

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. 296/JP/2020
निर्धारण वर्ष/Assessment Year :2012-13

Vandana Punia H. No. 1920, Near Geeta Bhawan, Mohalla Rampura, Hisar, Haryana	बनाम Vs.	ITO, Ward 7(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ATUPP8326R		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. R. S. Poonia (CA)
राजस्व की ओर से/ Revenue by : Smt Manisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 21/09/2021
उदघोषणा की तारीख/Date of Pronouncement: 22/09/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 19.03.2020 wherein the only ground of appeal relates to confirmation of addition of Rs. 5,16,696/- out of Rs 13,45,600/- made by the Assessing officer.

2. During the course of hearing, the Id. AR taken us through the order of Id. CIT(A) and it was submitted that as against addition of Rs.13,45,600/- made by the AO, the Id. CIT(A) reduced the addition to Rs. 5,16,696/- applying the peak credit theory. It was submitted that while applying peak credit theory, the Id. CIT(A) has not allowed benefit of source of such peak credit theory which has been explained by the

assessee by way of cash withdrawal of Rs. 5,00,000/- on 13.01.2011 from the same bank account which was not used anywhere else and was available at the beginning of the financial year as cash in hand. It was further submitted that the assessee has filed her ITR declaring total income of Rs. 1,88,370/- for A.Y 2012-13 in respect of which telescoping benefit has also not been allowed by the Id CIT(A).

3. It was further submitted that assessee had regular source of income and has filed her return of income for A.Y. 2009-10 declaring income of Rs. 2,93,180/-. Besides that, the assessee has saved money from regular household expenditure which was kept to be used in case of any family requirement and she belongs to a reputed family and had thus kept certain cash in hand which was deposited and not used anywhere else nor the Id AO or Id CIT(A) brought any adverse material on record. In support, reliance was placed on the Jaipur Benches decision in case of Shri Rajendra Singh vs ITO, Ward-3, Bharatpur (ITA No. 416/JP/2017) where cash withdrawal made in the month of March 2013 was taken as source of opening cash in hand as on 1st April of 2013 and the assessee's explanation regarding source of cash deposit from opening cash in hand was accepted.

4. Per contra, the Id. DR submitted that the Id. CIT(A) has already allowed the benefit of peak credit to the assessee and has given sufficient relief amounting to Rs. 8,28,904/- out of total addition of Rs 13,45,600/-. It was further submitted that the assessee has failed to explain the corresponding deposit made prior to withdrawal of Rs 5,00,000/- on 13.01.2011 and in light of the same, the Id CIT(A) has rightly not allowed the benefit while applying the peak credit theory. The Id. DR has thus

relied on the findings of the Id. CIT(A) and in support, reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Roshan Di Hatti vs. CIT [1977] 107 ITR 938 (SC).

5. We have heard the rival contentions and perused the material available on record. It is a settled legal proposition that onus of proving the source of a sum of money is on the assessee and the latter has to come forward with a satisfactory explanation and in absence thereof, it is open to the Revenue authorities to hold the same as income in the hands of the assessee. In the instant case, the Id CIT(A) has accepted the explanation of the assessee and returned a finding that earlier cash withdrawn can be treated as explained source of cash deposit in the same bank account and at the same time, cash withdrawal of Rs 5,00,000/- on 13.01.2011, which is also an admitted fact, has not been accepted and benefit thereof has not been given while working out the peak credit. The reason for such non-acceptance has been stated to be non-submission of explanation on part of the assessee in respect of corresponding deposit made prior to such withdrawal. In this regard, on perusal of the assessee's bank statement, we find that there is a cash deposit of Rs 5,00,000/- on 12.11.2010 which was available with the assessee as per her bank statement and which was then withdrawn on 13.01.2011. It is noted that the claim of the assessee regarding frequent cash withdrawal and deposit for the purposes of availing OD limit has been accepted by the AO in his remand report for the year under consideration and duly considered and accepted by the Id CIT(A) while working out the peak credit. Therefore, where similar transactions of deposits and withdrawals exist in the previous financial year, the explanation of the assessee duly supported by her bank statements cannot be disputed

without any adverse material on record. Further, we find that the assessee has disclosed income of Rs 1,83,370/- in her return of income and which has been accepted by the AO which again explain the source of part of deposits in the bank account. We therefore find that the assessee has reasonably explained the source of deposits in her bank account and the additions so confirmed by the Id CIT(A) is hereby directed to be deleted.

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

Order pronounced in the open Court on 22/09/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/09/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Vandana Punia, Hisar, Haryana
2. प्रत्यर्थी / The Respondent- ITO, Ward 7(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. 296/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar