

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. 542/JP/2019
निर्धारण वर्ष / Assessment Year :2014-15

Shri Kailash Chand Sharma, Near Chaturbhuj Mandir, Kekri, Ajmer-305404.	बनाम Vs.	I.T.O., Ward-2(3), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKGPS 8992 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Hemang Gargieya (Adv.) &
Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 08/04/2021
उदघोषणा की तारीख / Date of Pronouncement : 22/06/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 22/02/2019 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

- “1.1 The impugned additions and disallowances made in the order u/s 143(3)/147 dated 26/12/2018 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.
- 1.2. 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 143(3)/147 dated 26/12/2018 also kindly be quashed.

2. *Rs. 34,50,000: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the impugned addition made by the AO on account of the unexplained cash deposits u/s 68 of the IT Act in the bank account. The addition so made and confirmed being contrary to the provisions of law and facts kindly be deleted in full.*
3. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”*

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

3. Brief facts of the case are that as per information available on record which was received from Asstt. Director of Income Tax (Inv.), Ajmer, it was noticed that the assessee had made credits in SBI Bank, Kekri ADS branch in account No. 30128275297 amounting to Rs. 47,30,000/- on various dates during the period 01/4/2013 to 31/03/2014. As per return filed by the assessee for the year under consideration, the assessee has declared income from salary/pension and income from other sources amounting to Rs. 6,05,250/- and as such deposits in the bank account amounting to Rs. 47,30,000/- remained unexplained. After making detailed enquiry and after perusing the material placed on record, the A.O. completed the assessment U/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short, the Act)

determining the total income of the assessee at Rs. 40,55,250/- by making addition of Rs. 34,50,000/- on account of unexplained cash deposits.

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 and material placed on record, upheld the action of the A.O.. Against which, the assessee is in further appeal before the ITAT.

5. At the time of hearing, the Id AR appearing on behalf of the assessee does not want to press ground No. 1.1 and 1.2 of the appeal and prayed for dismissal of these grounds as not pressed. The Id DR has raised no objection if these grounds are dismissed being not pressed. Therefore, considering the prayer of the assessee, we dismiss these grounds of appeal being not pressed.

6. Ground No. 2 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition made by the A.O. on account of unexplained cash deposit U/s 68 of the Act in the bank account of the assessee.

7. The Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the lower authorities and also relied upon the written submissions filed before the Id. CIT(A) which are at para No. 4.2 of the impugned order and the same are reproduced below:

"In the reference of above cited subject, we would like to evince the following matter to your concern-

That during the relevant Assessment year 2014-15 assessee's accounts was used by his fast friends Mr. Kanha Ram to Deposits sales proceeds of his immovable property. That as above stated Mr. Kanha Ram is fast friend of assessee and at time of sale of immovable property Mr. Kanha ram don't have any bank account in any bank.

Mr. Kanha Ram requested to assessee for deposits his (Kanha Ram) above funds in assessee's accounts, because of he (Kanha Ram) don't have any account bank and he was also confirmed, that he will transfer the same fund in his Bank accounts from assessee's Bank accounts as soon as possible after opening of Bank accounts. That Mr. Kanha Ram was also gives his consent that if any sort of problem may occur, than he will reply the same proper manner. That we are also producing his consent (Self Signed) affidavit of Mr. Kanha Ram along with notary public certificate for the confirmation/ verification of the said affidavit as an Annexure G.

That fund amount of Rs. 2980000/- on dated 10/04/2013 and Rs. 900000/- on dated 11/04/2013 was not related with Mr. Kailash Chand Sharma. That the same amount was belongs to assessee's friends' Kana Ram from Sales consideration of his Immovable property.

That amount of Rs. 2980000/- on dated 10/04/2013 and Rs. 900000/on-dated 11/04/2013 deposited by Mr. Kana Ram and the same was also withdrawals / paid as per direction of Mr. Kana Ram. Details of payment as under:-

1. That Mr. Kailash Chand Sharma had paid 1st Payment on Direction of Mr. Kanha Ram to Mr. Jagdish Gurjar (Son in Law of Mr. Kanha Ram) through cheque (130332) on dated 16th April 2013 for amount of Rs. 200000/- the same was paid by Bank to Mr. Jagdish Gurjar on Dated 16th

April 2013. For the confirmation of the same transaction we are enclosing copy of Cheque as used for the payment certified by the Bank as an Annexure —A .

2. That Mr. Kailash Chand Sharma had paid 2nd Payment on Direction of Mr. Kanha Ram to Mr. Jagdish Gurjar(Son in Law of Mr. Kanha Ram) through cheque (130334) on dated 07th May 2013 for amount of Rs. 1000000/- the same was paid by Bank to Mr. Jagdish Gurjar on Dated 10th April 2013. For the confirmation of the same transaction we are enclosing copy of Cheque as used for the payment certified by the Bank as an Annexure B.

3. That Mr. Kailash Chand Sharma had paid 3rd Payment on Direction of Mr. Kanha Ram to Mr. Ishwar (Daughter's Son of Mr. Kanha Rain) through cheque (130335) on dated 15th May 2013 for amount of Rs. 1000000/- the same was paid by Bank to Mr. Ishwar on Dated 16th May 2013. For the confirmation of the same transaction we are enclosing copy of Cheque as used for the payment certified by the Bank as an Annexure C.

4. That Payment of Rs. 200000/- and Rs.700000/- paid on dated Mr. Kanha Ram and same was also deposited by Mr. Kanha Ram to his Account 07590100016696 (Bank of Baroda Kekri) And after deposited amount of Rs. 900000/- Mr. kanha ram transfer this amount in two parts (Rs. 450000/- in his name and Rs. 450000/- in her wife name) to MIS under Post office on dated 14th June 2013 just after three days of issue cheque in the name of Mr. Kanha Ram. For the confirmation of the same we are enclosing copy of the pass books in the name of Mr. Kanha Ram and her Wife name. As an Annexure D and E.

5. That amount of Rs. 430000/- paid to Mr. Kanha Ram on dated 17th June 2013 and same is also confirmed by Income Tax Department as per

information got in the cross verification from Bank and information provided by the Income Tax Department in Show Case Notice.

6. *That remaining amount collected by Mr. Kanha Ram in form of Cash vide cheque no. 130340 on dated 18th June, 2013 and other 50000/- was also received from Mr. Kailash Chand Sharma.*

That all above cheques are issued in the above persons names and all are relative of Mr. Kanha Ram and Kanha Ram self. All Cheques are duly signed by Mr. Kailash Chand Sharma and counter signed by payment receiver. We also collect all copy of cheques from Bank Department of Income Department my confirm/cross verification from the Bank.

That we are also enclosing copy of Bank Statement as required by the Income Tax Department for the conclude the assessment proceeding for the relevant assessment year 2014-15. As an Annexure F.

We apologize for the aggravation caused to your department."

8. On the other hand, the Id. DR has vehemently supported the orders passed by the revenue authorities.

9. We have heard the rival contentions of both the parties and perused the material available on record. From the record, we noticed that during the year under consideration, an information was received from the ADIT (Inv.), Ajmer regarding cash deposits in the bank account of the assessee. Therefore, the A.O. issued necessary notices to the assessee for explaining the deposits of cash in the bank account and in response thereto, it was submitted by the assessee that the assessee's account was used by his fast

friend Mr. Kana Ram to deposit sale proceeds of his immovable property. It was submitted by the assessee that since Mr. Kana Ram was his fast friend and at the time of sale of his immovable property, the said Kana Ram was not having any bank account in any bank, therefore, he requested the assessee to deposit the said funds in assessee's account and it was agreed between the assessee and Mr. Kana Ram that Kana Ram would transfer the entire amount to his bank account as and when the same is opened in any bank. In this respect, as per the assessee, an affidavit was given by said Mr. Kana Ram to the assessee. It was further submitted by the Id AR that the amount deposited by Mr. Kana Ram was withdrawn/paid as per the direction of Mr. Kana Ram and the details of the buyers have already been given by the assessee in his written submissions which are mentioned in para 4.2 of the order of the Id. CIT(A).

10. From the record, we noticed that in order to verify the statement of the assessee, summons was issued to said Mr. Kana Ram by the ADIT (Inv.), Ajmer. However, in response to the said summons, the reply was filed by one Shri Shailendra Singh Rathore, Advocate on behalf of Mr. Kana Ram thereby taking a contrary stand and denied the liability of the said Kana Ram. Even during the course of assessment proceedings, the A.O. had sought information from the bank U/s 133(6) of the Act and also issued summons U/s 131 of the Act to the said Kana Ram. However, on one

occasion, the said Mr. Kana Ram sought adjournment on the ground that he is ill and therefore, on said request, the matter was adjourned by the A.O. for 10/12/2018. Thereafter, the said Mr. Kana Ram did not appeal. Again, another notice through registered post was sent to Mr. Kana Ram, however, the same was returned back unserved by the postal authority with the remark "recipient is out of Kekri and refused to receive the post by his family members". All those facts on record goes to show that the assessee has miserably failed to prove the affidavit filed by the said Mr. Kana Ram and even the said Kana Ram did not attend the office of the A.O. in spite of the fact that he was served with the summons U/s 131 of the Act. In this way, the statement made in the said affidavit remained unproved and no other independent evidence has been brought on record by the assessee to substantiate the statement made by the said Mr. Kana Ram in the affidavit. Apart from this, we have also noticed that no evidence has been placed on record in the shape of ITR of the said Mr. Kana Ram for the year under consideration reflecting the source of the funds. Therefore, keeping in view the totality of the facts and circumstances, we are of the view that the addition sustained by the Id. CIT(A) do not need any interference.

11. No new facts or circumstances have been brought before us in order to controvert or rebut the findings so recorded by the Id. CIT(A), therefore,

we find no reason to interfere into or deviate from the judicious findings so recorded by the Id. CIT(A). Hence, this ground of appeal is dismissed.

12. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 22nd June, 2021.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 22 /06/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Kailash Chand Sharma, Ajmer.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-2(3), Ajmer.
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. 542/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar