

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवंश्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.1246/JP/2019  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Chand Mohammad 505, Raja Road, Ajmer Road Madanganj, Ajmer	बनाम Vs.	The ITO Ward- 2 Kishangarh
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BDXPM 8066 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vishal Gupta, CA  
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 10/08/2022  
उदघोषणा की तारीख / Date of Pronouncement: 18/08/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal by the assessee is directed against the order of the Id. CIT(A), Ajmer dated 20-08-2019 for the assessment year 2011-12 which in turn arise from the order of the ITO, Ward -2, Kishangarh passed u/s. 143(3) of the Act on 27.12.2018.

2. The assessee has assailed this appeal on the following grounds of appeal.

- “1. That on the facts and circumstances of the case, the notice issued u/s 148 by the AO is bad in law for various reasons and prayed for being quashed.
2. That on the facts and circumstances of the case, the Id.d CIT(A) erred in confirming the action of AO of reopening the assessment without having jurisdiction and also without having any reason to believe as on the date of issue of notice u/s 147/148b that income has escaped assessment. The assessment in pursuance of the same is thus prayed for being quashed.
3. That on the facts and circumstances of the case, the Id.d CIT(A) erred in confirming the action of AO of reopening the assessment without obtaining appropriate sanction as provided u/s 151 of the Act and thus assessment in pursuance of same is prayed for being declared void ab initio.
4. That on the facts and circumstances of the case, the IdCIT(A) erred in confirming the action of AO of making addition in hands of assessee of an income which does not belong to the assessee at all ignoring the facts and circumstances of the case. Such an addition is invalid and hence prayed for being deleted.
5. That on the facts and circumstances of the case, the Id. CIT(A) erred in confirming the action of AO of addition in hands of assessee ignoring the fact that assessee was not indulged in any business activities and had no source from which such huge receipts can be obtained by him. Such an invalid and arbitrary addition is thus prayed for being deleted.
6. That on the facts and circumstances of the case and without prejudice to other grounds of appeal, the Id.CIT(A) has erred in confirming the action of AO of assessing the income of assessee at Rs.21,77,189 which is in alternate excessive and unjustified. It is hereby prayed for reducing the addition thus made.”

2.1 During the course of hearing, the Id. AR of the assessee has not pressed the Ground Nos. 1 to 3. Hence, the same are dismissed being not pressed.

3. Apropos Ground No. 4 to 6, brief facts of the case are that no return of income was filed by the assessee u/s 139(1) of the Act. The AO noted that as per information available on record a report was received related to FIU (IND) in the case of Shri Chand Mohammad from office of DDIT (Inv.)-1, Udaipur vide letter No. 647 dated 27-03-2014. From the reports and its enclosures, it was gathered that assessee Shri Chand Mohammad in the name of his proprietary concern M/s. Chand Trading deposited the huge amount in the bank account No.3573002100033003 with Punjab National Bank having Bank on daily basis and was withdrawn the amount through ATM or self cheque from the base branch in Kishangarh. During the year under consideration total sum of Rs.2,17,71,252/- was deposited. It is noted from the entries of cash deposits in bank account of assessee that cash was deposited at different stations all over India. The observation of the AO in the assessment order is that Kishangarh is well known place of marble and granite trading but in plenty of cases the marble and granite are sold either under billing or without bills and in this case the sale proceeds of out of books cash sales of the assessee were deposited by different parties in his own account of PNB at different stations. To this effect or on identical facts, the AO has relied upon the decision of ITAT Jaipur Bench in the case of Smt. Anita Choudhary (ITA No. 733/JP/2009 dated 7-05-2010) wherein

ITAT upheld the addition of an amount equal to 10% of such deposits and this decision of ITAT (supra) was confirmed by the Hon'ble Rajasthan High Court in DBITA No. 289/2010 dated 14-10-2011. The AO on the basis of information available on record issued notice u/s 148 dated 27-03-2018 to the assessee, after obtaining necessary satisfaction from the competent authority. In response to this notice, the assessee had e-filed his return on 4-04-2018 declaring an income of Rs.49,025/- vide acknowledgement No. 607631860040418 but this return filed by the assessee remained unverified for a long time. Accordingly, vide letter No.314 dated 14-08-2018 was asked by the AO to verify the return and certain details/documents were required to submit before the AO but nobody attended the office of the AO for hearing fixed on 6-12-2018. Because of non-compliance on the part of the assessee, a show cause notice was issued on 12-12-2018 for completing the assessment u/s 144 of the Act and thus the AO issued the show cause to the assessee as mentioned at pages 19 and 20 of the assessment order. The statements of Shri Chand Mohammad was taken on 17-12-2018 at 5.30 PM by the AO u/s 131 of the Act which is mentioned at pages 21 to 25 of the assessment order. Shri Chand Mohammad mentioned in his statement that he has given his statement after reading the documents with proper thought, wisdom and without pressure. Shri

Chand Mohammad in his statement recorded on oath had denied to have any knowledge of his bank account and submitted that Shri Ganesh Goyal S/o Shri Ghanshyam Goyal, Mahaveer Colony, Ajmer Road,, Kishangah used his identity and opened the bank account in his name and misused them. The assessee further submitted that he was working on textile factory of Shri Ganesh Goyal and at that he cleverly opened bank account in the name of assessee and misused them and the assessee was not aware as to how Shri Ganesh Goyal was using his account. However, the AO did not find the reply / statement of the assessee as convincing. The AO further took the statement of Shri Ganesh Goyal who submitted that Shri Chand Mohammad was allowing marble traders of Kishangarh to deposit their unaccounted cash in his bank account and was returning to them it to them and charging commission on such deposits. The AO thus noted that Shri Chand Mohammad failed to establish that Shri Ganesh Goyal was using his bank account and he did not file any FIR against Shri Goyal for misusing his identity and bank accounts which indicate either the assessee himself has done the activity of depositing and withdrawing the cash or the same was with his connivance. It is also pertinent to mention that the assessee had failed to establish that the accounts were used by Shri Ganesh Goyal and not by himself and the assessee in his statement

recorded on 17-12-2018 in reply to question no. 12 admitted that he has nothing to prove that his bank accounts were used by Shri Ganesh Goyal. Neither the assessee nor Shri Ganesh Goyal told the exact amount of the cash pertaining to different marble traders Kishangarh. Thus, in the absence of documentary evidence, the AO held that the amount deposited in the bank account pertains to the assessee Shri Chand Mohammad and the AO relied upon the decision of ITAT Jaipur Bench in the case of Smt. Anita Choudhary (supra) which was affirmed by Hon'ble Rajasthan High Court in DBITA No. 289/2010 dated 14-10-2011. In this way, the AO assessed the income of the assessee at 21,77,189/- during the year under consideration which is 10% of the total deposits in the bank account of the assessee amounting to Rs.2,17,71,252/-. Hence, the AO made an addition of Rs.21,77,189/- in the hands of the assessee.

4. In first appeal, the Id. CIT(A) has confirmed the action of the AO by observing as under:-

"5.3.... The AO has been very reasonable in estimating the net profit only at the rate of 10% of the total cash deposits relying on the decision of jurisdictional ITAT and High Court in the case of Smt. Anita Choudhary. Therefore, I am of the considered view that the addition of Rs.21,77,189/- made by the AO is fully justified and as per the provisions of law. Accordingly, the addition of Rs.21,77,189/- made by the AO is hereby confirmed."

5. During the course of hearing, the Id. AR of the assessee tried to convince the Bench that Shri Chand Mohammad was not involved in any such activity of depositing and withdrawals of cash from such bank account. The Id. AR further submitted that in answer to Question No. 10, Shri Chand Mohammad was working according to the instruction of Shri Goyal for commission. The Id. AR of the assessee filed the written submission which did not indicate that the assessee was not involved in such transaction of depositing / withdrawing the amount from his PNB Bank account and the assessee did not lodge the FIR against such bungling in the name of Shri Naresh Goyal.

6. On the other hand, the Id. DR relied upon the orders of the lower authorities and also filed a case of ITAT Jaipur Bench in the case of Shri Banwari Lal Agarwal vs ITO, Ward-2, Kishangarh (ITA No. 1245/JP/2019 dated 13-10-2020).

7. We have heard both the parties and perused the materials available on record and judicial precedent relied upon by them to drive home to their contentions. From the records, the Bench noted that the assessee had bank account with PNB wherein transaction of depositing / withdrawing the amount was continuous. These financial transactions were within the knowledge of the assessee as it is manifestly in the statement recorded and

the clear findings of the lower authorities indicate that such transaction of depositing and withdrawing the amounts in the knowledge of the assessee. The Id. AR could not controvert the findings of the lower authorities which is based on the statement of the assessee recorded and, in that statement, nowhere it has been stated that he was not aware about having the bank account and has also not opposed the transaction done. The Id. AR of the assessee submitted that the action of the lower authorities is not correct and in fact the assessee has not earned so much of benefit as it is held by the lower authorities and the assessee being small tax payer the same may be considered accordingly. We find from the order of the Id. CIT(A) that he has already considered all the aspects and the decision cited by the assessee. The lower authorities has already granted the relief to the extent of 90 % of the amount deposited in the bank account and only considered the income to the extent of 10 % of the such deposit. The Id. AR of the assessee could not substantiate as to how and why the said relief is still not sufficient and has not submitted any comparative finding so as to deviate and grant more relief based on the stated facts. Since, the substantial relief has already been granted by the lower authorities recording the detailed finding of facts and in such a situation, we have no alternative except to confirm the action of the Id. CIT(A) as Id. AR did not controvert the findings

of lower authorities. Based on these observations the appeal of the assessee is dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 18 /08/2022

Sd/-

Sd/-

(संदीप गोसाईं)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

( राठोड कमलेश जयन्तभाई )

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/08/2022

\*Mishra

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

1. The Appellant- Shri Chand Mohammad, Kishangarh
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2, Kishangarh .
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1246/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar