

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

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

आयकर अपील सं./ITA No. 806/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09.

Shri Deepak Bansal, A-38, Bhan Nagar, Queens Road, Vaishali Nagar, Jaipur.	बनाम Vs.	The Income Tax Officer (Hqrs.) Office of Pr. Commissioner of Income-tax-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AKPPB 1666G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vedanta Agarwal (Advocate)
राजस्व की ओर से / Revenue by : Smt. Manisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 05.01.2021.
घोषणा की तारीख / Date of Pronouncement : 08 /02/2021.

आदेश / ORDER

PER SANDEEP GOSIAN, J.M.

This appeal by the assessee is directed against the order dated 21.08.2017 of Id. CIT (A)-1, Jaipur for the assessment year 2008-09. The assessee has raised the following grounds of appeal :-

- “ 1. On the facts & circumstances of the case & in law also Id. CIT (A) grossly erred in confirming the addition of Rs. 6,78,723/- made by Id. AO by rejecting the explanation filed the assessee before Id. AO as well before CIT (A).”

2. This is the second round of appeal before the Tribunal. The brief facts of the case are that the return of income was filed on 31.09.2009 declaring total income at Rs. 1,09,672/-. The case was selected for scrutiny. In the scrutiny assessment, the AO noted that there is a cash deposit of Rs. 24,66,204/- in the savings bank account of the assessee maintained with State Bank of India, Hatwara Road, Jaipur. On being failed to explain the source of deposit of this amount by the assessee, the Assessing Officer made the addition of Rs. 24,66,204/-. On appeal before the Id. CIT (A), the Id. CIT (A) confirmed the addition vide his order in ITA No. 470/10-11 dated 23.01.2012. Aggrieved by the order of the Id. CIT (A), the assessee preferred appeal before the Tribunal. The Tribunal set aside the order of the Id. CIT (A) and remitted the matter back to the Assessing Authority with the direction to allow reasonable and effective opportunity of hearing to the assessee for explaining his case and pass order afresh in accordance with law vide its order in ITA No. 243/JP/2012 dated 22.08.2013.

3. In compliance to the order of the Tribunal, the A.O. issued notice under section 142(1) of the IT Act asking the assessee to file the source of cash deposit of Rs. 36,89,710/- in SB A/c No. 30215156688 maintained with State Bank of India, Hatwara Road, Jaipur. In response, the assessee furnished copy of cash book for the period from 01.04.2007 to 31.03.2008 showing opening cash balance of Rs. 6,78,723/- as on 01.04.2007. The assessee was asked to furnish supporting evidence in respect of opening cash balance of Rs. 6,78,723/-. The assessee could not file any corroborative evidence before the AO to explain the opening cash balance and in support of the details submitted by him. Thus the AO treating the

amount of Rs. 6,78,723/- as unexplained, made the addition of this amount to the total income of the assessee. Aggrieved by the order of the AO, the assessee preferred appeal before the Id.CIT (A). The Id. CIT (A) confirmed the order of the AO by observing in para 3.1.2 of his order as under :-

" (i) The brief facts of the case are that this is the second round of litigation. In the first round, the AO has assessed the income of the appellant at Rs. 25,75,876/- against returned income of Rs. 1,09,672/- .The matter travelled upto Hon'ble ITAT and the matter was set aside to the file of AO. Now, the AO has made an addition of Rs. 6,78,723/- to the income of the appellant as the same was claimed as opening cash in hand as on 01.04.2007, which could not be explained satisfactory before the AO with documentary evidence. It may be mentioned that in the original assessment order, the additions were made as the appellant could not explain the source of cash deposit in its bank account.

(ii) During the appellate proceedings, except making the above submissions, nothing was filed by the appellant to support its contentions. It is trite law that the onus is on the person who is making a claim. In the instant case under consideration, the appellant has tried to explain the source of cash in hand amounting to Rs. 6,78,723/- but without any documentary evidences. It has already been mentioned in the earlier part of this order that a number of opportunities were provided to the appellant to explain its case but the appellant has failed to prove its contentions even during the appellate proceedings. A claim without the supporting evidence cannot be accepted. Therefore, in view of the totality of facts and circumstances of the case, it is held that the AO was justified in making an addition of Rs. 6,78,723/- to the income of the appellant and thus the same is hereby sustained."

4. Being aggrieved, the assessee challenging the order of the Id. CIT (A), preferred appeal before this Tribunal raising the ground that the Id. CIT (A) was not justified in rejecting the explanation of the assessee furnished before the AO and Id. CIT (A).

5. Before us, the Id. A/R of the assessee has submitted that the assessee is regularly assessed to tax and filing the return of income and opening cash balance is duly reflected in the books of account as on 01.04.2007, thus the source of cash deposit in the bank account cannot be rejected by the AO without rejecting the books of accounts of the assessee. The Id. A/R has further contended that once the books of account of the assessee are not rejected by the AO, then the cash which is shown in the books of accounts is an explained source for deposit made in the bank account. The Id. A/R placed reliance on the order of this Tribunal in the case of **Smt. Pinki Devi Agarwal in ITA No. 515/JP/2018** and submitted that the addition be deleted.

6. On the other hand, the Id. D/R submitted that the assessee could not explain the details of opening cash balance as on 01.04.2007 as mentioned by the AO at page 3 of his order, hence the AO has rightly made the addition. The Id. D/R relied on the orders of the authorities below.

7. We have heard the rival contentions and perused the material available on record. At the outset, we note that an identical issue has been decided by this

bench of the Tribunal in the case of Smt. Pinki Devi Agarwal in ITA No. 515/JP/2018 dated 16.01.2019 by observing in para 5 as under :-

"5. We have considered the rival submissions as well as the relevant material on record. For explaining the cash deposit in the bank account of Rs. 13,82,626/-, the assessee has filed the cash book showing the opening cash balance of Rs. 11,32,626/- and gift of Rs. 2,50,000/- received during the year, out of which Rs. 1,50,000/- received from mother Smt. Santosh Devi Agarwal and Rs. 1,00,000/- from father Shri Mali Ram Agarwal. The assessee produced the gift deeds whereby the mother and father of the assessee have confirmed the gifts given of Rs. 1,50,000/- and Rs. 1,00,000/- respectively to the assessee. It is pertinent to note that the assessee has been filing her return of income regularly and also produced the return of income as well as balance sheets for the assessment years 2009-10 and 2010-11, and these facts and records are not in dispute. Since none of the returns of income in the preceding year were subjected to scrutiny assessment, therefore, the availability of cash with the assessee would not be proved by mere filing of return of income. However, the assessee has shown the availability of cash of Rs. 11,32,626/- in the books of account being opening cash balance as on 01.04.2010. The said cash was also closing cash balance as on 31st March, 2010 in the balance sheet as on 31st March, 2010. The returns of income though were not subjected to scrutiny, however, once the cash was reflected in the books of account and part of the balance sheet of the assessee, then in the absence of said cash introduced in the books of account by the assessee during the year under consideration, the issue of making addition by disallowing the availability of cash in the hands of the assessee can be considered only in the preceding year in which the cash was introduced by the assessee in the books of account. The AO

during the assessment proceedings was very well aware of the fact that Rs. 11,32,626/- was stated to have been introduced in the books during the earlier assessment year and, therefore, if the said claim of the assessee was not acceptable then the proper course of action was to make the addition of this cash introduced in the books of account under section 68 in the relevant assessment year in which the said cash was introduced in the books and not in the year under consideration when it is shown as opening cash balance. The AO instead of taking up the assessment of the preceding year has made the addition of the said amount by rejecting the source of the amount as shown as opening cash balance. Further, the AO has not rejected the books of accounts of the assessee and, therefore, once the assessee has established the availability of the cash in the books of account, then the proper course of action for rejecting the said claim and making the addition is to reopen the assessment of the earlier year. Hence, to the extent of availability of cash of Rs. 11,32,626/- being opening cash balance which was duly reflected in the books of account of the assessee for the year under consideration as well as in the earlier year, the same cannot be rejected and the consequential addition is not sustainable.”

As per the facts of the present case, the opening balance as on 01.04.2007 has been shown in the tabular form by the assessee. The whole cash balance amount was from different particulars. The amount at point no. 5 & 6 of the table has already been shown in the ITR filed.

Therefore, keeping in view the facts of the present case and considering the decision of this Bench herein above, we delete the addition sustained by Id. CIT (A).

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 08/02/2021.

Sd/-

(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(SANDEEP GOSIAN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 08/02/2021.

das/

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

1. अपीलार्थी / The Appellant-Shri Deepak Bansal, Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO Hqrs., Office of Pr.CIT-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. 806/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar