

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 285/JP/2022
निर्धारण वर्ष/Assessment Year : 2011-12

Smt. Geeta Devi Saini 86-A, Karni Vihar, Road No. 17 VKI Area, Jaipur	बनाम Vs.	The DCIT Circle-4, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APEPS 8664 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shyam Sunder Jangid, Adv.
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 12/10/2022
उदघोषणा की तारीख / Date of Pronouncement: 4 /01/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 24-05-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 raising therein following grounds of appeal.

“1. On the facts and circumstances of the case, the ld. CIT(A) has erred in sustaining illegal action initiated u/s 148 of the Act by the AO placing wrong and incorrect facts before the ld. Pr. CIT, Jaipur for obtaining approval inasmuch assessee has purchased

only one piece of land whereas the AO has obtained approval by stating that assessee has purchased two pieces of land and thus the whole proceedings were vitiated and the assessment order deserves to be quashed on this ground.

2. On the facts and circumstances of the case, the ld. CIT(A) has erred in sustaining addition of Rs.14,48,950/- u/s 68 of the Act in total disregard to the facts that Section 68/69 is not applicable. Thus being a "no account" case and the amount invested has emanated from appellant's own accumulated funds for last several years in support of which cash flow charts was filed.

2.1 During the course of hearing, the ld. AR of the assessee has not pressed the Ground No.1. Hence, the same is dismissed being not pressed.

3.1 Apropos Ground No. 2 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“6.2 Ground of appeal NO. 1(b) is that in making addition of total amount of investment of Rs. 14,46,950.00, A.O. has disregarded the fact that this investment has emanated from appellant's income from sale of milk and gift from father and father-in-law. It is submitted that around Jaipur communities known as Mali. Gujjar, Meané etc. are milk vending communities and sale of milk is their major source of income. The appellant has reiterated the same contentions in the submissions filed during the appellate proceedings and furnished a statement to explain the source of investment in land.

6.2.2 It is seen that that the issue relates to unexplained investment in land. The appellant has purchased agriculture land of Rs. 14,46,950/- in cash which includes registry charges of Rs. 1,46,950/- and no return of income is filed by her. The burden of proof lies on the appellant to explain the nature and source of the cash so used to purchase the land, In the given case the appellant has taken a plea that the cash is earned from sale of milk In the statement filed R.8,51,000 is sought to be explained as cash

generated by the appellant through own sources and as per income in earlier returns filed. It is not discernible that all income if at all earned in earlier years is totally held as cash over a period of more than 8 years. Moreover no documentary evidence by way of earlier returns filed or any bank account tries to establish accumulation of funds/saving over the years is furnished. Thus there is no supporting evidence filed to establish the nature and source of cash that is claimed to be self-generated and used to purchase the land. Hence the primary burden of proof is not in the given case. In this regard reference is made to the following judicial decisions

- Hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif v. CIT 1963 50 ITR 1 SC has held that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show other than that the receipt was not income or that if it was it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it a taxable income.

- The Apex Court in Roshan Di Hatti vs CIT (1977) 107 ITR 938 held that onus of proving the source of a sum of money found to have been received by an assessee is on him. When the nature and source of money or others cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee."

6.3.3 In appellate proceedings the appellant has submitted a statement wherein it is contended that Rs.621000/- is marriage gifts received from parents and in-laws and some gift deeds on plain paper are submitted. The gift deeds are examined and it is observed that

- The deeds are stated to be made on 25/07/2010 in English on plain paper. The signatures of both the appellant and all the donors and witnesses are in Hindi and the signatures themselves show that the persons do not know English.

- The donors are the father of appellant for Rs.321000/- and father-in-law for Rs.300,000/- and no PAN is quoted for either of them.

- The gift deeds containing only one signature in English and that is of advocate Shri Shyam Sunder Jangid who was also the authorised representative in the case in the assessment proceedings.

“ VERIFICATION

1. Smt. Geeta Devi Saini W/o Sh. Lal Chand Saini (Donce) has accepted the above cash gift of R3,21,000.00 (Three Lacs twenty one thousand only) on this day 25-July-2010

गीता

Smt. Geeta Devi Saini
W/o Sh. Lal Chand Saini
(Donee)

Witness:

श्री लादूराम सैनी s/o

श्री सोहन लाल / कल्याण सहाय

श्री परभाती लाल सैनी, प्लाट नं. 79

342, महादेव नगर,

बालनाथ धाम कॉलोनी, रोड नं. 17

हरमाडा, जयपुर

आकेडा रोड VKI जयपुर

Hon'ble Calcutta High Court in CIT v. Precision Finance (P) Ltd. [1994] 208 ITR 465, has laid down that an assessee is expected to establish (i) Identity of creditors (ii) Capacity of creditors to advance money (iii) Genuineness of transaction. In the given case the appellant has merely filed some declarations on plain papers that were not submitted before A.O. and now are being passed off as proof of the source of cash used to purchase the land. The appellant has not furnished any proof of identification of the so called persons, the deeds do not contain any PAN or copies of their returns. Further no bank accounts or bank statements or any other supporting documents to establish the source of the gifts made is furnished. Thus, the identity or creditworthiness of the so called persons making the gifts/donors is not established. Further the genuineness of the deeds is doubtful as these are not registered documents. These are self-serving documents prepared as an after-thought to the transaction in land, evident from the fact that these are **prepared by the authorized** representative and that it is not on any notarized stamp paper or registered document. If the relatives gave gifts it has to be proved by the establishing the capacity of the donors to make such gifts and backed by proper documentary evidence to show the source of the cash used to make these gifts. Moreover in the Indian society it is unheard that both father and father-in-law of a girl are giving gifts vide similarly worded gift deeds on the same deed in a language which they clearly do not know or interact in. In this regard reference is made to the Bombay High Court

decision in the case of CIT v/s. Sadiq Sheikh TXA NO.18 & 19-2014 wherein it has held that the Revenue can examine the source of the source. Merely pointing out to a source and the source admitting that it has made the payments is not sui ont to discharge the burden placed on the assessee. The explanation has to be plausible and backed by reliable evidence. Fantastic or unacceptable explanations are not acceptable. Thus relying on the above discussion, it is held that the capacity of lender and genuineness of transaction remains unexplained

6.4 Therefore relying on the above quoted judicial decisions it is held that the appellant has not been able to furnish any plausible explanation as to the nature and source of funds and therefore the action of Assessing Officer in treating Rs. 1446950/- as an unexplained cash investment is hereby upheld and ground of appeal is treated as dismissed

Thus, the Id. CIT(A) has dismissed the appeal of the assessee holding that the assessee has not been able to furnish any plausible explanation as to the nature and source of funds and confirmed the action of the AO treating the sum of Rs.14,46,950/- as an unexplained cash investment.

3.2 During the course of hearing, the Id. AR of the assessee prayed that the Id. CIT(A) has erred in sustaining the addition of Rs.14,46,950/- as made by the AO. However, the Id. CIT(A) filed the written submission whose relevant portion is reproduced below.

“In the 2nd ground, the appellant has disputed the addition of entire amount of Rs.14,46,950/- (Rs.13,00,000/-+1,46,950) holding it to be income from “Other sources”. It is submitted that appellant is a lady residing in a village near Jaipur city engaged in the profession of sale of milk. This is traditional business/profession of some of the communities in this area which include Meena, Gujar, Saini, Yadav etc. the family members are doing this profession since generation and still engaged in the same profession. If AO has any doubt, he ought to

have got spot enquiries made. The Id. CIT(A) also ignored this plea and presumed that there no income at all.

It is submitted that how the Id.AO & CIT(A) has come to the conclusion that assessee has no income at all. This is a preserve decision and deserves to be quashed.

The Id. CIT(A) observed that no evidence in support of this plea was filed. It is submitted that a milk vendor does not require PAN, bank account or registration of any Govt. agency and therefore circumstantial evidence may be taken as correct and acceptable. If there is any doubt spot enquiries be made instead of rejecting the plea outright. The appellant submit that she is still prepared to cooperate for making spot enquiries, if ordered by the Hon'ble Bench. The appellant thus submit that on Ist ground the assessment deserves to be quashed and if the same is accepted the 2nd ground will not require adjudication.

3.3 On the other hand, the Id. DR supported the order of the Id. CIT(A).

3.4 The Bench has heard both the parties and perused the materials available on record including the evidences filed by the Id. AR of the assessee. Brief facts of the case are that the assessee had purchased an agricultural land for a consideration of Rs.13.00 lacs in cash and also paid a sum of Rs.1,46,950/- in cash on account of registry, stamp duty charges etc. Thus, in this way, the total sum of Rs.14,46,950/- was paid by the assessee in cash for the purchase of immovable property during the year under consideration. As per Revenue Authorities, the since the assessee could not prove the source of cash, therefore, addition in respect of entire land was made in favour of the assessee. Although by filing the written submission and reiterating the arguments as made before the Id. CIT(A), the Id. AR of the assessee submitted

that the assessee is a lady residing in village near Jaipur and is engaged in the profession of sale of milk for the last several years. She has traditional business/profession of some of the communities in this area which includes Meena, Gujar, Saini, Yadav etc. and the family members of the assessee are also engaged in this business/profession since generation and still engaged in the same profession. According to the ld. AR, the assessee was having her accumulated income for the last several years and this regard, the ld. AR of the assessee has drawn Bench attention to PB Page 5 which contains of statement of affair as on 31-03-2011 and paper book page 6 which contains details of cash funds and it also includes Stridhan and returned income as sources of purchase of agricultural land. The assessee has also placed on record the copy of Income Tax Return for the assessment year 2005-06 and also the copy of computation of total income as well bank accounts. It was also submitted by the ld. AR that a sum of Rs.3.21 lacs and Rs.3.00 lacs were given to the assessee by her father and her father-in-law through gift deeds and in this way, the assessee explained the source of income for purchase of agricultural land. After having meticulously gone through the facts of the case as well as documents placed on record, the Bench finds that it is an undisputed that the assessee is filing her return of income since the A.Y. 2005-06 and in this way the assessee had accumulated the cash in hand. Apart from this, the assessee had also filed an affidavit wherein specifically she has mentioned that the

amount for purchase of agricultural land at Rs.14,46,950/- was out of her accumulated cash funds from the last several years earning which were lying with her. It was also pleaded in the affidavit that said funds were earned from her profession of sale of milk for which she had declared income. The assessee had also filed two gift deeds executed by Shri Lallu Ram Saini, father of the assessee and Shri Prabati Lal Saini, father-in-law of the assessee wherein they had given Rs.3.21 lacs and Rs.3.00 lacs respectively at the time of purchase of agricultural land. On perusal of the said gift deeds, the Bench noticed that Shri Lallu Ram Saini, father of the assessee had worked in PWD and also owned agricultural land and Shri Prabati Lal Soni, father-in-law of the assessee had business of stones slabs and building and owned agriculture land, had given these sums out of love and affection. It is important to mention that all those documentary evidences were placed on record by the assessee before the AO but the AO had not carried out any enquiries or verification in respect of the said documentary evidences or with regard to the carrying out the profession of milk selling by the assessee. It is thus noted that the assessee had discharged her onus by filing the documentary evidences in the shape of return of income, bank accounts, gift deeds etc. However, the AO has failed to carry out necessary investigation or verification qua the said documents. It is also noticed that the Id. CIT(A) while rejecting the claim of the assessee had categorically mentioned that in Indian Society, it is unheard that both

father and father-in-law of a girl are giving gifts. It is also noteworthy to mention that these documents were placed before the AO who failed to investigate the matter qua these documents. In such a situation, the Bench has no other option except to rely upon the unrebutted documents placed on record by the assessee and thus the addition so sustained by the Id. CIT(A) is directed to be deleted. Thus the appeal of the assessee is partly allowed.

4.0 In the result, the appeal filed by the assessee is partly allowed

Order pronounced in the open court on 4 /01/2023

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

जयपुर / Jaipur

दिनांक / Dated:- 4 /01/2023

*Mishra

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

1. The Appellant- Smt. Geeta Devi Saini, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-4, Jaipur
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. 285/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar