

3. It was further submitted by the Id AR that the Id. CIT (A) had also dismissed the appeal in skeptical manner without addressing the points at issue in right perspective and without examining the credit entries critically with the following findings vide para 2.3 of the appellate order:

"I have perused the facts of the case, the assessment order and the submissions of the appellant. Ground No.1 to 04 which are interrelated are being taken up together. Assessing Officer observed that there is a cash deposit of Rs.6,20,000/- in the Oriental Bank of Commerce and credit of Rs.1,36,784/- in Baroda Rajasthan Ksheteriyan Gramin Bank. The assessee has shown gross receipt of Rs. 4,62650/-. It is further noticed that out of deposit of Rs.6,20,000/- deposit of Rs.3,10,000/- was made only on 15.6.2009.

Considering this, Assessing Officer after allowing proportionate credit of sales realization, treated difference of Rs.4,96,650/- as undisclosed cash deposited in the same bank account. Lt. Authorized Representative submitted that this represents the business records, past saving and L.C. Payment received.

On perusal of overall facts, I find that the appellant has not filed any proper documents proving that amount deposited in bank is out of business receipts/old saving. Regarding credit of Rs.1,30,000/- the narration in bank account is L.C. which does not mean that this is an exempt receipt. Therefore, Assessing Officer correctly treated the bank deposit of Rs.4,96,650/- as unexplained. Hence, these grounds of appeal are dismissed."

4. It was submitted by the Id AR that on going through the above findings, it is noted that the Ld. CIT (A) has incorrectly taken the figures of the 'cash deposits' at Rs.6,20,000/- instead of actual cash deposit of Rs.3,10,000/-. In the circumstances, the conclusion arrived at on the basis of the incorrect figures of bank deposit, the working of the addition is factually and legally incorrect and deserves to be quashed. Again, the Ld. CIT(A) has incorrectly observed that the Ld. AO had allowed credit of the past savings and sale proceeds of business goods proportionately to arrive at the addition of Rs.4,96,650/-. On going through the assessment order, it is noted that while taking cash deposit of Rs. 3,10,000/-, the Ld. AO had added credit entries of interest and LC incorrectly without appreciating the exact nature of these credit entries. Thus the Ld. CIT (A) has misconstrued the facts of the case and confirmed the addition made by the AO on the basis of incorrect facts and figures. Thus the findings of the Ld. CIT (A) are assailed on the following counts:

(i) The actual cash deposit in the Bank during the year is Rs.3,10,000/-and not Rs.6,20,000/- as taken by the Id. CIT (A) while confirming the addition of Rs. 4,96,650/- made by the Ld. AO.

(ii) The Id. AO had incorrectly worked out the figures of Rs.4,96,650/- by adding the credit figures on account of interest of Rs. 35,786/- & Rs.14,080/- appearing in bank account of Oriental Bank of Commerce, and opening credit balance of Rs.6,472/- appearing in the bank account of Baroda Raj. Kiheteriyan Gramin Bank and Rs.1,30,000/- on account of bank transfer on 6.1.2010. No cash deposit was made in Baroda Raj. Ksheteriyan Gramin Bank as per copy of letter submitted herewith. In fact, during this year, the appellant had deposited only Rs.3,10,000/- in cash. Balance was credit entries on account of interest, the opening credit balance and transfer entry on account of the funds

transferred to the appellant for performing religious functions etc. (108 Hawan Kunds in Desi Ghee etc.). In the Return, the appellant had shown income of Rs. 55,200/- from this source.

(iii) Regarding source of the cash deposit of Rs.3,10,000/- the Authorities below have admitted the fact that the part of such deposits could be made out of the past savings and the sale proceeds of the business goods during the year. Considering these facts, they have confirmed the addition Rs.4,96,650/- out of the alleged deposits of Rs.8,17,000/- (cash deposit of Rs.6,20,000/- and the alleged credit entries of Rs.1,87,000/-) (i.e about 50% of the alleged deposits and credit entries etc.) Thus they have given credit of Rs. 3,20,000/- out of past savings and sale proceeds of the business goods. Thus the source of these deposits to the extent of Rs.3,20,000/- were found to be satisfactorily explained by the Authorities below. In view of above facts and discussions, the actual cash deposit of Rs.3,20,000/- stands satisfactorily explained as per above findings of the Authorities below. As such the addition of Rs.4,96,650/- as confirmed by the Id. CIT (A) deserves to be deleted.

5. Per contra, the Id. DR submitted that the assessee has failed to explain source of deposits in his bank account. It was submitted that the notice u/s 148 was initially issued on account of cash deposit of Rs. 6,20,000/- in assessee's bank account which has escaped assessment. Thereafter, during the course of assessment proceedings, the Assessing Officer examined the bank statement of two bank accounts maintained by the assessee and found that there is a cash deposit of Rs. 3,10,000/- and there is credit of Rs. 49,866/- in assessee's account maintained with Oriental Bank of Commerce and besides that, there are credits of Rs. 1,36,784/- in another bank account maintained with Baroda Raj. Ksheteriyan Gramin Bank.

It was accordingly submitted that since the assessee has failed to explain the source of credit in his bank accounts, an amount of Rs. 4,96,650/- was brought to tax in the hands of assessee. He accordingly supported the findings of the lower authorities.

6. We have heard the rival submissions and perused the material available on record. We find that pursuant to notice u/s 148, assessee has filed his return of income disclosing gross business receipts of Rs. 4,62,700/- besides other income in the form of interest receipts, income from Pooja Path and other misc. receipts amounting to Rs. 61,038/-. Therefore, business and other receipts totaling to Rs. 5,23,738/- have been disclosed by the assessee in his return of income. On perusal of the assessee's bank account maintained with Oriental Bank of Commerce, we find that there are 3 credit entries of Rs. 35,786/, 14,080/- and 3,10,000/- (cash deposit) totaling to Rs. 3,59,866/-. Further, there is a credit entry in the saving bank account maintained with Baroda Rajasthan Ksheteriyan Gramin Bank amounting to Rs. 1,30,000/-. Therefore, as against the total gross receipts of Rs 523,738/- declared by the assessee in his return of income, the total credit in the assessee's bank account comes to Rs. 4,89,866/-. Therefore, the explanation of assessee that the cash deposit of Rs. 3,10,000/- is out of the business receipts is found to be reasonable. Therefore, where the very basis of reopening of the assessment wherein the cash deposits of Rs. 3,10,000/- (wrongly mentioned as Rs. 6,20,000/-) has been duly explained and the explanation of the assessee is found reasonable and also the fact that business receipts of Rs. 4,62,700/- and other miscellaneous receipts including interest receipt of Rs. 61,038/- so declared by the assessee has been accepted by the Revenue and corresponds to credits in assessee's bank account, we do not see any basis for making further addition of Rs. 4,96,650/- in the hands of the assessee. Therefore, in light of the facts

and circumstances of the case, the addition so made by the Assessing Officer is hereby directed to be deleted.

In the result, appeal of the assessee is allowed.

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:- 02/07/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Umesh Kumar Pujari, Sikar
2. प्रत्यर्थी / The Respondent- The ITO, Ward 4(1), 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. 1127/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar