

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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. 6/JP/2023
निर्धारण वर्ष/Assessment Years : 2009-10

Munni Devi Sharma 520, Govind Rai Ji Ka Rasta, Chandpole Bazar, Jaipur	बनाम Vs.	ITO Ward 1(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AVIPS 1510 Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Anil Kumar Sharma
राजस्व की ओर से/ Revenue by : Sh. A. S. Nehara (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 17/05/2023
उदघोषणा की तारीख/Date of Pronouncement: 28/06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 30.11.2022 [here in after Id. NFAC/CIT(A)] for assessment year 2009-10 which in turn arise from the order dated 29.12.2016 passed under section 143(3)/147 of the Income Tax Act, 1961 [here in after to as Act] by ITO, Ward 1(4), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. Under the facts and circumstances of the case the Id. CIT(A) is not justified in sustaining the addition of Rs. 47040/- to returned income by restricting the cost of improvement to 60% of Rs. 78400/- claimed by the assessee for computing the Short Term Capital Gain.

2. Under the facts and circumstances of the case the Id. CIT(A) is not justified in upholding the action of the AO in assessing Agriculture Income Rs. 330460/- as Income from other sources and in further enhancing the same to Rs. 380460/- against that of Rs. 330460/- assessed by the AO.

3. Under the facts and circumstances of the case the Id. CIT(A) is not justified in sustaining the addition of Rs. 6612366/- against that of Rs. 8245366/- made by the AO towards cash/Cheque/DD Deposited in Bank Account of the assessee holding the same as Income from undisclosed Sources.”

3. Succinctly, the fact as culled out from the records is that the assessee filed original return of income on 31.07.2009 declaring Agriculture income of Rs. 630460/-. The assessee subsequently in response to notice u/s 148 of IT Act 1961 filed another return of income on 15.09.2016, declaring total income of Rs. Nil and same agriculture income of Rs. 630460/-. The assessee during the course of assessment proceedings vide letter dated 22.11.2016, filed revised computation of total income declaring short term capital gain of Rs. 1,10,440/- arising from the transfer of certain capital assets comprising Rs. 89,340/- from the transfer of House No. 1224, Baba Harish Chandra Marg Chandpole Bazar, Jaipur. The assessee vide letter dated Nil submitted the details and particulars of above said cost of improvement of Rs. 78,400/-. The AO without properly appreciating the contention of the assessee disallowed the above said cost of improvement of Rs. 78400/- on the ground that no documentary evidences have been

submitted in support of the cost of improvement claimed by the assessee, therefore the AO added back the same to declared short term capital gain of Rs. 1,10,440/- and thus assessed short term capital gain of Rs. 1,88,440/-. The assessing officer also added a sum of Rs. 82,45,366/- being the amount of the sum found credited in the two-bank account maintained with the HDFC Bank Limited.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A)/NFAC. The relevant finding of the Id. CIT(A)/NFAC on the grounds so raised is reiterated here in below:

“VI Discussion by the CIT (Appeals)

The agricultural income is restricted maintains that he was holding 32 bigha agricultural land at village Paladi, Tehsil Virat Nagar dist Jaipur. There were no mandi sales slip submitted by the assessee, but only the assertion that he was holding 32 bigha agricultural land. Though the assessee exerted that he will produce evidences for agricultural income earned, no such evidence was produced during appellate proceedings. Not even a single mundi sales slip was produced by the taxpayer during the appellate proceedings. Considering these the agricultural income returned by the taxpayer is reduced by 50000/-. Agricultural income is reduced to 2,50,000/-. The remaining amount of Rs 380460 is treated under Income from other sources. The assessing officer shall add this amount to the income returned.

Addition upheld: 380460/-”

“VIII. Discussion of the issue in detail and the summary of decision

The table below would show the details of cash deposit and narration given by taxpayer Bank Account No. 14030400000042

Date of deposit	Amount of deposit in Rs	Nature/source of deposit	Taxability in the hands of the assessee	Amount in Rs to be added back
31/5/2008	500000	Ch No.641803 – joint account with Indra Kumar Sharma, husband of the assessee towards sale of land at village Achrol, Jaipur as per registered sale deed dtd 30/5/2008. The assessment proceeds of Indra Kumar Sharma completed separately vide assessment order dtd 23/12/2016 and the above said registered deed was submitted before the AO during the course of relevant assessment proceedings.	This amount of Rs 50 lakhs is in the name of Indra Kumar Sharma. Though this is a joint account with the taxpayer the cheque is issued in the name of Indra Kumar Sharma. The source is not explained to the satisfaction during the appellate proceedings.	500000/-

11/7/2008	1,50,000	Assessee in spite of best efforts could not trace the nature and source of deposit. No detail from the bank was received.	taxpayer has not raised any serious objection and only said that even if there is an addition it has to be telescoped against agricultural income.	150000
1/8/2008	1600000	Sale proceeds of agricultural land at Machwa, Jaipur vide registered sale deed dtd 31/7/2008 for Rs 11,21,000 and 5 lakhs. No documentary evidence produced.	Since no documentary evidence is produced during appellate proceedings, taxpayers submission during appellate proceedings is not accepted.	1600000
2/9/2008	800000	Ch No.868368 towards sale proceeds of agricultural land at village - Paldi, Tehsil - Virat Nagar, dist - Jaipur as per registered sale deed dt 20/10/2008.	Taxpayer says agricultural land situated beyond 8 kms from the municipal limits of Virat Nagar is not a capital asset. Moreover the cheque is received in advance for a different land sale. No documentary evidence produced in the form of sale deed during appellate proceedings. Hence contention of the assessee cannot be accepted.	800000
18/10/2008	2350000	Cheque No 022475, towards sale proceeds of agricultural land at Paldi Village, Virat Nagar Tehsil, Dist-Jaipur	No documentary evidence produced. Hence the explanation not accepted.	2350000

	Total addition upheld	5400000
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BANK ACCOUNT No.15851930000254

Date of deposit	Amount of deposit in Rs	Nature/source of deposit	Taxability in the hands of the assessee	Amount in Rs to be added back
18/10/2008	950000	DD No 22474 towards sale proceeds of agricultural land at village – Banwara, Tehsil – Virat Nagar, dist – Jaipur as per sale deed dtd 20/10/2008.	This apparently seems to be cheque wrongly mentioned as DD (please see cheque no 22475 for Rs 2350000 belonging to the same series) . Since no documentary evidence is produced, the same cannot be accepted. Even if it is DD, it cannot be accepted because DD is only a draft drawn against cash source of which is not known.	950000
13/1/2009	18000	3 month rent advance	According to taxpayer not a capital asset. It is house property income in the hands of assessee.	18000
14/1/2009	124800	Cheque No 26710, account closure proceeds of loan account/CC.	There will not be closure proceeds of loan account or CC account, because	124800

			these are amounts disbursed towards loan application or cash credit application. It is not from closure of an SB account. Hence the argument not accepted.	
14/1/2009	113566	Taxpayer in spite of best efforts could not trace the nature and source of deposit.	No explanation or evidence offered. Assessee has admitted that she cannot trace the source.	113566
17/2/2009	6000	One month rent of Hse No 3452	Income from HP.	
		Total addition upheld		1212366

GRAND TOTAL = 66,12,366

The addition made by the assessing officer to this extend is upheld.

Addition upheld: 66,12,366/-“

5. As the assessee did not find any favour from the order of the Id. CIT(A) the assessee has carried this appeal before the tribunal. A propose to the grounds so raised the Id. AR of the assessee appearing on behalf of the assessee has placed on record his written submission which is extracted in below;

“The humble appellant in respect of each ground of appeal most respectfully bag to submit :

Ground No.1 : Not pressed.

Ground No.2:

1.The assessee declared the agriculture income of Rs.630460/- in the relevant return of income.

2. The assessee during the course of assessment proceedings vide letter dated 07.12.2016 submitted affidavit (PB No.35-36).
3. The assessee further submitted copy of Agriculture land holding documents of 3.79 Hectares. (PB No. 57-68). (Para 2 on Page No.2 of the assessment order.)
4. The AO estimated the agriculture income of Rs.300000/- and held the balance income of Rs.330460/- as income from other sources and thus made addition of the same to returned income.
5. Before Id. CIT (A) it was submitted that the assessee was having sufficient Agriculture land to generate the agriculture Income of Rs.630460/- as claimed in the return of Income.
6. It was also submitted that even on the basis of estimated income of Rs. 25000/- to 30000/-per Bigha as held by the AO, the AO is not justified in estimating the agriculture Income of Rs.300000/- keeping in view the total agriculture land held by the assessee. (Para-V,Page No.4 of Order of CIT(A))
7. The Id. CIT(A) has reduced the estimated agriculture Income to Rs.250000/- against that of Rs.300000/- estimated by the AO and enhanced the addition to Rs.380460/- against that of Rs.330460/- made by the AO. (Para –VI, Page No.5 of Order of CIT(A))
8. The Id. CIT(A) has no basis and justified reason to restrict the estimate of Agriculture Income to Rs.250000/- against that of Rs.300000/- estimated by the AO.
9. Under the relevant facts explained by the assessee before the AO/CIT(A) the claim of the assessee of having agriculture Income of Rs.630460/- is reasonable and justified.
10. Therefore Your Honour is requested to allow the claim of the assessee of agriculture income of Rs.630460/- and delete the relevant addition of Rs.380460/- as sustained/enhanced by Id.CIT(A).

Ground No.4:

1. During the course of assessment proceedings certain amount comprising cash, cheque and DD were found credited in Bank Account of the assessee jointly held with her husband Indra Kumar Sharma.(Name of Indra Kumar Sharma was deleted after his death on 28.02.2015).(PB No. 37-42)

Account No.	Amount
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14030400000042 later changed to 15852500000185 w.e.f.25.01.2009 HDFC Bank	7060000/-
15851930000254 HDFC Bank	1383366/-
Total	8443366/-

(Page No.4 of the assessment order)

2.The husband of the assessee looking after her affairs was died on 28.02.2015 and the assessee was not having specific knowledge about the nature, source and evidences of above said deposits.

3. Therefore the assessee vide letter dated 26.12.2016 requested the HDFC Bank to provide the details/nature of such deposits. (PB No.133)

3.Unfortunately, the assessee could not obtain the details/nature of above said deposits from the HDFC Bank, therefore being a uneducated lady under some misguidance, vide letter dated 26.12.2016 explained the nature/ source of such deposits based on wrong/mistaken and adhoc information and belief.(Page No.4-5 of assessment order)

4.The AO accepted the cash deposit of Rs.58000/-on 29.05.2008 in bank account No. 14030400000042, and Inter Bank Transfer of Rs.140000/- in Bank account No.15851930000254 and held the balance deposit of Rs.8245366/-(8443366/-less Rs.198000/-) as income from undisclosed sources and made addition of the same to returned income. (Page No.6 of the assessment order)

5. The assessee before Id. CIT(A) categorically with clean hand admitted that the nature/source of deposits explained before the AO are based on wrong/mistaken and adhoc information, therefore same may kindly be ignored.(Para 10 on PB No.10)

6. The assessee relying on certain judicial pronouncement in support of his retraction filed additional evidences along with application u/r 46A of IT Rules 1962 for admission of the same.(Para 11 to 17 on PB No.6)

7. The assessee in the light of strong and conclusive documentary evidences explained the source/nature of each and every amount /deposit credited in both the bank accounts of the assessee. (Para-16 in Tabular Form on PB No.8-11)

8. The Id.CIT(A) send the additional evidences submitted by the assessee for remand report of the AO.

9.The AO vide his remand report dated 09.02.2018 accepted the source/nature of deposits to the extent of Rs. 7981800/- and reiterated for balance of Rs. 263566/-. (PB No.181-182)

10.The assessee vide rejoinder dated 03.07.2018 relied on remand report of the AO and reiterated on his written submission.(PB No.183-184)

11. The further proceedings before Id. CIT(A) transferred to online/ faceless proceedings.

12. The assessee vide his online response dated 03.09.2021 and 06.07.2022 relied on the physical proceedings and submitted the relevant details before the Id. CIT(A). (PB No.185-188)

13. The Id. CIT(A) without perusing the details/evidences and remand report of the AO available on record held in respect of entries to the extent of Rs.6612366/- that no documentary evidence produced in appellate proceedings and sustained the addition made by the AO to that extent. (Page No.12-15 of order of Id. CIT(A))

21.The assessee vide his written submission dated 11.09.2017 before Id. CIT(A) by submitting relevant details and cogent documentary evidences has explained source and nature of deposits in her Bank Account relating to the addition of Rs.8245366/- made to returned income.(PB No.1-12 supported with 13-180)

22. The AO himself vide his remand report dated 09.02.2018 has accepted the source and nature of deposits explained by the assessee to the extent of Rs. 7981800/-.

23. Therefore, Your Honour is requested to delete the relevant addition of Rs.6612366/- sustained by Id. CIT(A).”

6. In addition to the written submission, the Id. AR of the assessee submitted that he has supported the holding of land of 15 bighas before AO and 32 bighas before Id. CIT(A) jointly earned by other family members. Even though, the Id. CIT(A) instead of granting relief to the assessee has reduced the benefit granted by the AO and submitted that in respect of ground No. 2 for estimation of agriculture income. He prayed before the

Hon'ble Bench that considering holding of land fair estimation of agriculture income is required to be made so as to render the justice to the assessee and consider grounds of appeal accordingly. To support Ground No. 3. The Id. AR of the assessee submitted that there is an application for additional evidence under rule 46A (1)(c) of IT Rules, 1961 was made before Id. CIT-1, Jaipur based on that additional evidence application filed by the assessee a remand report was also called for from the Assessing Officer and the AO has submitted his remand report letter dated 09.02.2018. He has heavily relied upon the report of AO in that ground before us.

7. On the other hand, the Id. DR relied on the order of lower authorities and did not controvert to the fact that there is a remand report available on record so far as to the submission made by the assessee before the Id. CIT(A).

8. We have heard the rival contentions and perused the material placed on record. The Bench noted that from the written submission filed by the assessee he has not pressed ground No. 1 and therefore, the Ground No. 1 is dismissed.

9. So far as regards the ground No. 2 regarding estimation of agriculture income of the assessee, the Bench noted that the assessee before AO contended that he owns 15 bighas of land and before Id. CIT(A) he contended along with other family members, he owns 32 bighas of land based on that the averments the Id. CIT(A) without giving any justification reduced the agricultural income of the assessee at Rs. 50,000/- contending that the assessee has not submitted any single mandi sales slip and therefore, the agriculture income as against Rs. 3 lakhs allowed by the AO, he reduced it to Rs. 2.50 lakhs. The bench noted that the assessee has submitted copy of agricultural land holding documents of 3.79 hectares of land (APB 57-68). The assessee also submitted an affidavit about the holding of the land and earning of the agricultural income (APB35-36). In the remand proceeding the Id. AO reported that the assessee in support of the agricultural income has not supported the same with the evidence. As the assessee before us also could not substantiate the agricultural income to the extent of Rs. 6,30,460/- and thus based on the finding recorded by the Id. AO we do not any fault in granting the relief to the assessee for agricultural income to the extent of Rs. 3,00,000/- being fair and reasonable. Based on these observation ground no. 2 raised by the assessee is partly allowed.

10. As regards the ground no. 3 raised by the assessee for sustaining the addition of Rs. 66,12,366/-, bench noted that on this issue there is a detailed remand report available on record which has not been discussed by the Id. CIT(A) while passing the order. The operative part of the remand report which has not been considered is reproduced here in below for the sake brevity :

निर्धारित द्वारा प्रस्तुत साक्ष्यों का अवलोकन करने पर यह स्पष्ट होता है कि निर्धारण वर्ष 2009-10 के दौरान निर्धारित द्वारा वित्त वर्ष 2008-09 में एचडीएफसी, बैंक लिमिटेड, सी-स्कीम, जयपुर के बचत खाता संख्या 14030400000042 में 70,60,000/- एवं इसी बैंक के खाता संख्या 15851930000254 में रू0 13,83,366/- नकद कल जमा राशि रू 84,43,366/- में से रू0 1,98,000/- का साक्ष्य पेश किया गया तथा शेष रू0 82,45,366/- के संबंध में निर्धारिती द्वारा बैंक में जमा कराये गये नकद राशि के स्रोत पेश किये गये। इनमें दिनांक 11.07.2008 को जमा राशि रू. 1,50,000/- एवं दिनांक 14.01.2009 को जमा राशि रू. 1,13,566/- के स्रोत पेश नहीं किया गया। इस प्रकार बैंक में जमा राशि रू. 82,45,366/- 2,63,566 = 79,81,800/- का निर्धारिती द्वारा जमा राशि का स्रोत पेश किया गया, जिनको निर्धारिती द्वारा दिये गये साक्ष्यों से मिलान किया गया, जो सही पाया गया एवं रू. 79,81,800/- के स्रोत का सत्यापन किया गया।

11. Since the assessee fairly admitted that out of the total addition of Rs.82,45,366/- made by the Id. AO, he has based on the AO's remand report seek relief of Rs. 79,81,800/- for which Id. AO appreciated the additional evidence and accepted the fact that the assessee has given the details of source of Rs. 79,81,800/- and therefore, based on that non controverted finding the addition of Rs. 2,63,566/- only sustained. The bench noted that Id. DR did not controvert the finding of AO's report in remand proceedings. The assessee has clearly with evidence before Id. AO

submitted the details and based on that details the Id. AO has fairly admitted by discussing each and every evidence filed by the assessee agreed that the assessee has explained the source of the amount credited in the bank account to the extent of Rs. 79,81,800/- and the assessee did not dispute that finding further for the balance the addition sustained. Based on these facts we are of the considered view that out of the total addition of Rs. 82,45,366/- made by the AO a sum of Rs. 79,81,800/- is deleted based on the detail finding of the AO recorded in the remand report. In the light of this fact, the Ground No. 3 raised by the assessee is partly allowed.

In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28/06/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2023

*Ganesh Kumar

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

1. The Appellant- Munni Devi Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(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. 6/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar