

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 1176/JP/2019  
निर्धारण वर्ष / Assessment Year :2010-11

Shri Praveen Kumar, B-9, Sundar Nagar, Patel Marg- West, Mansarovar, Jaipur.	बनाम Vs.	I.T.O. Ward 6(2) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AZHPK 8063 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.S. Choudhary (CA)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 08/02/2021  
उदघोषणा की तारीख / Date of Pronouncement : 24/02/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 22/07/2019 for the A.Y. 2010-11 in the matter of order passed U/s 147/144 of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

- "1. The Id. CIT(A)-2 has grossly erred in law as well as in facts in addition of amount of Rs. 11,31,800/-. Ld. CIT(A)-2 has grossly erred in law as well as in facts for not appreciating the documents/information furnished during the course of proceedings and it is liable to be quashed.*
- 2. Order U/s 147/144 of the Income Tax Act, 1961 is completely perverse and baseless and is liable to be quashed.*

3. *The appellant craves leave to add, amend, withdraw or insert any ground or grounds of appeal before or at any time of hearing of the appeal."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the on information being received by the A.O. for the year under consideration that the assessee had deposited cash of Rs. 29,90,300/- in his savings bank account and on verification, it was gathered that the assessee had not filed his return of income for the year under consideration. No compliance was made by the assessee to the letter of NMS issued by the A.O., therefore, proceedings U/s 147 of the Act was initiated after getting approval from the competent authority and thereafter notice U/s 148 of the Act was issued, but neither any reply nor any return of income was filed by the assessee. In response of the show cause notice dated 14/11/2017, the assessee alongwith one person namely Shri Abhishek Agarwal, R/o-139, Mahaveer Nagar-II, Maharani Farm, Jaipur appeared before the A.O. on 21/11/2017. Wherein the said Abhishek Agarwal got recorded his statement that he has used bank account of the assessee and all the transactions in his bank account have been made by the said Shri Abhishek Agarwal. Thereafter, the A.O. completed the assessment U/s 144 of the Act and assessed total income of assessee at Rs. 11,31,800/- as unexplained income.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties as well as material placed on record, sustained the addition made by the A.O. Against the said order of the Id. CIT(A), the assessee has preferred present appeal by taking above mentioned grounds of appeal.

5. The solitary effective ground raised by the assessee relates to challenging the order of the Id. CIT(A) in sustaining the addition of Rs. 11,31,800/-. In this respect, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and prayed to delete addition sustained by the Id. CIT(A). The submissions made before the Id. CIT(A) by the assessee are stated below:

*In the above cited case we hereby state that, the assessee was student and studying for said period in BIRLA INSTITUTE OF TECHNOLOGY as a regular student. It means assessee was neither involved in any business nor service in which he can devote sufficient time. Assessee has not filled income tax return since income was NIL. Certificate enclosed.*

*Assessee was maintaining a Saving Bank account with Axis Bank a/c no.- 909010036473994 for receiving monthly expenses from his father because Assessee belongs to Mahendragarh- Haryana.*

*Assessee was tenant of Shri Abhishek Agarwal at 139, Mahaveer Nagar, Tonk Road Jaipur and Shri Abhishek Agarwal was involved in business of Real estate/property in Rajasthan as name and style of "M/s Shri Krishna Star Realter" Whose PAN no is AGUPA0751C and Shri Abhishek Agarwal has*

*accepted to have made all transactions in the said bank account. He further admitted that entries in cheque or cash in the bank account belongs to his company naming M/s Shri Krishna Star Realter" whose PAN no is AGUPA0751C. Ld AO mark in Assessment order the same. Affidavit enclosed.*

*I. We are submitting cash flow and bank statement before your goodself in which total deposit Rs. 31,27,300.00 and Total withdrawals are Rs 23,27,900. All transactions made by shri Abhishek Agarwal for his own business.*

*2. Ld AO made addition Rs 11,31,800/- on basis of cash deposit/Peak credit amounting. The mere fact that the deposits had been made in the bank account does not indicate that these deposits constitute income. Sufficient cash Balance is available to deposit in bank account.*

*3. In case of Jaya Aggarwal vs ITO, High court Of Delhi at New Delhi decide that if sufficient cash balance from withdrawal and deposit subsequently then addition to income is not correct and should be deleted.*

*4. In various cases ITAT and Court decide that cash deposit in bank account is not a part of income the mere fact that the deposits had been made in the bank account does not indicate that these deposits constitute income.*

*5. On the facts and circumstances of the case the Ld. AO is not justified while making addition as bank deposit/credit entry in bank account. As such assessment may be please be held as bad in law and addition made thereon may kindly be deleted.*

*6. Similar case decided by ITAT JAIPUR on 2nd May 2019 in case of Neim Khan Vs ITO ITA/283/JP/2018 Assessment Year 2014-15 Neim Khan Vs ITO ward 2(2) Jaipur Similar case law for bank deposits like Jaya Agarwal vs. CIT, ITA Nos. 5430 & 5432/DEL/2011 [Assessment Years: 2010-11to 2012-13]*

7. *On the facts and circumstances of the case the Ld. AO is not justified while making addition as bank deposit in bank account. As such assessment may be please be held as bad in law and addition made thereon may kindly be deleted.*

*We pray for relief and deletion of the addition made by assessee officer."*

6. On the other hand, the Id DR has relied on the orders of the revenue authorities.

7. We have heard the rival contentions and perused the material available on record. As per facts of the present case, the assessee was student and studying for said period in Birla Institute of Technology as a regular student of M.Sc. Animation and Design and was tenant of Shri Abhishek Agarwal, who was into business of real estate in name and style of M/s Shri Krishna Star Realter. According to the assessee, he was not having any sufficient income, therefore, not filed Income tax return since the income was Nil. The assessee was maintaining a savings bank account with Axis Bank bearing account No. 402010100033503 for receiving monthly expenses from his father as the assessee belongs to Haryana State. In this respect, our attention was drawn by the Id AR to the paper book which contains bank account statement, available at page No. 19 to 24 of the paper book. Since the assessee was tenant of Shri Abhishek Agarwal who was involved in the business of real estate in the name of style of firm M/s Shri Krishna Star Realter and whose PAN No. is AGUPA0751C. As per the Id AR, the said Shri

Abhishek Agarwal, approached the assessee to open a new savings bank account with Axis bank and the said Abhishek Agarwal become the introducer and consequently, a new bank account bearing No. 909010036473994 was opened. The assessee has also placed on record the bank statement showing the transactions during the period were exclusively carried out in the new bank account by Shri Abhishek Agarwal in favour of his family members i.e., father, mother, wife and friends and all transactions were made by said Shri Abhishek Agarwal by depositing cash and consequently issuing cheques to his family members. The Id AR also submitted that said Shri Abhishek Agarwal produced his affidavit before the A.O. and made statement on oath that all transactions in the said bank account were carried out by him and admitted that entries belong to his company/firm M/s Shri Krishna Star Realter. On the contrary, the revenue authorities rejected the contentions of the assessee.

8. After having gone through the entire documents placed on record and the statement made by Shri Abhishek Agarwal before the A.O., we found that it is an undisputed fact that the assessee was student and was having two bank accounts i.e. one bank account No. 402010100033503 where the entire transactions during the year under consideration were of Rs. 1,71,500/- which was deposited by his father for college fee and maintenance expenses of Rs. 5,000/- per month which were withdrawn by him and the copy of the

said bank statement is at page No. 19 to 24 of the paper book. Whereas the subsequent new bank account bearing No. 909010036473994 was got opened subsequently in which Abhishek Agarwal was the introducer and from the statement of accounts of this account which is at page No. 25 to 27 of the paper book and the details of which are reproduced below:

S N	Date	Cheque No	Amount	Particulars
1	31.10.09	64671	310000	Abhishek Agarwal (Self)
2	31.10.09	64672	6000	Abhishek Agarwal (Self)
3	11.11.09	64673	96600	Ravi Dutt(Friend)
4	11.11.09	64674	74500	Rajkumar(Friend)
5	11.11.09	64675	30000	Self (Abhishek Agarwal)
6	26.11.09	64677	127800	Rajkumar(Friend)
7	26.11.09	64680	135600	Manish Mittal(Friend)
8	24.12.09	14680	235000	Sampat Ram Agarwal (Father)
9	02.01.10	146547	162000	Manish (Friend)
10	23.01.10	146555	259000	Abhishek Agarwal (Self)
11	05.02.10	Transferred from	19448	Sanjana (wife)
12	08.02.10	Transferred from	20090	Shakuntal Agarwal (Mother)
13	08.02.10	Transferred from	21684	Sanjana (wife)
14	08.02.10	Transferred from	20144	Sampat Ram Agarwal (Father)
15	08.02.10	Transferred from	23363	Abhishek Agarwal (Self)

From perusal of the above chart, we found that all the transactions were carried out by Abhishek Agarwal by issuing cheques in the name of his father Shri Sampat Ram Agarwal, his mother Shakuntala Agarwal, his wife Sanjana,

his friend Manish Mittal, Ravi Dutt and Raj kumar and none of the transactions was ever made in any of the persons related to the assessee. So far the said Abhishek Agarwal has also produced affidavit before the A.O. and made a categorical statement during the assessment proceedings wherein he has categorically accepted to have made all transactions in bank account No. 909010036473994 of the assessee held with Axis bank. He further admitted that entries for the cheques and cash in the bank account belongs to his company M/s Shri Kirshna Star Realtor whose PAN No. AGUPA0751C. Once all those documents and admitted statement of Abhishek Agarwal was before the A.O. but still the A.O. has not made any efforts to make additions in the hands of said Abhishek Agarwal who has not only made categorical admitted statement but had also mentioned his PAN number and details of all transactions carried out with his family members and friends which are available at page No. 24 to 27 of the paper book which are already reproduced above and also supported with affidavit of Abhishek Agarwal which is at page No. 30-31 of the paper book. It is undisputed fact that there were two bank accounts of the assessee and in the first bank account, there was only a meagre transactions, which were between the father of the assessee and assessee whereas in the second bank account which was subsequently opened on the introduction of Abhishek Agarwal and which is now under dispute that carries several transactions which all belongs to

Abhishek Agarwal, his family members and his friends. Naturally huge withdrawals from the said bank account were for the purpose and objective by the said Abhishek Agarwal as all the cheques were issued in the name of family members of Abhishek Agarwal as well as his friends. From the very beginning, the assessee had made solitary explanation that the said bank account was opened at the instance of Abhishek Agarwal and all the deposits and withdrawals were made by the said Abhishek Agarwal. We found that explanation given by the assessee was not fanciful and sham story. It was plausible and should have been accepted by the revenue authorities, unless there was justification or ground to hold to the contrary. More particularly when the entire explanation was supported by statement of Shri Abhishek Agarwal coupled with bank transactions and affidavit of said Abhishek Agarwal. The revenue authorities should have given due regard and latitude to human conduct and behaviour while considering the validity and truthfulness of an explanation. One should not consider and reject an explanation as concocted and contrived by applying prudent man's behaviour test. The principle of preponderance of probability as a test is to be applied and is sufficient to discharge onus. Probability means likelihood of anything to be true. Probability refers to appearance of truth or likelihood of being realized which any statement or event bears in light of the present evidence (Murray's English Dictionary). Evidence can be oral even then the same

cannot be discarded. More particularly, in the present case, when the assessee has fully discharged his onus by calling Shri Abhishek Agarwal who appeared before the A.O. and got recorded his admission statement coupled with affidavit and the bank statements to the effect that all transactions in the bank account 909010036473994 were of Shri Abhishek Agarwal which have not been rebutted by the department. Therefore, in our view, there was no reason to discard the admission of Shri Abhishek Agarwal.

9. Therefore, keeping in view the totality of facts and circumstances of this particular case, we are of the view that the assessment order and the appellate order falls foul and have disregarded the preponderance of probability test. For reaching to the above conclusion, we draw strength from the decision of Hon'ble Delhi High Court in the case of **Jaya Agarwal Vs ITO in ITA No. 315/2005 decision dated 13<sup>th</sup> March, 2018**, therefore, keeping in view our above observations and also keeping in view the principles laid down by the Hon'ble Delhi High Court in the case of **Jaya Agarwal Vs ITO (supra)**, we direct the A.O. to delete the addition. However, the Revenue is at liberty to initiate any action, if so desired or advised against Shri Abhishek Agarwal on the basis of his admission statement, affidavit and bank statement. We order accordingly.

10. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> February, 2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 24/02/2021

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

\*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Praveen Kumar, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O. Ward 6(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1176/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar