

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 50/JAB/2022
(Asst. Year: 2017-18)

Nisha Sharma, Village Deori Rajmarg, Distt. Narsingpur (MP) [PAN : AZVPS 4510 R] (Appellant)	vs.	Principal CIT-1, Jabalpur. (Respondent)
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Appellant by : Shri Nitin Agrawal, Advocate
Respondent by : Shri Shravan Kumar Gotru, CIT-DR

Date of hearing : 12/09/2022
Date of pronouncement : 29/09/2022

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Principal Commissioner of Income Tax-1 Jabalpur ('Pr. CIT' for short) dated 21/03/2022, revising the assessee's assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 26/12/2019 for Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee, a partner in two partnership firms, namely, Sharma Associates & Vanshika Constructions, filed her return of income for the year on 22/03/2018, declaring a total income of Rs. 28,85,990, which was selected for scrutiny through CASS for the following reasons:

- (i) Claim of Large Exempt Income;
- (ii) Large agricultural income shown in ITR; and

(iii) Large cash deposit during demonetization.

The Assessing Officer (AO) accepted the returned income vide assessment order dated 26/12/2019, observing that the assessee had share income (from partnership firms) at Rs. 158.04 lacs, and agriculture income at Rs. 17.84 lacs, which were verified and found acceptable. His findings are as under:

‘The assessee is a partner of Vanshika Construction having exempt share income of Rs. 1,34,64,570/-. The assessee is also partner in Sharma Associates having exempt share income of Rs. 23,39,577/-. The assessee has also shown agriculture income at Rs. 17,83,553/-. The assessee has furnished supporting evidence, i.e., Khasra Khatoni and sale bills of agriculture income. The assessee has also exempt income of Rs. 302/-. Total of this is Rs. 1,75,88,002/- The same is verified and found acceptable. The assessee has deposited cash of Rs. 16,39,320 during the period of demonetization. *The assessee has stated that deposited cash is out of past savings.* It is seen that the assessee is having huge income compared to cash deposited in bank account which is tandem with the return of income filed by the assessee.’
(emphasis, ours)

Subsequently, the Id. Pr. CIT vide order dated 21/03/2022, passed under section 263 of the Act, set aside the assessment, observing that the assessment order is erroneous and prejudicial to the interests of the Revenue, and directed a *de novo* consideration and passing a suitable order by making proper investigation and enquiry and applying correct provisions of law, holding as under:

‘9. I have considered the e-submission of the assessee furnished during the course of assessment proceedings as well as the revision proceedings and have perused the documents available on records. On examination of records, it is noticed that the assessee claimed agriculture income to the tune of Rs. 17,83,553/-. However, the assessee has furnished copies of “Bhu Adhikar & Rin Pustika” and some sale bills, but the cash deposit in bank accounts, i.e., total cash being agricultural receipts, are not commensurate with the bank statement and cash book furnished by the assessee. The AO has also not made any third party enquiries in respect agricultural produce or sale of agricultural produce. Further, in respect of cash deposits of Rs. 16, 39, 320/- in bank accounts, assessee furnished cash book and copy of bank statement but source of cash was not verified by the then AO. The opening cash balance of the assessee is also not examined during the course of assessment proceedings.’

Aggrieved, the assessee is in appeal before us.

3. Before us, Sh. Agrawal, the Id. counsel for the assessee, would submit that the AO rightly passed the assessment order after examining the documents

submitted by the assessee. The assessee, he claimed, submitted detailed replies in the assessment proceedings, explaining the sources of income and submitting all the relevant documents, viz. Bank statements; ITRs and computation of income of both the firms, for which he would take us through the assessee's submissions during assessment proceedings. Reference was made by him for the purpose to PB pgs. 31-33, 22-24, 90-92. That explains the acceptance by him of the assessee's claims per her return as to cash deposit and agriculture income. Sh. Gotru, the Id. CIT-DR, on the other hand, supported the impugned order.

4. We have heard the parties, and perused the material on record.

4.1 We begin by noting the observations by the AO, found deficient in terms of inquiry, inferring lack of application of mind by the Id. Pr. CIT. For agricultural income, the AO states of the assessee having furnished supporting evidences. Regarding the cash deposit of Rs. 16.39 lacs during the monetization period, the AO observed that the cash deposited is stated to be out of past savings of the assessee. Our findings in the matter, separately *qua* the two aspects adversely commented upon by the revisionary authority, even as, as apparent, the AO has not issued any definite finding in the matter (see para 2 above).

4.2 As regards agricultural income, we observe there is no mention of the land holding, crops cultivated and sold; extent of income, i.e., in relation to sale, etc. in the assessment order. Further, how does it compare with the agricultural income declared by the assessee in the past, or by others in the region with similar holdings (or on yield basis)? This is particularly so as the very basis for verification of the return is 'large' agricultural income, implying it to be inconsistent with the past. This is precisely what the Id. Pr. CIT refers to when he speaks of absence of any third party enquiry in respect of agricultural produce or its sale. Again, we observe that while the AO speaks of Khasra Khatauni (i.e., the land records), the Id. Pr. CIT, on an examination of the record, states of it being of

‘*Bhu adhikar*’ and ‘*Rinpustika*’. The correct fact/s needs to be clarified, even as the latter record would not by itself determine if the land is agriculture.

4.3 As regards availability of cash, there is no finding by the AO on as to how the cash deposited during the demonetisation period (Rs.16.39 lacs), no mean amount, compares with that deposited in the corresponding period during the immediately preceding year/s and/or even the succeeding year/s. What is the extent of the cash saving, much less, the basis thereof. Resultantly, the opening cash balance, ascribed to past savings, and relied upon in explanation of the cash deposited during the year, remained unverified and, in fact, indeterminate. The cash-book furnished during the revision proceedings reflects an opening cash-balance (as on 01/04/2016) at Rs. 29.45 lacs. What is the basis of the same, particularly considering that the assessee is not maintaining any day-to-day accounts. Be that as it may, this is an astounding sum to hold as personal cash, which surely requires being enquired and verified, even as the same was not inquired into and, consequently, there is no furnishing of the opening cash before the AO, much less any explanation in its respect. The assessee, though has several incomes, yet, relies in the main on the cash withdrawn on 23/06/2015 (Rs. 22.50 lacs) and on 16/11/2015 (Rs. 3 lacs) for explaining the cash deposit/s i.e., 12 to 17 months prior to its deposit in the bank! The assessee, despite several sources of income, is hard put to explain the cash deposits, ascribing the same to the said cash withdrawals, clearly indicating that but for the said withdrawals, she does not have the requisite cash-in-hand. Now, nobody would withdraw cash just to keep it with himself, so that the onus, even otherwise on an assessee to prove the claims per his return of income, is heavy on the assessee, i.e., to state as to why and for what purpose/s cash was withdrawn, and why did she continue to hold it, i.e., assuming so, for over a year. This also clarifies, being a pure question of fact, that income does not necessarily imply cash, which could be held in the form of different assets. As such, stating, as the AO does, that the assessee has sufficient income to

support the cash deposit/s, is clearly inapposite, not based on any material, much less verified and inquired into as to the truth thereof. The same is, as apparent, a matter of fact, to be enquired into and determined, issuing definite finding/s of fact.

4.4 The question is not if the assessee has furnished the relevant details, which it has not, before the AO, but whether the same had been, where so warranted, inquired into by the AO, and which we find as clearly not. In fact, a proper inquiry by the AO in the matter, would have led to the production of the relevant material, as was the case before the Id. Pr. CIT, who though did not either verify the same or inquired thereinto, but set aside the assessment for the purpose. The law in the matter is well-settled, so that lack of enquiry, indicating non-application of mind, inflicts an order as erroneous and prejudicial to the interests of the Revenue, liable for revision, toward which the Id. Pr. CIT has relied on some case law, as under, which we regard as apposite:

Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC);

CIT v. Deepak Kumar Garg [2008] 299 ITR 435 (MP);

CIT vs. HPFC [2010] 186 Taxman 105 (HP); and

Consolidated Photo and Finvest Ltd. v. Asstt. CIT [2006] 281 ITR 394 (Del)

4.5 In our view, the Id. Pr. CIT has pointed out the areas where the AO ought to have inquiry, both qua the source of cash deposited by her in her bank accounts as indeed agricultural income, accepting instead the returned income of the assessee by simply relying on the submissions by the assessee. No enquiry worth name, much less proper, has been made by the AO. The assessment order is resultantly *sans* any finding in the matter, i.e., both as regards agricultural income as well as the source of cash deposits. The case law relied upon by the Id. Pr. CIT has not rebutted by the appellant before us in any manner. Case law in the matter is legion, each decision having been rendered in the fact settings of that specific case. We in

fact find the decisions in *Rampyari Devi Sarogi v. CIT* [1968] 67 ITR 84 (SC) and *Deekap Kumar Garg* (supra) as squarely applicable in the facts of the instant case.

5. We, in view of the foregoing, find no reason to interfere with the impugned order and, accordingly, decline to.

6. In the result, the assessee's appeal is dismissed.

Order pronounced in open Court on September 29, 2022

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 29/09/2022

vr/-

Copy to:

1. The Appellant: Nisha Sharma, Village Deori Rajmarg, Distt. Narsingpur (MP)
2. The Respondent: Principal CIT-1, Jabalpur.
3. The CIT-D.R., ITAT, Jabalpur.
4. Guard File.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur.