

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 341/JP/2022
निर्धारण वर्ष/Assessment Year : 2011-12.

Shri Yogendra Kumar, Kherali Pichnot, Khareda, Via-Malakhera, Alwar.	बनाम Vs.	The Income Tax Officer, Ward 2(3), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. BDWPK 5766 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri PC Parwal (CA)

राजस्व की ओर से / Revenue by : SMs Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 07/02/2023
उदघोषणा की तारीख / Date of Pronouncement: 20/02/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 09.06.2022 of Id. CIT (A), National Faceless Appeal Centre (NFAC) Delhi passed under section 250 of the IT Act for the assessment year 2011-12. There is a delay of 34 days in filing the present appeal. The assessee has filed an application for condonation of delay which is supported by the affidavit of the assessee dated 5th September, 2022. In the affidavit, the assessee has explained the delay as under :-

1. That against this order I filed an appeal before CIT (A) through CA Rajesh Bhagwan on 17.12.2018. In Form No. 35 my address along with the mobile no. is given and e-mail id of my CA Rajesh Bhagwan is given at which the notice of hearing may be sent.

2. That neither me nor my CA received any communication of fixation of hearing of my case from NFAC, Delhi. Therefore, when I approached my CA on 29.08.2022 to enquire about the status of the case, then he browsed my income tax e-portal where it came to his notice that Id. CIT (A), NFAC has passed the order on 09.06.2022.
3. That for ascertaining as to where the notices has been issued, when my CA browsed my profile it was found that in the income tax profile the e-mail id is 'neerajmalik22101976@gmail.com' but the mobile no. and address is mine. The notices were never communicated on my mobile no. or at my address or at the e-mail id of my CA specified in Form No. 35. I also do not remember that the e-mail address mentioned in the income tax portal belongs to whom.
4. That after downloading the order from the e-portal on 29.08.2022, my CA gave the same to me and thereafter I approached CA P.C. Parwal of M/s. Kalani & Co., Jaipur to file appeal before Hon'ble ITAT who advised me to file the appeal along with the application for condonation of delay.
5. The facts stated in Para 1 to 5 above are true and correct to the best of my knowledge and belief. So help me GOD."

2. We have heard Id. Counsels of both the parties and perused the material on record. We have considered the rival submissions as well as gone through the contents of the application and affidavit of the assessee. The Id. A/R submitted that neither the assessee nor his authorized representative had received any notice fixing the date of hearing from NFAC Delhi though the case of the assessee was decided on 09.06.2022. The notices of hearing were never communicated to the assessee at the assessee's address or mobile number or at the e-mail id of assessee's C.A. as given in the appeal memo Form No. 35. However, the order came to the notice of the assessee on 29.08.2022 when assessee's Chartered Accountant browsed the assessee's income-tax e-portal to enquire the status of the case. The Id. A/R further

submitted that the impugned order was communicated to a wrong e-mail id neerajmalik22101976@gmail.com instead of e-mail id of the assessee's Chartered Accountant as mentioned in Form No. 35. The Id. A/R further submitted there is no delay in filing of appeal from the date of communication of the order i.e. 29.08.2022 but the delay of 34 days from the date of order i.e. 09.06.2022. The Id. A/R has thus contended that the assessee has corroborated this fact in the affidavit and, therefore, the delay in filing the appeal is neither intentional nor willful but due to the circumstances as explained in the condonation application as well as in the affidavit. Thus the Id. A/R has pleaded that the delay of 34 days in filing the appeal may be condoned.

3. Having considered the reasons as explained by the assessee in the application for condonation of delay as well as in the affidavit, we are satisfied that the assessee was having a reasonable cause for delay of 34 days in filing the appeal before the Tribunal. Accordingly, in the facts and circumstances of the case and in the interest of justice, we condone the delay of 34 days in filing the appeal.

4. The brief facts of the case are that the assessee is running a kirana store at village Khareda, District Alwar and is also engaged in agricultural work with his father. In response to notice u/s 148 he filed the return of income 26.04.2018 at total income of Rs.76,540/-. The AO in notice dated 12.07.2018 (**PB 1-1A**) required the assessee to furnish evidence of source of investment made in time deposit with ING Vysya Bank Ltd. (now Kotak Mahindra Bank). Thereafter vide notice dated 30.07.2018 (**PB 2**) he required the assessee to explain source of cash deposit of Rs.9,87,000/- and RTGS credit of Rs.4,93,000/- in the bank account. The assessee

vide letter dated 14.08.2018 (**PB 3-4**) explained the source of individual cash deposit made in the bank account. The AO, however, without seeking any further explanation treated the credits in bank account of Rs.14,80,000/- as unexplained for the reasons stated at Pages 3 & 4 of his order and made addition for the same u/s 69 of IT Act, 1961. Aggrieved by the order, the assessee preferred appeal before the Ld. CIT(A), but the Ld. CIT (A) in the absence of explanation furnished by the assessee, considered an amount of Rs.1 lacs as explained being out of past savings and thus, confirmed addition of Rs.13,80,000/- u/s 68 of the Act. Now the assessee is in appeal before the Tribunal by raising the following grounds :-

1. The Ld. CIT (A) NFAC has erred on facts and in law in deciding the appeal ex-parte without service of notice at the address/mobile no./e-mail id given in Form 35 and without considering the impact of Covid-19 when the case was fixed for hearing and thus, deciding the appeal without providing opportunity of hearing.
2. The Ld. CIT (A) NFAC has erred on facts and in law in confirming the addition of Rs. 13,80,000/- u/s 68 of IT Act by treating the cash deposit to this extent in the bank account as unexplained income of assessee.
3. The appellant craves to alter, amend and modify any ground of appeal.

5. Before us, the Ld. A/R for the assessee submitted his written submissions as under :-

“At the outset it is submitted that none of the notices issued by CIT(A) was received by the assessee as the notices were not served on the e-mail/ postal address provided in Form No.35. Therefore, order passed by CIT(A) without serving notice on the assessee is illegal & bad in law.

It is further submitted that the Ld. CIT(A) without considering the facts available on record has only considered Rs.1 lacs as explained being out of past savings and considered the balance Rs.13,80,000/- as unexplained u/s 68 of the Act. This is prima facie incorrect. The deposit in the bank account cannot be considered as unexplained credit u/s 68 of the Act in as much as the primary condition for application of section 68 is that any sum is found credited in the books of accounts, the source of which is not explained to the satisfaction of AO. Admittedly, assessee is not maintaining any books of accounts. The bank pass book is not books of accounts as held by **Hon'ble ITAT Amritsar Bench in case of Satish Kumar Vs. ITO (2019) 175 DTR 121** and therefore, addition confirmed by Ld. CIT(A) u/s 68 of the Act is illegal and bad in law.

On merits, the source of cash deposits of Rs.9,87,000/- and RTGS credit of Rs.4,93,000/- is as under:-

(a) Cash deposit of Rs.6 lacs on 16.06.2010

The assessee explained that the source of deposit of the said amount is out of Rs.4 lacs received from the father on sale of tractor by him to Charan Lal on 15.03.2010 and Rs.2 lacs received as gift from him. In support of the same the sale agreement of tractor (**PB 9-11**) and gift declaration (**PB 12-14**) was filed. The AO has not accepted the explanation in respect of sale of tractor on the ground that supporting documents, i.e. copy of registration certificate, purchase bill, etc. to prove ownership are not furnished and no evidence that sale consideration was received by the assessee and deposited in the bank account was filed. No reason for not accepting the cash gift of Rs.2 lacs was given.

It is submitted that the fact of assessee's father Sh. Ramesh Chand owning tractor no. RJ-02-RA-5153 is evident from the registration

details **(PB 6-8)**. The sale of tractor by him for Rs.4 lacs on 15.03.2010 is evident from the sale agreement furnished to AO **(PB 9-11)**. The gift deed executed by Sh.Ramesh Chand on 05.06.2010 **(PB 12-13)** in respect of gift of Rs.2 lacs was furnished to the AO. After furnishing these evidences, AO never required the assessee to furnish any confirmation from the father of assessee regarding Rs.4 lacs given by him to the assessee for deposit in the bank account. Therefore, an affidavit dt. 05.09.2022 **(PB 27-29)** is now obtained and enclosed in the paper book. Thus, source of cash deposit of Rs.6 lacs is fully explained, supported by documentary evidences and therefore the same be accepted.

(b) RTGS of Rs.3,37,000/- & Rs.1,56,000/- on 09.07.2010

The AO made the addition for the reason that assessee has not furnished explanation in respect of RTGS deposit. It is submitted that from the bank statement itself **(PB 5)** it is evident that these amounts were received from Dinesh Singh Mankotia against which Rs.1,50,000/- was returned back to him on 14.07.2010. Thus, the net amount received is Rs.3,43,000/- (3,37,000+1,56,000-1,50,000). In fact assessee has sold his plot to Dinesh Singh Mankotia on 09.07.2010 **(PB 15-21)**. In the sale deed it is stated to be sold in cash for Rs.1,56,000/- whereas the fact is that it is sold for Rs.3,43,000/- for which amount is received by RTGS but in the sale deed the buyer has shown the sale consideration in cash at Rs.1,56,000/- to save stamp duty. It may be noted that RTGS is credited in the bank account on 09.07.2010 which is the same day on which sale deed is executed. Thus, the source of RTGS credit on 09.07.2010 of Rs.4,93,000/- (3,37,000+1,56,000) is fully explained and therefore, the addition made/ confirmed by lower authorities be deleted.

(c) Cash deposit of Rs.1,67,000/- on 10.07.2010

The assessee in course of assessment proceedings explained that this amount is advance received by his father against sale of tractor to Sh. Mahesh Chand on 12.09.2011. The AO has not accepted the explanation for the reason that as per the sale agreement of tractor no. RJ-02-RB-6227 dt. 12.09.2011 (**PB 23-26**), the sale proceeds was given on that date and no details in respect of advance payment is mentioned therein.

It is submitted that tractor no. RJ-02-RB-6227 was sold to Sh. Mahesh Chand on 12.09.2011 for Rs.4,40,000/- (**PB 23-26**). However, against sale of this tractor Sh. Ramesh Chand, father of assessee received advance of Rs.1,75,000/- out of which Rs.1,67,000/- was deposited in the bank account of assessee. Of course there is no reference of advance received in the sale agreement dt. 12.09.2011 but this fact was explained by the assessee in the reply filed to the AO. Further affidavit of assessee's father on this issue is placed at **PB 27-29** and the registration details of this tractor is at **PB30-31**. Thus, the source of cash deposit of Rs.1,67,000/- is fully explained.

(d) Cash deposit of Rs.1,50,000/- on 13.07.2010

In course of assessment proceedings the assessee explained the source of this cash deposit as out of income, past savings and cash in hand. Since documentary evidence was not filed AO treated the same as unexplained.

It is submitted that the cash deposit of Rs.1,50,000/- on 13.07.2010 is out of sale proceeds of plot of land for Rs.1,25,000/- on 16.06.2010 (**PB 32-38**) and balance is out of income/ past savings of assessee. The sale deed could not be furnished during the course of assessment proceedings as it was not available but subsequently it was obtained from the sub-registrar. Assessee has also declared income from kirana

at Rs.76,540/. Thus, the source of cash deposit of Rs.1,50,000/- is fully explained and the addition be deleted.

(e) Cash deposit of Rs.40,000/- on 22.12.2010 and Rs.30,000/- on 19.01.2011

The source of these cash deposits is cash withdrawal of Rs.1 lacs made on 09.10.2010 and Rs.50,000/- made on 01.01.2011 as is evident from the bank statement itself **(PB 5)**. Thus, the source of cash deposit of Rs.70,000/- is fully explained.

From the above it can be noted that the source of cash deposit is fully explained and therefore, addition made by AO and confirmed by Ld. CIT(A) be directed to be deleted.”

6. On the other hand, the Id. D/R supported the orders of the Revenue Authorities.

7. We have heard Id. Counsels for both the parties, perused the material available on record and gone through the orders of the revenue authorities. At the outset, we note that the orders passed by the AO as well as the Id. CIT (A) are ex parte and without considering any documentary evidence to be filed by the assessee. Before us, the assessee has submitted additional evidences by way of filing sale deeds in respect of source of cash deposits in the bank account of the assessee and other documents in support of his claim. We note that since the case of the assessee was not heard on merits and decided ex parte in the absence of proper representation from the side of the assessee, we are of the considered view that it will be in the interest of justice if the matter is restored back to the file of the A.O. for deciding the matter afresh after providing a reasonable opportunity to the

assessee and considering the submissions and verifying the documents to be furnished by the assessee before the AO. The assessee is directed to appear before the AO and furnish necessary corroborative evidences in support of his case. As stated hereinabove, the case of the assessee is remitted to the file of the AO for deciding afresh after affording an opportunity of hearing to the assessee.

8. In the result, this appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20/02/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20/02/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Yogendra Kumar, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2(3), Alwar.
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. 341/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

