

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. 1071/JP/2019
निर्धारण वर्ष/Assessment Years : 2013-14

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 B.K. Gupta (CIT)

सुनवाई की तारीख/ Date of Hearing : 28/06/2021
उदघोषणा की तारीख/ Date of Pronouncement : 02/07/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A)-IV, Jaipur dated 08.07.2019 pertaining to assessment year 2013-14 wherein 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. 369850/- The Id. Assessing Officer erred in law as well as on the facts of the present case in making addition as*

unexplained investment and Id. CIT(A) erred in sustaining the same."

2. 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. For the year under consideration, the assessee has filed return of income declaring income of Rs.193,850/- on 30.08.2013. A search was conducted in the case of Kedia and Yadav Group and in consequent to the same, assessee's premises was also searched on 19.11.2016. Accordingly, notice u/s 153A 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.193,850/-. In the course of assessment proceedings, the Id. AO has noticed that as per page 10 of Exhibit No. 2, the assessee had made payment of Rs.369,850/- in cash for purchase of a car on 13.02.2013. Though regular books of accounts have not been kept by the assessee but the assessee has explained the same with his cash flow statement as well as capital account and balance sheet which were made on estimated basis. However, the Id. AO rejected the same as there were no cash withdrawals in the bank statement of the assessee and accordingly, the amount was added as unexplained investment. On appeal the Id. CIT(A) summarily rejected the appeal of the assessee and against the same, the assessee has filed the present appeal.

3. In the above background, the Id AR has raised various contentions during the course of hearing, as are contained in the written submissions filed by him and contents thereof read as under:-

"1.1.1 The car purchased with disclosed sources of income: At the outset, we may submit that the cash payment for purchase of car has been made out of disclosed sources of income. It may be noted that the assessee is earning for more than 20 years and also filing return of income since AY 2010-11. Therefore, payment made for purchase of car is very well justified, especially when the assessee lives in a village and living expenses is quite low with its own ancestral house. Thus apparently such payment can be treated as justified. The purchase of car is duly supported with the cash flow statement which is enclosed in paper book at PB 16.

1.1.2 Assessee regularly filing its return of income since AY 2010-11: We may submit that as submitted above the assessee is regularly filing its return since AY 2010-11 agricultural and dairy income as source of income. Copies of return of income are duly placed in the paper book from PB 13-25 alongwith the financial statements prepared on the basis of available information. Therefore, there is clear source of income available with the assessee and is duly disclosed to department also.

1.1.3 Financial Statement on estimated basis and Cash Flow Statement submitted: We may submit that though the assessee has not maintained any books of accounts, however the assessee has duly submitted the profit and loss account, capital account and balance sheet on estimated basis to support the payment towards purchase of car and the same is appearing at PB 15.

Even the assessee has duly submitted the cash flow statement explaining the source of investment in purchase of car at PB 16.

1.1.4 Copies of ITR, computation of total income, cash flow statement and financial statements submitted from AY 2010-11 to AY 2013-14: We are submitting herewith the financial statements and cash flow statements from AY 2010-11 to AY 2013-14 for your kind perusal from PB 13-25. These statements show the year to year availability of cash with the assessee. The opening cash balance as carried forward from preceding year has duly been shown in the statement for the year under consideration. The cash flow statement for the year under consideration is placed at PB16.

1.1.5 No defect or error found by the AO or CIT(A) in the information submitted by the assessee: It is important to note that all the above information including financial statements and cash flow statements were duly submitted before both the lower authorities i.e. AO and CIT(A). However, none of the authorities have found any error or defect in the information so submitted. Therefore, such information has to be accepted as correct and on that basis the submissions of the assessee could not be rejected. The silence of the department is only to deny the legitimate relief to the assessee without any substantive basis. Accordingly, the addition made by the Id. AO was bad in law.

1.1.6 Reason for non-withdrawal from bank account: The Id. AO stated that there is no cash withdrawal except AY 2012-13 and therefore, cash payment of Rs.369850/- is not justified. In this regard, we may submit that the assessee lives in a village and the source of income of the assessee i.e. agricultural income and dairy income are such that only cash is received by the assessee and even there are no cash or cheque deposit. Most of the time the assessee receives cash on account of its income and the same is kept with him to meet drawings and the balance is kept as savings in cash only. This contention of the assessee is proved by absence of deposit in the bank account

In any case, the complete receipt shown by the assessee as appearing in the cash flow statement has duly been assessed by the Id. AO to tax and therefore, there is no justification in stating that there was no cash withdrawal by the assessee as the cash was duly available out of the receipts shown by the assessee

1.1.7 Drawings of assessee or income of assessee not doubted by the Id. AO: It is important to note that the assessee has duly submitted the complete figures of income as well as drawings with the financial statement submitted. No question was raised by the Id. AO on the drawings declared by the assessee. Income of the assessee is also duly supported by the return of income. In these circumstances there was no reason for non-acceptance of cash shown by the assessee as the entire receipts have been brought to tax.

1.1.8 Reasonableness of cash in hand not in question: It is also relevant to mention here that no question is raised by the Id. AO regarding reasonableness of the cash balance in question and the only issue raised is of cash withdrawal. In these circumstances when the cash was available out of income of the assessee which is duly brought to tax, there remains no other ground to reject submissions of the assessee.

1.1.9 No reason advanced by the Id. CIT(A) in rejecting the submissions of the Assessee: It is submitted that the Id. CIT(A) has rejected the appeal of the assessee summarily without considering the submissions of the assessee and even without pointing out that how the assessee could not prove the source of cash payment. Therefore, it is clear that even the Id. CIT(A) has no valid reasons to reject appeal of the assessee and hence, chosen to reject the appeal summarily without any discussion. As such the order of Id. CIT(A) cannot sustain on this issue and ground of the assessee has to be allowed.

In the above facts and circumstances of the case, the Id. AO was not justified in rejecting the submission of the assessee merely for the reason of non-withdrawal of cash whereas the entire receipts shown by the assessee has duly been taxed by the Id. AO. The Id. CIT(A) has also erred in sustaining the same without any justification. Hence, the appeal of the assessee is prayed to be allowed. Therefore, we pray your goodself to delete the complete addition of Rs. 369,850/-."

4. Per contra, the Id. CIT/DR has relied on the findings of the AO which are contained at para 7.1 to 7.4 of the assessment order which read as under:-

7.1 The reply filed by the AR of assessee has been duly considered and not found acceptable for the reasons that the assessee has himself admitted that no books of accounts are maintained by him. The income declared by assessee in his return of income is not supported with his contention as no cash was available with him.

7.2 Further, the contention of assessee regarding Dairy Business is being running for more than 20 years is not found acceptable for the reasons that no return of income was filed till A.Y. 2009-10 and income declared in return filed from A.Y. 2010-11, 2011-12 & 2012-13 at Rs. 85,740/-, 148,050/- & Rs. 1,94,480/- respectively with is not commensurate with opening capital of Rs. 3,69,850/- in A.Y. 2013-14.

7.3 The Following cash balance shown by assessee in capital account submitted which is prepared on estimated basis as under:-

S. No.	A.Y.	Cash Balance as per Capital (Rs.)	Cash withdrawals every years as per bank statement (Rs.)	Drawing (Rs.)
1.	2010-11	1,57,110	-	1,40,000
2.	2011-12	2,05,045	0	1,45,000
3.	2012-13	1,92,391	1,40,500	1,46,795
4.	2013-14	3,500	0	2,02,744

7.4 From the above working, it is clear that the assessee has cash in hand at Rs. 1,92,391/- at the beginning of year i.e. A.Y. 2013-14 and he made payment of Rs. 3,96,850/- in cash. No cash withdrawals from bank except for F.Y. 2011-12 relevant to A.Y. 2012-13 are seen. The withdrawals from capital account were for the purpose for daily or his personal expenses. Since, cash balance for payment of Rs. 3,69,850/- is no where justified.

Therefore, the investment in purchasing of car is treated as out of his undisclosed income and the same is hereby added in his total income for this year."

5. It was further submitted that Id CIT(A) has duly considered the submissions of the assessee and the findings of the AO have been confirmed. It was accordingly submitted that there is no infirmity in the findings of the Id CIT(A) and the same may be confirmed and appeal of the assessee be dismissed.

6. We have heard the rival contentions and perused the material available on record. It is an admitted fact that the assessee is engaged in agricultural and diary activities and has been regularly filing his return of income since A.Y 2010-11. For the impugned assessment year 2013-14, the assessee has reported agricultural income of Rs 191,240/- and dairy income of Rs 257,850/- which has been accepted by the AO while passing the impugned assessment order. Considering the fact that the agricultural and diary activities are predominantly rural activities where the transactions continues to be undertaken predominantly in cash rather than through formal banking channels, what is relevant is availability of overall cash in hands of the assessee at the time of purchase of the car towards the end of the financial year i.e, on 13.02.2013. On perusal of the return of income alongwith accompanying cash flow statement, we find that the assessee has generated net cash receipts of Rs 191,240/- from agricultural operations, net cash receipts (before depreciation) of Rs 315,589/- from diary business during the year under consideration which reasonably explains the source of purchase of car for which part payment was

made in cash of Rs 369,850/-. As far as withdrawals for household expenses are concerned, we find that the same is again demonstrated partly from agricultural and diary activities during the year as well as availability of cash at the beginning of the financial year. We therefore find that the assessee has duly explained the source of payment for purchase of car and the investment so made in purchase of car cannot be treated as made out of undisclosed sources and the addition of Rs 369,850 is hereby directed to be deleted.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 02/07/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/07/2021.

***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. 1071/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar