

आयकर अपीलिय 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. 378/JP/2022  
निर्धारण वर्ष/Assessment Year : 2010-11

Shri Jagdish Chandra Choudhary Village: Dorai, Post Via H M T Dorai, Ajmer	बनाम Vs.	The ITO Ward 2(2) Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIVPC 3743 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anoop Bhatia, CA  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 30/11/2022  
उदघोषणा की तारीख / Date of Pronouncement: 15 / 02/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 25-07-2022, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2010-11 wherein the assessee has raised the following grounds of appeal.

“1. The assessee is an individual retired from Indian Army and engaged in agriculture and livestock breeding in Dourai, Ajmer. An assessment order was passed u/s 147 rws 143(3) of the Act by ld AO for the AY 2010-11 wherein the ld AO has considered a sum of Rs 10,00,000 deposited by assessee in his saving bank a/c number 10147179735 as unexplained and treated it as income from undisclosed source and added it to total

income of assessee thereby assessing the total taxable income at Rs 10,65,900 which includes income declared by assessee at Rs 65,900/-. Aggrieved by such order passed by ld AO assessee filed an appeal before the CIT(A) which was dismissed vide an order dt. 23.05.2018. Aggrieved by the order passed by ld CIT(A) the assessee filed an appeal before Hon'ble ITAT on 1.8.2018 which was set aside to CIT(A) for deciding the matter a fresh

2. The assessee has duly put forth all the evidences and have also explained the source of cash deposited by him in his bank account which are very much genuine but the same has again been rejected by Ld CIT(A) which is very unlawful and therefore, assessee again knocks at your door in need of natural justice and prefers an appeal before your goodself.

3. On facts and circumstances of the case and in law the Ld CIT(A) has grossly erred in conforming the cash deposited by assessee of Rs 10,00,000 as unexplained and from undisclosed sources. Appellant prays that such deposit being fully explainable deserves to be deleted

4. That the ld CIT(A) has further erred in framing a biased opinion on the submission/explanations submitted by assessee and questioning the usuality or unusuality of the family decisions(as to why father was keeping his mother's jewellery rather than distributing among daughter in laws and daughters).

2.1 During the course of hearing, the Bench observed that there is delay of 25 days in filing the appeal by the assessee for which the ld. AR of the assessee filed a condonation application dated 5-10-2022 praying therein that because of panic attack and depression to the assessee, the delay has occurred in filing the appeal. To this effect, the ld. AR of the assessee has filed medical certificate as well as affidavit of the assessee. Further, the ld. AR of the assessee further submitted that it was beyond the control of the assessee in late filing of the appeal by the assessee.

2.2 On the other hand, the ld. DR objected to the condonation application but submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 After hearing both the parties and perusing the materials available on record, the Bench noted that there is a sufficient cause which prevented the assessee in late filing of the appeal. In view of the facts and circumstances of the case and also the decision of Hon'ble Supreme Court in the case Collector, Land Acquisition vs MSt.Katiji and Others, 167 ITR 471, the delay so made by the assessee in filing the appeal is condoned.

3.1 Brief facts of the case are that the assessment order was passed on 7-09-2017 u/s 147 of the Act for the year under consideration. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A) who dismissed the appeal and upheld the addition made by the AO. However, the assessee further took the matter before the ITAT on 01-08-2018 and ITAT vide order dated 25-11-2019 restored the matter back to the file of the Id. CIT(A) for deciding the same on merits. Consequently, the Id. CIT(A) after hearing the contentions of both the parties dismissed the appeal filed by the assessee by observing as under:-

“4.5 I have carefully considered the submission of the appellant, bank account details, and assessment order dt. 07.09.2017 is seen that the appellant had deposited Cash of Rs. 10,00,000/- on 25.02.2010 in Saving bank account which was stated to be received by appellant from his father who expired on 01.04.2013 in regard to source of aforesaid amount of Rs. 10,00,000/-, the appellant claimed that this cash amount was given to him by his father out of the sale proceeds of his wife's (mother of appellant) ornaments (both gold and silver), past savings and agricultural accumulations. But in support of his claim, the appellant did not provide any concrete evidence/proof like sale bills of jewellery, sale bills of agricultural produce or any other documentary evidences.

It is further to point out that during the course of assessment proceedings, the appellant's statement was recorded on 30.08.2017 wherein while answering the question no. 13, the appellant admitted that "whatever stated in the affidavit earlier filed he had made

observations of his own, but now in absence of having any documentary proof of availability of cash with his father, and being recipients beneficiary of such amount, he admitted it of own and surrendered it for taxation for the year under consideration and promised to pay tax thereupon." The affidavit of the appellant clearly shows that appellant not having any evidence, reason and occasion for gift particularly to him only whereas there were others siblings too. The appellant had no evidence in respect of sources informed to the AO The appellant has also not given any breakup as how much was from past savings, how much was from sale of jewellery and how much was from sale of agricultural produce. The appellant has also not shown that any capital gain return was filed on account of sale of jewellery by his father. No details of sale of agricultural produce were submitted. It is observed that Hon'ble ITAT had asked for sale bills of agricultural produce. But before Hon'ble ITAT also no sale bills were filed.

4.6 Now coming to the claiming of agricultural produce it is seen that only paper relating to ownership land and revenue record are submitted. The appellant has made claim of receiving agricultural receipt gifted by his father without any evidence. The term "Agricultural Income" has been defined u/s 2(1A) of the Act. The definition of agricultural income' under section 2(1A) provides that the following shall constitute agricultural income-

- (i) Any rent or revenue derived from land which is situated in India and is used for agricultural purposes [Section 2(1A)(a)]
- (ii) Any income derived from such land by agricultural operation including processing and sale of the agricultural produce as rent-in-kind so as to render it fit for the market [Section 2(1A)(b)].
- (iii) Income derived from building or land used for agricultural operation, in certain cases. [Section 2(1A)(c)]

Hon'ble Supreme Court had elaborately explained what constitute the term agriculture in depth in the case of CIT v. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC). It is a landmark case for the understanding of agriculture under the Income Tax Act. It was an interesting case wherein assessee was growing trees on a forest land. Growing of trees was inter alia includes of cutting of trees and leaving the stumps to re-grow. The Supreme Court held such income as agriculture income and held as under:-

“The primary sense in which the term agriculture is understood is agar-field and cultra-cultivation, i.e. the cultivation of the field, and if the term is understood only in that sense agriculture would be restricted only to cultivation of the land in the strict sense of the term, meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are, however, other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be

performed after the produce sprouts from the land, i.e. weeding, digging the soil around the growth, removal of undesirable under growths and all operations which foster the growth and preserve the same not only from Insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting, and rendering the produce fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all. However, the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations which have been described above would not be enough to characterize them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land. It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations. The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term the tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above, all of which operations, basic as well as subsequent, form one integrated activity of the agriculturist and the term 'agriculture' has got to be understood as connoting this integrated activity of the agriculturist. One cannot dissociate the basic operations from the subsequent operations and say that the subsequent operations, even though they are divorced from the basic operations can constitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed in regard to any land that land can be said to have been used for 'agricultural purposes' and the income derived therefrom can be said to be 'agricultural income' derived from the land by agriculture. The mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring within the scope of the term and such extension of the term 'agriculture' is unwarranted. The term 'agriculture' cannot be dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended in the manner stated before both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for extending to all activities which have relation to the land or are in any way connected with the land. The use of the word agriculture in regard to such activities would certainly be a distortion of the term "

It the term 'agriculture' is understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the lands of products which have some utility either for consumption for trade and commerce, & will be seen that the term agriculture receives a wider

interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of its cultivation of land in the sense of tiling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations.’

The aforesaid judgment makes it clear that the term ‘agriculture’ is ‘cultra’, i.e. cultivation of the "agar" i.e. field/land. In other words, raising of a product through the use of human skill and labour on land may be classified as agricultural activity. The product should have some utility either for consumption, for trade and commerce. The term "Agriculture" receives a wider interpretation both with regard to its "operations" as well as the "results" of such operation. Looking to the definition given in the Act and above referred landmark decision of the supreme court on the matter, following ingredients must be existing in Agricultural Income-

1. Existence of Land,
2. Ownership of Land is immaterial
3. Primary operation cultivation of land and its all process like tilling of the land, sowing of the seeds, planting, irrigation and similar work done on the land itself.
4. Subsequent operation is also the resultant items through basic operation should be in a shape of products either for consumption or trade.

4.7 In the case of Avdhesh Kumar Jain Vs CIT dt 27.02 1989 178 ITR 443 All, 1990 48 Taxman 266 the Hon'ble High Court upheld the order of Hon'ble ITAT wherein appellant failed to establish the primary and subsequent operation. In this case, the appellant was not able to state as to whom the said agriculture produce was sale. The appellant has also not established to show that it was engaged in commercial agricultural activity. It is further found that while making addition the AO has made certain uncontroverted findings. The findings of the AO are as under-

1. The assessee was having two bank a/c in the SBI, HMT
2. The father of the assessee was also having his own SB a/c in HMT Branch
3. The assessee was having no proof of availability of fund at home by his father.
4. The assessee was also not having any documentary evidence of having sold the gold/silver ornaments by his father.

5. The assessee has also no explanation as to why the father of the assessee Shri Narayan Choudhary has not deposited such huge cash in his bank a/c and why such a huge cash claimed to have been kept at home.

6. No books of a/cs or bills and vouchers which indicate the receipt of Rs. 10,00,000/- in hand by Shri Narayan Choudhary have been maintained/kept

7. When the assessee are three brothers than why his father had given impugned cash to assessee only.

Perusal of AO's findings shows that appellant father was having bank a/c and apart from the appellant he had many successors also. It is not reasonably explained by the appellant as to why the entire gift was given to the appellant only and not his other family members. It is also a case, where appellant has not claimed that the cash payment was received by his father from sale of agricultural land. His mother also expired in 1975 and since then his all brothers got married it is very unusual that his father was keeping his mother's jewelery, rather than distributing among the daughter in laws and daughter. In conclusion of the above, it is concluded that the amount of Rs. 10,00,000/- which was deposited in the bank belongs to the appellant's himself. Therefore, the contention of the appellant that the amount of Rs. 10,00,000/- was received from his father is not acceptable. Hence, the action taken by the AO is correct and valid. The appeal of the appellant is hereby dismissed.

5. In result, the appeal of the appellant is dismissed.”

3.2 Now against the order of the Id. CIT(A) dated 25-07-2022, the assessee is in second round of litigation before the Bench on the grounds mentioned hereinabove. The grounds raised hereinabove by the assessee are interrelated and interconnected which relates to challenging the addition of Rs.10.00 lacs made by the AO considering that the said amount deposited by the assessee in the bank as unexplained and treating it as income from undisclosed sources. Therefore, the Bench thought it fit to dispose off these grounds of appeal through a consolidated order.

3.3 The ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised before the ld CIT(A) and also submitted the following written submissions on 30-11-2022.

“ In continuation of our earlier submission file before Your Honor on 23.11.2022 and as directed by the Hon'ble bench on 30.11.2022, the assessee humbly submits that the assessee had explained that that the source of cash deposit of Rs. 10 lacs in his bank account was amount received from his father. The source of said amount in the hands of father was explained as being received from sale of agricultural proceeds, sale of certain jewellery belonging to his mother and past savings. Since the father had deceased and the jewellery was sold in the local market, where he resided, it was not possible to file the bills for such sale. Therefore in support of above contention, during the appellate proceedings before Ld. CIT(A) the assessee had filed 2 affidavits one by the assessee and the other by two witnesses, affirming on oath, the transaction of sale of jewellery by his father and handing over the sum to the assessee by his father. But the same does not find any mention in the order of Ld. CIT(A), who added the amount as being undisclosed income of the assessee.

It is submitted that the assessee had always contended that his only source of income was pension from the Indian Army and agricultural income. Even ld. AO has not pointed out any assets or any source of income other than that stated above. Thus when there was no contradictory material in possession of ld. AO, the explanation accorded by assessee, and duly substantiated by affidavits, affirming on oath the said contention, cannot be rejected. Also submitted that the affidavits which are duly notarized, hold legal identity, cannot be rejected merely on surmises, without there being any contradictory material on records. This contention of assessee is duly supported by the decision of Hon'ble Supreme Court in the case of M/s Mehta Parikh & Co Vs. CIT II, wherein while accepting the contention of the assessee it has been held that, "A mere calculation of the nature indulged in by the Income tax Officer or the Appellate Assistant Commissioner was not enough, without any further scrutiny, to dislodge the position taken up by the

appellants, supported as it was, by the entries in the cash book and the affidavits put in by the appellants before the Appellate Assistant Commissioner." Thus in view of above it is humbly submitted that the affidavits of witnesses, duly affirming the source of funds by the father of the assessee deserves to be accepted and since the cash deposited into the bank account belongs to his father, the addition made deserves to be deleted.”

3.4 On the contrary, the ld. DR relied upon the orders of the ld. CIT(A).

3.5 The Bench has heard both the parties and perused the materials available on record. It is noted that the assessee has specific stand that the amount of Rs.10.00 lacs deposited by him in his bank account belongs to his father as the assessee was deriving income only from Pension from Indian Army and income from other sources. Besides, agricultural income has also been shown in the computation of income by the assessee. It was submitted by the ld. AR that the source of cash deposit of Rs.45,000/- on 14-05-2009 and Rs.10,00,000/- on 25-02-2009 in the State Bank of India saving bank account was out of agricultural sale proceeds and as regards the deposition of Rs.10.00 lacs, it was given by the father Shri Narayan Choudhary, to the assessee who later on passed away on 01-04-2013. In support of his contention, the assessee filed an affidavit stating that he has received Rs.10.00 lacs from his father out of his past savings from agricultural income and sale of gold and silver items by his late father. However, the said contention of the assessee was rejected by the AO by holding that father of the assessee was also having his saving accounts in SBI and the assessee was having no proof of availability of

funds at home by his father. Apart from that it was specifically treated by the Revenue authority that the assessee was not having documentary evidences of having sold the gold/silver ornaments by his father and absolutely there was no explanation as to why the father of the assessee Shri Narayan Choudhary had not deposited such huge cash in his bank account and as to why the said amount was lying at their home. It was further submitted that no books of account or bills and vouchers which indicate the receipt of Rs.10.00 lacs in the hands of Shri Narayan Choudhary has been placed on record. Thus the AO rejected the contention of the assessee. However, the ld. AR has drawn Bench attention to the documentary evidences filed before the Revenue Authorities which are in the shape of death certificate of father of the assessee which is available at Page 2 of the Paper Book, copies of Jamabandi and Girdawari for agricultural land owned by the father at Paper Book Page 3 to 11, affidavit of assessee affirming receipts of cash from father and its source which is available at PB page 12, affidavit of two witnesses affirming facts in assessee affidavit which is available at PB Page 13, copy of bank statement (State Bank of India) of assessee which is available at PB page 16, affidavit of assessee affirming payment of shares of brothers from the cash received from father which is available at PB Page 17, affidavits of brothers affirming receipt of their shares alongwith their Adhar Cards which is available at PB Pages 18 to 21. From the records, the Bench noticed that the source of said

amount in the hands of the father was tried to explain by the assessee as being received from sale of agricultural proceeds, sale of certain jewellery belonging to his mother and past savings. It was contended that since the father had died and jewellery was sold in the local market where he resided, it was not possible to file the bills for such sale. Therefore, in support of his contentions and during the appellate proceedings before the Id. CIT(A) the assessee had filed two affidavits i.e. one by the assessee and other by two witnesses affirming on oath the transactions of sale of jewellery by his father and handing over the same to the assessee by his father. To my utter surprise, the same does not find any mention in the order of the Id. CIT(A) who added the amount as being undisclosed income of the assessee. Further from the record, it is also noted that the AO has not pointed out any other assets or any source of income other than stated by the assessee. Therefore, the Bench can conclude that there was no contradictory material in the possession of the AO and then in that eventuality the explanation accorded by the assessee and duly substantiated by way of affidavit affirming on oath, the said contentions cannot be rejected summarily. In my view, the affidavits which are duly notarized hold the legal identity which cannot be rejected merely on surmises without having any contrary material on record. In this regard, the Bench finds strength from the decision of Hon'ble Supreme Court in the case of M/s. Mehta Parikh & Co. vs CIT, 1956 AIR 554 (dated 10-05-1956) wherein while accepting

the contention of the assessee it has been held that *‘a mere calculation of the nature indulged in by the Income Tax Officer or the Appellate Assistant Commissioner was not enough, without any further scrutiny, to dislodge the position taken up by the appellants, supported as it was, by the entries in the cash book and the affidavits put in by the appellants before the Appellate Assistant Commissioner’* Therefore, considering the documents submitted by the Id. AR of the assessee coupled with affidavits filed before the Id. CIT(A), the Bench is of the view that documentary evidences as to the source of the funds of the father and contentions of the assessee deserves to be accepted. It is also noteworthy to mention that the documents in the shape of affidavit presented before the Bench at PB pages 17 to 21 were not rebutted by the Revenue Authorities and the affidavits earlier placed on record before the Id. CIT(A) were also not rebutted or contradicted by the Department. Taking into consideration the above facts, circumstances of the case and the affidavits mentioned hereinabove as well as the decision of Hon’ble Supreme Court in the case of *M/s. Mehta Parikh & Co. vs CIT (supra)*, the Bench does not concur with the findings of the Id. CIT(A) on the issue in question. Hence, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 15/02/2023.

Sd/-

(संदीप गोसाईं)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/02/2023

\*Mishra

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

1. The Appellant- Shri Jagdish Chandra Choudhary, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 2(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 378/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar