

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. 195/JP/2020
निर्धारण वर्ष / Assessment Year : 2011-12

M/s Kalpana 119, 3 rd Floor Mahadev Nagar, Vaishali Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-5(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BIMPk 4068 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Smt. Suhani Maharwal (C.A.)
राजस्व की ओर से / Revenue by : Miss. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 07/07/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 09.01.2020 of Id. CIT(A)-II, Jaipur for the assessment order 2011-12. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference. The assessee has raised the following grounds:-

"1. The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void-ab-initio, the same kindly be quashed.

Consequently the impugned assessment framed u/s 144 r.w.s. 147 dated 05.11.2018 also kindly be quashed.

2. On the facts and in the circumstances of the case, Ld. CIT(A) erred in passing order without affording reasonable opportunity of being heard which is in violation of natural justice and liable to be set aside.

3. On the facts and in the circumstances of the case, Ld. CIT(A) did not allow the condonation of delay of appeal inspite of valid reasons provided by the assessee.

4. On the facts and in the circumstances of the case, Ld. AO erred and simultaneously Ld. CIT(A) sustain in adding addition of Rs. 905000/- on account of the alleged unexplained income i.e. Rs. 545000/- time deposits with bank Rs. 360000/- cash deposited in bank the addition is without any basis and unjustified liable to be quashed.

5. On the facts and in the circumstances of the case, Ld. AO erred and simultaneously Ld. CIT(A) sustain in charging interest u/s 234A, 234B and 234C of the Act. The appellant totally denies its liability of charging any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full."

2. Ground No. 1 is regarding validity of reopening of assessment. At the time hearing, the Id. AR of the assessee as stated at bar that the assessee does not press ground no. 1 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 the ground no. 1 of the assessee's appeal is dismissed being not pressed.

3. Ground no. 2 and 3 are regarding the ex-parte impugned order passed by the Id. CIT(A) and to decline the condonation of delay of 20 days in filing the appeal before the Id. CIT(A). The Id. AR of the assessee has submitted that the assessee is 72 years old widow living alone and her children are not living with her. Due to her old age, the assessee was not able to hand over the relevant documents before the Id. CIT(A). The AR has pointed out that the assessee is not a regular tax payer and only because certain transactions during the year regarding development of the plot of land the assessee received amount and deposit in the bank account of the assessee, therefore, in these facts and circumstances of the case the explanation of the assessee for delay in filing the appeal may be condoned. The Id. AR has also pointed out that the assessee has entered into the development agreement with the developer for development of her plot No. 165, Pratap Grih Nirmarn Sahkari Samiti, Vaishali Nagar, Queens Road, Jaipur. Under the said development agreement the assessee received a sum of Rs. 5,00,000/- out of which Rs. 2,51,000/- through cheque and balance amount of Rs. 2,49,000/- was received in cash. All these facts are narrated in the development agreement itself, therefore, the said documents is relevant for deciding the issue of addition made by the AO

on account of term deposit as well as cash deposit in the bank account of the assessee. The Id. AR has also referred to bank account statement of the assessee and submitted that the assessee has withdrawn various amount from her bank account prior to the term deposit as well as cash deposit. Thus, the Id. AR has submitted that the documents which are now filed by the assessee are available in the public domain and could have been verified by the AO at the time of assessment. If these documents are to be considered then the assessee has explained the source of term deposit of Rs. 5,49,000/- and cash deposit of Rs. 3,60,000/- . Hence, the Id. AR has pleaded that the delay of 20 days in filing the appeal may be condoned and the addition confirmed by the Id. CIT(A) may be deleted.

4. On the other hand, Id. DR has submitted that the AO has given more than sufficient opportunities to the assessee to appear and produce the evidence however, the assessee chosen not to appear either before the AO nor before the Id. CIT(A). The notices issued by the AO and the Id. CIT(A) were sent at the address given by the assessee, therefore, the assessee cannot take the excuse of her old age for not complying the notices. The Id. DR has further pointed out that the reasons explained by the assessee are not reasonable explanation

for not producing the documents before the authorities below. Accordingly she has relied upon the orders of the authority below and opposed to the admission of additional evidence produced by the assessee.

5. We have considered the rival submissions as well as relevant material on record. There is no dispute that the assessee is not a regular tax payer or tax assessee. The assessee has not filed return of income U/s 139(1) of the Act but on the basis of the information regarding the term deposit and cash deposit in the bank account of the assessee the AO issued notice U/s 148 on 28.03.2018. There was no compliance on behalf of the assessee to be notices issued U/s 148 as well as U/s 142(1) of the Act. Accordingly, the AO framed assessment U/s 144 r.w.s. 147 of the Act whereby the addition on account of unexplained source of time deposit of Rs. 5,45,000/- and on account of unexplained source of cash deposit of Rs. 3,50,000/- were made by the AO. Thus, the total income of the assessee was assessed at Rs. 9,05,000/-. The assessee challenged the action of the AO before the Id. CIT(A) however, the Id. CIT(A) dismissed the appeal of the assessee both on the ground of delay of 20 days as well as on merits. As regards the delay of 20 days in filing the appeal the assessee has explained the

reasons that she is an old widow of 72 years and living alone as her children are not living with her. She has also stated in the application that due to old age she was not able to hand over the requisite documents to the advocate/ authorized representative to take necessary steps for filing the appeal before the Id. CIT(A) and also to submit evidence in support of the source of term deposit and cash deposit in the bank account. The Id. CIT(A) was not impressed with the reason for condonation of delay given by the assessee. The relevant part of the order of the Id. CIT(A) in para 2 as under:-

"2. This appeal has been filed on 25.01.2019 against the order under section 147/144 dated 05.11.2018 of I.T. Act. In the Form No. 3E the date of service of order is stated to be 06.12.2018. As per the service of the assessment order / demand notice dated 05.11.2018, the appeal was to be filed by 05.01.2018 whereas the present appeal is filed on 25.01.2019 i.e. delay of around 20 days. On perusal of Form No. 35, it is seen that the plea of ignorance of law and assessee is aged around 71 years old, has been given by the appellant. The reason for condonation of delay given by the appellant is not a valid reason as she has a qualified Authorized Representative to represent her case. Therefore, the delay is not condoned."

Thus, the Id. CIT(A) has not disputed the fact as explained by the assessee that the assessee is an old widow of 72 years and living alone without support of her children. Therefore, in these facts and

circumstances of the case the delay of 20 days ought to have been condoned by the Id. CIT(A). Having considered the facts and circumstances of the case and particularly the assessee being an old widow living alone, we condone the delay of 20 days in filing the appeal before the Id. CIT(A).

6. As regards the additional evidence proposed to be filed by the assessee we find that the assessee has now produced a development agreement dated 21.12.2010 whereby the assessee has agreed for development of her plot of land and sharing the constructed area in 50-50 ratio with the developer. Under the said agreement the assessee has also received Rs. 5,00,000/- and details of which are given in the agreement itself. Thus, once the registered agreement shows the receipt of Rs. 5,00,000 by the assessee then, it is relevant to consider the said agreement in support of the source of the term deposit and cash deposit in the bank account. Further, the assessee has also relied upon the bank account itself and which was basis of the addition made by the AO. However, from the very same bank account of the assessee it is clear that prior to the term deposit and cash deposit the assessee has made various withdrawals which is around Rs. 5,00,000/-. Thus, considering this withdrawal of the assessee from the bank account

about Rs. 5,00,000/- and further, a sum of Rs. 5,00,000/- received under the development agreement out of which Rs. 2,49,000/- received in cash prima facie support the case of the assessee. These two documents being a registered agreement and bank account are beyond the scope of any manipulation by the assessee and details of the bank account was very much available with the AO being the basis of this addition. Further, the assessee has also filed an affidavit to explain the reasons for source as well as not furnishing the documentary evidence before the authority below. Having considered the facts and circumstances of the case as well as the nature of documents filed by the assessee as additional evidence we find that though the assessee could not produce these documents before the authorities below however, these documents were very much in existence at the time of assessment and there is no scope of any manipulation. Therefore, in the interest of justice we admit the additional evidence filed by the assessee and set aside the matter to the record of the Assessing Officer to adjudicate the same afresh after verification and examination of the additional evidence filed by the assessee as well as giving an opportunity of hearing to the assessee. Since the matter is set aside to

the record of the AO therefore, ground No. 3 to 5 stand disposed of being set aside.

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

Order pronounced in the open court on 07/07/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/07/2020.

*Santosh.

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

1. अपीलार्थी / The Appellant- M/s Kalpana, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(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. 195/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar