

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1000 & 1001/JP/2019
निर्धारण वर्ष / Assessment Years : 2014-15 & 2017-18

Shri Harpal Yadav 17, Jayapuriyo Ka Badh, Sirsi, Jaipur.	बनाम Vs.	The ACIT, Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACOPH 3647 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Nikhilesh Kataria (C.A.)
राजस्व की ओर से / Revenue by : Shri Amrish Bedi (CIT)

सुनवाई की तारीख / Date of Hearing : 17/12/2020
उदघोषणा की तारीख / Date of Pronouncement : 18/01/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the respective orders of Id. CIT(A)-IV, Jaipur both dated 29.05.2019 pertaining to assessment years 2014-15 & 2017-18 respectively. Since both these matters are arising out of same search proceedings and involving common issues, both these appeals were heard together and disposed off by this consolidated order.

2. In ITA No. 1000/JP/2019 for A.Y 2014-15, the assessee has taken the following grounds of appeal:-

"1. The assessment order passed u/s 143(3) r.w.s. 153A is bad in law as well as on facts of the present case and hence, the same may please be quashed.

2. Rs. 235000/- The ld. AO erred in law as well as on the facts of the present case in making addition on account of alleged cash payment out of undisclosed income and the ld. CIT(A) erred in sustaining the same."

3. During the course of hearing, the ld AR submitted that the assessee is a farmer earning income from agriculture as well as dairy business for last several years and there is no change in the source of income during the year under consideration. For the year under consideration, the assessee has filed return of income declaring income of Rs. 2,46,900/- on 30.07.2014. A search was conducted in the case of Kedia and Yadav Group and in consequent of the same, assessee's premises were also searched on 19.11.2016. Accordingly, notice U/s 153A of the Act was issued on 17.02.2017 and in compliance of the same, return was e-filed on 14.08.2017 at the same total income of Rs. 2,46,900/-. In the course of assessment proceedings, the AO has noticed that as per page 20-21 of Exhibit No. 2, certain entries of amount given and received were coming for which explanation was called from the assessee. The assessee has explained that he is not aware of any such amount having been given or taken and further, the same has already been crossed and hence, not relevant. However ignoring the submissions of the assessee, an amount of Rs. 2,35,000/- (Kalu tauji- Rs.1,10,000/-, Raj Kumar ji- Rs.20,000/-, Surajmal Yadav- Rs. 1,05,000/-) was added to the total income of the assessee which on appeal has been confirmed by the ld CIT(A) and against the said findings, the assessee is in appeal before us.

4. It was submitted by the Id AR that the entries in the diary are not in the handwriting of the assessee nor the assessee is aware of any such amount given or taken and during the course of assessment proceedings itself, the assessee has disowned the entries made in the diary. It was submitted that the entries in this diary were made by Shri Jitendra Yadav, son of the assessee who is employed with the Railway Department. Every specific submission was made before AO dated 01.05.2018 which read as under:

"Explanation on amount of Rs.260000/- appearing on Exhibit No. 2/Page no. 20, 21 & backside thereof: Your goodself has asked to explain some cash receipts of Rs.260000/- appearing on Page no. 20, 21 & backside of 21 of Exhibit 2. In this regard, please note that firstly we are unable to find any sum of Rs.260000/- either in single amount or in cumulative amount on the pages referred by your goodself.

We may also submit that the paper in question is not in the hand writing of the assessee and the assessee is not aware of any of such amounts given or taken by himself. It may also be pointed out that these narrations given are appearing crossed and therefore, it appears that some incorrect narrations or details were wrongly written and thereafter crossed.

In any case, these details were written by the son of the assessee Shri Jitendra Yadav who is employed with the Railway Department and the assessee disowns the same. If required, the department may call upon Shri Jitendra Yadav for confirming this fact and we are ready to offer co-operation wherever required.

Therefore, the details appearing on Page no. 20, 21 & backside of 21 of Exhibit 2 are of no significance and hence, may please be ignored."

5. It was further submitted that an affidavit of Shri Jitendra Yadav was also submitted alongwith submission dated 02.011.2018 and in the affidavit, Shri Jitendra Yadav has clearly stated that these specific entries were made by him in the diary. This discharges assessee from its liability to explain the paper in as much as the son of the assessee has clearly accepted the ownership of the papers. It was further submitted that despite the affidavit of Shri Jitendra Yadav, no enquiry was made from Shri Jitendra Yadav to get further clarification on these entries. In these circumstances, there is no basis for the addition in the hands of the assessee and the same deserve to be deleted.

6. Per contra, the Id. DR submitted that there was seized document found from the premises of appellant and transaction on the same are written in cash and the assessee has failed to explain the said transactions and thus the onus cast on him has not been discharged and the addition thus has rightly been made by the AO and confirmed by the Id CIT(A). He accordingly supported the findings of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. At the outset, the Id. AR on behalf of the assessee submitted that the assessee doesn't want to press ground no. 1 of his appeal, hence the same is dismissed as not pressed. Regarding ground no. 2, it is not in dispute that there was a document marked as page 20-21 of Exhibit No. 2 seized from the premises of the assessee where

certain entries of amount given/taken in cash has been written. It is also a fact that no question was asked from the assessee regarding these transactions as part of his statement recorded u/s 132(4) of the Act. During the assessment proceedings, the assessee was asked to explain the said entries and the assessee explained that the said entries were not in his handwriting and were made by his son, Shri Jitendra Yadav and an affidavit of Shri Jitendra Yadav was also filed where he has owned up the entries and the transactions so reflected therein as made by him relating to family transaction and expenses. The Revenue has not brought any evidence or finding disputing the contents of the said affidavit and the same thus remain unrebutted before us. In light of above, where Shri Jitendra Yadav has owned up the entries and the transactions, the assessee has successfully discharged the onus cast on him and the presumption u/s 132(4A) cannot be drawn against him. In the result, there is no basis for impugned addition in the hands of the assessee and the same is hereby directed to be deleted. In the result, the appeal of the assessee is allowed.

8. In ITA no. 1001/JP/2019 for A.Y 2017-18, the assessee has taken following grounds of appeal:-

"1. The assessment order passed u/s 143(3) r.w.s. 153A is bad in law as well as on facts of the present case and hence, the same may please be quashed.

2. Rs. 876197/- The Id. Assessing Officer erred in law as well as on the facts of the present case in making addition on account of alleged unexplained money u/s 69A of the Act.

3. Without prejudice to above, the Id. AO erred in law as well as on the facts of the present case in treating Rs. 876197/- as

unexplained money though no corroborative evidence was found by the department.

4. Without prejudice to above, the Id. AO erred in law as well as on the facts of the present case in treating Rs. 876197/- as unexplained money and rather, at the best, it may be treated as business income of the assessee."

9. During the course of hearing, the Id AR submitted that the assessee is a farmer earning income from agriculture as well as dairy business for last several years and there is no change in the source of income during the year under consideration. A search was conducted in the case of Kedia and Yadav Group and in consequent of the same, assessee's premises was also searched on 19.11.2016. Later on, for the year under consideration, the assessee has filed his return of income declaring income of Rs. 4,54,370/- on 10.03.2018. The case of the assessee was taken up for scrutiny and during the course of assessment proceedings, the AO has noticed certain details on page no. 15 of Exhibit No. 2 whereby an amount of Rs. 8,76,197/- was appearing as "savings". The Id. AO asked for the explanation of the same in response to which the assessee has submitted that this is merely a loose paper which is having no date or period and thus, having no relevance being a dumb document. However, the AO rejected the submission of the assessee and held the amount of Rs.8,76,197/- as unexplained money and added the same u/s 69A of the Act which has been confirmed by the Id CIT(A) and against the said findings, the assessee is in appeal before us.

10. The Id. AR drawn our reference to the provisions of Section 69A of the Act which reads as under:-

"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

11. It was submitted that a perusal of above provision would show that this specific provision can only be applied where the assessee is found to be owner of any money, bullion, jewellery or other valuable article. However in the present case, not a single rupee unexplained money has been found from the possession of the assessee nor there is any seizure of unexplained money, bullion, jewellery or other valuable article. Therefore, in absence of any physical finding of such unexplained money, bullion, jewellery or other valuable article, the provisions of this section cannot come into picture. The application of section 69A by the AO is extremely far-fetched without there being any physical finding or any corroborative evidence that the assessee was owner of any such unexplained money, bullion, jewellery or other valuable article. Therefore, the very foundation of this addition does not exist and hence, the addition deserves to be deleted.

12. It was further submitted that though some noting of work done and expenses is appearing on this Exhibit, however no other detail like date of transactions or the period to which it relates or from whom the

payment is received or to whom payment is made is appearing. Further, as submitted in subsequent paragraph, no other corroborative evidence has been found from the possession of the assessee. In these circumstances, these papers are nothing but dumb documents. It is a very well-settled law that no addition on account of such dumb document can be made.

13. It was further submitted that there is absolutely no corroborative evidence or information found from the possession of the assessee that such income is earned by the assessee and that too for year under consideration. The addition by the AO is merely based on assumptions and presumptions and on the basis of which no addition could have been made.

14. It was further submitted that there is nothing on record to suggest that the alleged papers on the basis of which the additions have been made pertains to the year under consideration. The papers bear no date or year and therefore, the AO was incorrect in considering the same of the year under consideration. It was also submitted that if the investigating team or the AO was of the view that some income is to be assessed on the basis of such papers then they may have recorded the statement of the assessee on this issue but a perusal of the statement would show that no enquiry was made from the assessee on this issue. Therefore, the Id. AO erred in making addition on merits also and hence the same may please be deleted.

15. Without prejudice to the above submissions, it was further submitted that the perusal of papers would reveal that it is related to some work done and there is nothing to suggest of any investments.

Therefore, at best the same may be assessed as regular source of income of the assessee and not otherwise. Therefore, in light of the same, the addition made by the Id. AO has to be deleted even on this aspect.

16. Per contra, the Id. DR submitted that there was seized document found from the premises of appellant and the AO has given detailed reasons as para 5.3 of his order wherein the assessee has accepted the net savings of Rs 8,76,197/- and basis the same, the addition has been made u/s 69A of the Act. He accordingly supported the findings of the lower authorities.

17. We have heard the rival contentions and perused the material available on record. At the outset, the Id. AR on behalf of the assessee submitted that the assessee doesn't want to press ground no. 1 of his appeal, hence the same is dismissed as not pressed. Regarding ground no. 2, we refer to seized document marked as page 15 of exhibit no. 2 and find that the same contains certain figures, however, except at one place where savings have been written against the amount of Rs 876,197, there is no mention of any particulars in terms of nature of transactions, parties with whom the transactions were undertaken, the date of such transactions, etc. Even the AO in the assessment order at para 5 of his order has stated that "it appears to be payment received in cash by the assessee". Even there is no question which has been raised to the assessee as part of his statement recorded u/s 132(4) of the Act. Therefore, where the AO himself is not clear about the nature of transaction which is the very foundation for determination of taxability of such transaction, the tax liability on such transaction cannot

be fastened on the assessee. At the same time, the document so found reveal some work done by the assessee and given that the assessee is in the diary business, the net savings so determined can reasonably be related to the diary business already disclosed in the return of income in absence of any finding or corroboration relating to any other source of income. In the result, there is no basis for impugned addition in the hands of the assessee and the same is hereby directed to be deleted. In the result, the appeal of the assessee is allowed.

In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 18/01/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/01/2021.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Harpal Yadav, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-3, 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. 1000 & 1001/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar