

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. 1069/JP/2018
निर्धारण वर्ष/Assessment Year :2010-11

Shri Ramendra Singh 944 A, Shanti Nagar, Opp. Durgapura, Railway Station, Jaipur	बनाम Vs.	The Income Tax Officer Ward 6(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BAUPS0660M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 14/06/2021
उदघोषणा की तारीख/Date of Pronouncement: 02/07/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jodhpur dated 13.06.2018 wherein the assessee has taken the following grounds of appeal:-

"1. *The impugned additions and disallowances made in the order u/s 143(3) of the Act dated 31.12.2012 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.*

2.1 *Rs. 7,09,750/-: The Id. CIT(A) erred in law as well as on the facts of the case in partly confirming the addition of Rs. 7,09,750/- out of Rs.12,09,750/- made by the AO as unexplained cash deposits in bank account u/s 69A of the Act. The addition so made and partly confirmed*

by the Id. CIT(A), being totally contrary to the provisions of law and facts and hence kindly be deleted in full.

2.2 The Id. CIT(A) further erred in law as well as on the facts of the case in not accepting the opening cash balance of Rs. 4,23,740/- as on 01.04.2009 and in not considering the cashbook submitted from 01.04.2009 to 15.08.2009 in respect to cash deposited out of sale proceeds from vegetable and salary. The decision of Id. CIT(A) is totally contrary to the provisions of law and facts on the record and hence the addition kindly be deleted.”

2. During the course of hearing, the Id AR submitted that the assessee derives income from salary from M/s Komal Indian Oil and trading of vegetables. He filed his return of income on 28.02.2011 at total income of Rs. 3,09,422/- with the ITO, W-6(2), Jaipur. The AO noted that as per information available with department, the assessee had deposited cash above Rs.10 lacs. When asked to explain the source of such deposits, the assessee vide letter dated 20.06.2012 submitted cash flow statement explaining the sources being out of gift of Rs.5,00,000/- received from father, opening cash of Rs.4,23,740/- available as on 01.04.2009 and other receipts during the year. However, regarding gift from father, the AO alleged that assessee failed to prove creditworthiness & genuineness and regarding opening cash of Rs.4,23,740/-, the assessee failed to prove the same, hence he treated both the amounts as unexplained, however, no separate addition was made for the same. Finally, after rejecting the assessee`s replies, the AO concluded that upto 10.08.2009 the total cash deposits in bank account was Rs. 20,53,650/- (BOR Rs.9,15,800/- + SBI Rs.11,37,850/-) and total withdrawals were Rs. 6,64,900/- (BOR Rs. 4,68,400/- + SBI Rs. 196,500/-) and hence, there was a short fall of Rs. 13,88,750/- (Rs.20,53,650/- less Rs.6,64,900/-). After giving credit of the cash available from trading activities of Rs. 1,44,000/- and Rs. 35,000/-

received from cash loans totaling to 1,79,500/-, the AO finally added the balance as shortfall of Rs. 12,09,750/- to the income of assessee as unexplained cash deposits in bank account.

3. In the first appeal, the Id. CIT (A) partly confirmed the impugned addition holding as under:

"5.2 I have considered the assessment order, submissions of the appellant and the facts of the case. It is noted that the addition of Rs. 12,09,750/-constitutes three elements viz. gift by the father, opening balance discrepancy and the amounts deposited in the bank remaining unexplained satisfactorily.

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Now coming to the issue of Gift by his father, it is seen that the capacity, identity and creditworthiness of father and genuineness of transactions are no more in doubt thus, amount of gift of Rs. 5,00,000/- is treated genuine, hereby.

Whereas, the issues of opening cash balance and credit entries in the bank account of the appellant are concerned, genuineness of both, has not been proved. Appellant has furnished self-serving statements of accounts and particulars of entries, without any substance to prove satisfactorily the authenticity of claims made by him, so these remain unproved. Thus, addition made on account of same is confirmed. Accordingly, out of the addition of Rs.12,09,750/-, appellant gets relief of Rs. 5,00,000/- and remaining addition to the extent of Rs. 7,09,750/- is confirmed. Ground is partially allowed."

4. In the aforesaid factual background of the case, the Id. AR submitted various contentions as are also contained in the written submission which read as under:-

"1. At the outset we strongly rely upon the written submissions filed before the Id. CIT(A), which are also reproduced in his order at pg. 3 to 8.

2. Opening Cash Balance of Rs. 4,23,740/- Fully Established: It is submitted that the lower authorities have not judiciously appreciated the facts in as much as the assessee was aged 35 years (in F.Y. 2009-10) and being graduate had worked privately. He was also doing commission business of vegetables simultaneously for last several years.

The assessee filed his ROI for A.Y. 2008-09 & 2009-10, declaring gross income of Rs.1,08,000/- and 2,12,635/- from salary and / or commission, which stood assessed as admitted by the AO. Therefore, even assuming, he could earn a minimum most Rs.18 to 20,000/- per annum for a period of 15-17 years, he could have saved more than Rs.3,00,000/- as against Rs.2,55,000/- shown as opening cash balance on 01.04.2007.

Since the closing balance of Rs.4,60,865/- as on 01.04.2009 (Refer AO Pg-4) consisted of cash in hand of Rs.4,23,740/- as also bank balance of Rs. 36,852/- hence one cash flow statement was also filed before the AO, which shows the opening cash in hand of Rs.4,23,740/- as on 01.04.2009.

The assessee also submitted a cash flow statement before the AO for the period 01.04.2007 to 31.03.2009. Interestingly, the AO did not whisper a single word w.r.t. the opening cash balance of Rs.2,55,000/- as on 01.04.07. He did not even raise any objection nor doubted the Cash Balance available as on 31.03.08 of Rs.3,15,000/-. Thus, he accepted the availability of cash as on 31.03.07 and 31.03.08. However, he suddenly rejected the availability of

opening balance as on 01.04.09 of Rs.4,23,740/- merely on suspicion. In these facts and circumstances claim of opening cash balance of Rs.4.23 Lakh is not abnormal.

The lower authorities are silent as to for what purpose the earlier withdrawals would have been spent by the assessee.

3. Availability of current year income of Rs. 3,86,110/- is fully established:

3.1 Further as regard the availability of cash during the relevant financial year 2009-10 (A.Y. 2010-11) the assessee submitted a cash flow statement for the entire year which has taken into account all the receipts viz. opening cash Balance of Rs.4,23,740/-, gift of Rs.5,00,000/- (accepted by the CIT (A) at Pg-9), Salary Income of Rs.1,44,000/- and Income from retail business of Rs.2,42,110/- (as assessed by the AO itself Pg-10), cash withdrawal from bank of Rs.22,20,900/- and loan from relatives of Rs.35,000/-(as accepted by the AO Pg-9). Thus, total cash receipts / available cash was of Rs.35,65,750/- during the year. Out of the same, the assessee made total deposits of Rs.34,30,650/-. After reducing drawings of Rs. 1,19,500/- the closing cash balance of Rs. 15,600/- was still lying with the assessee (i.e. no negative cash) on 31.03.2010.

Interestingly, the AO assessed Salary Income of Rs.1,44,000/- as also the business income of Rs.2,37,081/-. Further fact of receiving loans of Rs. 35,000/- from two persons was also stood accepted. The fact of cash withdrawals were also accepted.

3.2 The Id. CIT(A) alleged that the assessee has furnished self-serving statements of accounts and particulars of entries, without any substance to prove satisfactorily the authenticity of claim made by him however, he has neither rejected the cash book nor the said cash flow and bank statements prepared by the assessee on the basis of day to day entries.

3.3 The lower authorities have not brought on record anything contrary which established that the cash in hand available with the assessee was not utilized for depositing in the various bank account but utilized elsewhere. More particularly when, the AO himself accepted the availability of cash of Rs.2,55,000/- as on 31.03.2007 and Rs.3,15,000/- 31.03.2008. Therefore, there was no occasion to doubt the opening balance of Rs.4,23,740/- as on 31.03.2009.

3.4 Moreover, the agricultural income of the father (current year), around Rs. 11-12 Lacs, stands impliedly accepted by the Id. CIT(A) when he accepted the gift of Rs. 5 Lacs to the appellant's son. His current agricultural income and his past savings were also helpful meeting the household and other outgoings of the appellant but were ignored.

3.5 The Id. CIT(A) though referred to the dubious conduct of the appellant but this was neither made a basis nor it could have been a basis for rejecting the explanation (supported by evidences) towards source of the balance impugned addition of cash deposits. The illegality or act against public policy cannot come in the way while considering applicability of S. 69, 69A.

4. Cash Flow Statement-Admissible evidence: In the cases where there are no accounts are maintained by one reason or the other or in the non-business cases, submission and consideration of the cash book / cash flow statements to explain the source is not uncommon and even the Hon`ble courts and Tribunals have taken cognizance and rather accepted such an evidence and explanation based thereon is valid.

In the instant case also, the assessee was not required to maintain his books of accounts. ROI were filed in Form-2, which is meant for "Individuals and HUFs not having Income from Business or Profession". There is no any column in ITR Form-2 which requires to shows Cash Balance. Moreover, this Form does not

require maintaining books of account and there is no column for balance Sheet & P & L Part. Therefore, the assessee on its own had prepared cash book and Cash Flow Statement, hence AO's allegation are baseless.

5. There apart, more importantly, a cash book prepared upto 15.08.2009 was also filed before the AO, who has discussed and accepted the same partly though not rejected fully. Needless to say that instead of making estimations a cash book prepared on day to day basis was more desirable as only such evidence could give precise answer i.e. show the availability of cash on the relevant dates of deposits."

5. Per contra, the Id. DR submitted that the assessee has submitted self-serving statement of accounts and particulars of entries without any substance to prove satisfactorily the authenticity of claim made by him and these statements remain unproved. Further, she relied on the order of the AO and our reference was drawn to the findings contained at Para 4 and 5 of the assessment order which reads as under:-

"4. Unexplained opening cash balance-

As stated above vide letter dated 26/29-10-2012 and letter dated 7-12-2012 the assessee was conveyed that opening cash balance of Rs 4,60,865/- is not acceptable. As stated above the assessee has not been able to prove the cash in hand as on 1-04-2009. As per record of this office assessee has been filing ROI from AY 2008-09 only. In AY 2008-09 total income was Rs 1,08,000/- and in AY 2009-10 filed in ward-4(4) it was Rs 2,12,365/-. As per ROI filed for AY 2009-10 on 30-09-2009 (proprietor of petrol pump) the cash balance as on 31-03-2009 was Rs 42,735/-. All pages of another ROI filed in w-4(4) have not been filed. In ROI filed for AY 2010-11 in ward 6(2) on 28-02-11 the cash balance has been shown at Rs 15,600/-. Considering all these facts the opening cash balance shown as on 1-04-2009 of Rs 4,60,865/- is treated as

unexplained. However no separate addition is being made in view of discussion in forgoing paras.

5. Unexplained difference in availability of cash for depositing in Bank account-

As stated above vide letter dated 14-09-2012 the assessee was asked to explain the source of Rs 11,52,150/- i.e. short of fall of available cash for depositing in Bank of Raj and SBI account. In response to the same assessee submitted a cash book. No evidence of sale and purchases of vegetables was furnished. In this cash book he has taken into consideration opening cash balance of Rs 4,06,865/-. As discussed above the source of opening cash balance has already been rejected. Further even if it is accepted that cash was generated on account of sale of vegetables the issue arises how much'. As per assessee's own account details of vegetable trade as under-

*Sales 2548760
Gross profit 383510/-
Expenses 145429/-
Net profit. 237081/-*

In this trade creditors for purchases do not stand for long. This is evident from ROI itself where at the end of year nil creditor have been shown by the assessee. It is also relevant to mention that in AY 2009-10 he has not shown income from trading of vegetables but commission income. Therefore it would be reasonable to assume that every month assessee had cash to the extent to Gross Profit which can be assigned on monthly averages. Gross profit was Rs 3,83,510/- on monthly average it would have been Rs 32,000/-(383510/12) , Here no expense

*is being assigned on monthly basis. No house hold withdrawals are being considered assuming that it were met out of his salary income shown. Thus up to mid Aug, 09 cash available out of trading for depositing in bank account would be Rs 1,44,000/-(32000*4.5). Thus only cash Rs 1,44,000/- is treated as available out of trading activities. Assessee has also shown cash loan of Rs 35,000/-. Thus total cash available was Rs 1,79,500/- for depositing in bank account.*

Total withdrawals were Rs 6,64,900/- from Bank (BOR 468400 + SBI 196500) up to 10-08-2009. Cash Deposit in bank account were 2053650/- (BOR 915800/ + 1137850/-). Thus there is short fall of Rs 13,88,750/-. Now as discussed above we treat Rs 1,79,000/-also available on account of trading activity and cash loans. Thus shortfall would be Rs 12,09,750/- . Assessee has no answer for the source of cash deposit to the extent of Rs 12,09,750/-. Coincidentally the difference in total cash deposited during the entire year and withdrawal is also 1209750/-(BOR 1077700 + SBI 2352950= 3430650/- - BOR 56400 -SBI 1656900=1209750).

In view of above discussion addition of Rs. 12,09,750/- is made to the total income of the assessee as unexplained cash deposit in bank account u/s 69A of the IT Act."

6. We have heard the rival submissions and perused the material available on record. During the course of assessment proceedings, the AO has enquired about the deposit of cash in assessee's bank account and to explain the same, the assessee has submitted his cash flow statement. While submitting the cash flow statement, the onus is on the assessee to substantiate each of the entries/transactions as so reflected therein with reasonable explanation and/or documentation. In the cash flow statement so submitted by the assessee, we find that the AO has not accepted the opening cash balance, gift from assessee's father, availability of cash from the retail business and quantum of

drawings so shown by the assessee. On appeal, the Id CIT(A) has accepted the assessee's explanation regarding receipt of gift from his father and hence, the same is not more under dispute before us in absence of any further appeal by the Revenue. Firstly, in respect of availability of cash from the retail business, the assessee has shown a figure of Rs 242,110 whereas the AO has computed an amount of Rs 179,500/- in respect of which no specific contention has been raised before us and hence, the figure of Rs 179,500/- as so computed by the AO needs to be considered as against figure of Rs 242,110/-. In respect of drawings, the assessee has shown a figure of Rs 119500/-, however, no basis has been specified as to how the assessee has determined the said figure where as the AO has returned a finding that given that assessee has salary and other business income, the household withdrawals can be considered as met out of salary income which has not been disputed by the assessee. Therefore, drawings towards household withdrawals are taken at Rs 144,000/- instead of Rs 119500/- taken by the assessee. Similarly, in respect of cash flow statement in support of opening cash balance, drawing a similar analogy regarding household withdrawals, the drawings towards household withdrawals are taken at Rs 108,000/- instead of Rs 48,000/- for A.Y 2008-09 and Rs 144,000/- instead of Rs 66,770/- for A.Y 2009-10 and considering the same, the opening cash balance would come to Rs 323,635/- instead of Rs 423,740/- considered by the assessee. Taking the same into consideration, we find that total cash receipts comes to Rs 34,03,035 and total deposits comes to Rs 35,90,250/- reflecting a shortfall of Rs 187,215/- which remain unexplained. Hence, the addition to the extent of Rs 187,215/- are sustained and remaining addition is hereby directed to be deleted.

In the result, appeal of the assessee is partly 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

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Ramendra Singh, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(2), 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. 1069/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

