

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

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 201/Jodh/2018
(ASSESSMENT YEAR- 2013-14)**

Smt. Renu Gurjar 11, Saifan Colony, Bedla Road, Udaipur.	Vs	Dy. Commissioner of Income Tax, Central circle-2, Udaipur.
(Appellant)		(Respondent)
PAN NO. AGDPG 9991 K		

(Virtual Hearing)

Assessee By	Shri Rajesh Lodha-C.A.
Revenue By	Shri Lovish Kumar, CIT-DR
Date of hearing	05/07/2023
Date of Pronouncement	18 /09/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax (Appeals)-2, Udaipur [herein after “Ld.CIT(A)”] dated 16.02.2018 for the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

“1. The Ld. CIT(A) has erred in upholding the assessment order passed by the Ld. AO which was bad in law bad on facts and contrary to all cannons of natural justice.

2. The Ld. CIT(A) has erred in confirming addition of Rs. 6,00,000/- on account of excess money found during

unexplained cash found received by the appellant during the year under consideration.

3. Brief facts of the case are that the assessee is an individual and derives income from income from business and other sources and this declaration is given in returned filed u/s 153A of the Act (i.e. assessment in case of search or requisition). It is noted from the assessment wherein the case of the assessee a search and seizure operation was carried out u/s 132 of the Income Tax Act at the residence of the assessee and his family members as well as business premises of their closely held Pvt. Ltd Company on 05.12.2012 as per warrant of authorization issued by the Director of Income Tax (Inv.), Jaipur. Consequently, notices u/s 153A of the Act were issued for the assessment years 2007-08 to 2012-13 and notice u/s 139(1) for the search year i.e. A.Y. 2013-14. For the year under consideration return in response to notice u/s 153A was filed by the assessee on 15.01.2014 declaring total income of Rs. 10,55,295/- (in computation of assessed income the same is taken as Rs. 10,18,700/-) and agricultural income of Rs. 2,45,500/- The assessment was completed on total income of Rs. 21,34,993/- by making a disallowance of business expenses, addition on account of unexplained investment and unsecured.

Conclusively, the AO made addition in the hands of the assessee by holding as under:-

“12. Excess money found during course of search - During course of search an amount of Rs 35 Lakh was seized from premise of assessee, in his reply dated 20.01.2015, the learned AR of assessee claimed that out of this amount Rs 20 Lakh belong to this assessee, I had gone through the submission and found that it is not true as per their own disclosure, because if Rs 9 lakh was advance from Santosh Prajapat as told and accepted by me in this order, from where the balance amount of Rs 11 Lakh came ? even if I give benefit to assessee for his own opening cash balance the same is only Rs 61592 including bank balance, there is no cash withdrawal from any disclosed bank account of assessee so this Rs 11 Lakh become unexplained money found from the assessee, the same is added back in his income as income from other sources, since this income was seized by revenue department, the same will not remain available as source of investment with assessee, so no telescoping benefit will be available for assessee as source for investment. Addition- Rs1100000/-“

4. Being aggrieved by the AO, the assessee preferred an appeal before the Id. CIT(A) who after considering the facts and circumstances of the case confirmed the addition of Rs.60,000/- by observing as under:-

“ 5.3.1 A cash of Rs. 35 lakh was seized from appellant's premises during search and out of the same that Rs. 20 lakh was claimed to be belonging to the appellant. After considering the submissions of the appellant, the AO accepted genuiness of Rs. 9 lakh that was claimed as an advance from Santosh Prajapat by the appellant. However, for the remaining, Rs. 11 lacs was treated unexplained by the AO.

5.3.2 The A/R has given details cash available as on 05/12/2012 as under:

Opening Cash and Bank balance as	Rs. 61,592/-
Receipt against land agreement from Santosh	Rs. 9,00,000/-
Rent Receipt	Rs. 1,03,700/-
Proportionate income from Taxi (517263/365*240)	Rs. 3,40,118/-
Proportionate other income & interest (440242/365 240)	Rs. 2,89,474/-
Cash received by cheque dt. 27-08-2012 from Shyam Gurjar	Rs. 5,00,000/-
Agriculture Income	Rs. 2,45,500/-
Total cash balance available as on date of search	Rs. 24,40,384/-

5.3.3 I find that from the above sources of cash as claimed by the appellant, only Receipt of Rs. 9,00,000/- against land agreement from Santosh and the Cash received of Rs. 5,00,000/- in reimbursement from Shyam Gurjar for cheque payment dt. 27- 08-2012 from the bank account of the appellant used directly by her husband Shri Shyam Gurjar has immediate source and plussible evidence of Bank account of appellant and relevant documents for land deal for receipt of money.

5.3.4. For the rest of all sources of cash are based on general explanations and not acceptable as appellant's cash book was not written from time to time and not found during the search and the memoranda cash book cannot be relies in toto.

5.3.5 The Receipt of Rs. 9,00,000/- against land agreement from Santosh is already accepted by the AO.

5.3.6 Coming to the Cash received of Rs. 5,00,000/- in reimbursement from Shyam Gurjar, it is seen from the perusal of bank account No. 07722010014900 with Oriental Bank of Commerce of the appellant, that cheque No. 191799 dated 27.08.2012 for Rs. 5,00,000/- paid to Ganshyam Singh for buying of land at Kadmal, Udaipur as described in conveyance deed dated 09.08.2012 and as reimbursement of the said cheque, the husband of the appellant Shri Shyam Gurjar paid Rs. 5,00,000/- from proceeds of Rs. 11,50,000/- vide land sale agreement (Vikray Ikrar) dated 22.11.2012. The explanation advance cannot be rule out and therefore the credit for cash received from husband has to be given.

5.3.7 For the rest of cash Rs. 6,00,000/- I see no reason for accepting the availability of cash only on the basis of general explanations. Accordingly the addition of Rs. 6,00,000/- made by the AO is hereby confirmed.”

5. The assessee being not satisfied with the order of the Id. CIT(A) has filed the present appeal before us by filing following detailed written

submission with the prayed that the addition of Rs.6.00 lacs upheld by the Id.

CIT(A) is bad in law and is not sustainable which should be deleted.

“WRITTEN SUBMISSION:

Since ground no 1 and 2 are interlink, so, for the sake of convenience, synopsis of arguments and submission is commonly submitted as under:

Ground No. 1 and 2

1. The Ld. CIT(A-2) has erred in upholding the order passed by the Ld. AO which was bad in law bad on facts and contrary to all cannons of natural justice.

2. The Id. CIT(A) has erred in confirming addition of Rs. 6,00,000/- on account of excess money found during unexplained cash found received by the appellant during the year under consideration.

2.1 That as on the date of search total cash Rs 35 lac was found from residence of appellant, out of that her share was Rs. 20 lacs and husband's share was Rs 14 lacs. Out of that Rs 20 lacs, the assessing officer has accepted availability of her cash of Rs. 9 lac and made addition of balance Rs 11 lacs.

2.2 Later on, the CIT(A) considering reply further accepted cash availability of Rs 5,00,000/- and confirmed addition of Rs 6,00,000/-.

2.3 It is humbly submitted that the appellant has furnished detailed cash flow statement (PB No. 19, 21) establishing availability of Rs 20 lacs in her hands. The Ld. CIT(A) has considered the part of receipt against agreement to sales and bank statement as plausible evidence accepted further cash availability of Rs 5,00,000/-. For the other details of cash flow statement he has rejected them for the reason citing that explanation is general nature and cash book was not found in search.

2.4 The appellant has earned total income of Rs. 13,42,704/-, consisting of House rent, Taxi operation, other income and agriculture income during entire AY 2013-14, and out of that declared and accepted income she claimed to have earned upto date of search Rs. 978,792/- on proportionate basis for the period of 8 months of the current year (PB No.5 para 3.6). Out of that Rs. 431,980/- was also reduced on account of investment and withdrawal till date of search.

2.5 Considering availability of opening balance of Rs.61,592/- and net generation of cash of Rs. 546,812/- (Rs. 978,792/- minus Rs. 431,980) from income was arrived at upto date of search (for 01- 04-2011 to 05-02-2012). Thus, the total availability of cash was arrived at Rs. 6,08,404/- as on search date 05-12-2012, and out of that Rs 6 lac was claimed as source of cash found and seized of Rs.20 lac.

2.6 Therefore, the appellant has proved the availability of cash of Rs 6,00,000/- from her regular, declared and accepted income, which should not have been rejected by mentioning general explanation by the Ld CIT(A).

2.7 Whereas, the details of cash generation comprise of her regular income for the year under appeal and same has been disclosed in her return of income. The income declared in

return of income was duly accepted by the AO and CIT(A) but same has not been considered for source of cash. It is humbly submitted that accepted return of income and incomes declared therein are also plausible evidences to consider the generation of cash by an assessee.

2.8 Herein the case the appellant has taken income from 01-04-2012 to 30-11-2012 (before the date of search on 05-12-2012) that proportionate income receipts after reducing expenses and outgoings upto date of search. This amount of income was part of duly accepted annual income by the department, so, corresponding generation of cash cannot be denied. If it is considered that there was no generation of cash from such declared income, then such income had to reduce from declared income from return of income. At the either side accepted the income and levied tax thereupon and on another side not considering same for source of cash generation therefrom is contradictory.

2.9 Rejection of assessed cash income for consideration of cash balance is arbitrary and picking part of items from the list of sources of cash availability and leaving others is unwarranted. The cash flow statement should have been either rejected or accepted in totto, nevertheless, it cannot be considered as partly correct and partly incorrect.

2.10 Worthwhile to submit here that none of the authority has alleged and proved that appellant has expended or used her current year's income earned till date of search for any other purposes, under the circumstances, this amount should not have been disallowed for the purpose of computation of cash availability.

PRAYER

Therefore addition of Rs 6,00,000/- upheld by the Id. CIT (A) is bad in law and not at all sustainable. Therefore, humble appellant request your honor to kindly delete.

We pray that the appeal may kindly be allowed.

The letter of authority in favour of under signed is enclosed herewith.”

6. Per contra, the Id. DR relied upon the orders of the Id. CIT(A).

7. We have heard the both parties and perused the materials available on record. Brief facts of the case are that consequent upon search operation on 5-12-2012 and notice u/s 153, an assessment was made on 25-03-2015 by the AO wherein certain additions were made. However, the main grievance of the assessee in the appeal before us as to the addition of Rs.11.00 lacs made

by the AO which has been reduced to Rs.60,000/- by the ld. CIT(A) in first appellate proceedings with following narration.

“ 5.3.7 For the rest of cash Rs. 6,00,000/- I see no reason for accepting the availability of cash only on the basis of general explanations. Accordingly the addition of Rs. 6,00,000/- made by the AO is hereby confirmed.”

It is noted from the available records that the assessee had earned total income of Rs.13,42,704/- consisting of house rent, taxi operation, other income and agricultural income during entire assessment year 2013-14 and out of that declared and accepted income the assessee claimed to have earned upto date of search amounting to Rs.9,78,792/- on proportionate basis for the period of 8 months of the current (PB Page 5, para 3.6). It is also noted that out of that, Rs.4,31,980/- was also reduced on account of investment and withdrawal till the date of search. It is also noted from the records that opening cash and bank balance as on 5-12-2012 was at Rs.61,592/- and net generation of cash of Rs.5,46,812/- (i.e. Rs.9,78,792 minus Rs.4,31,980 = Rs.5,46,812/-) from income was arrived at upto the date of search i.e. from 01-04-2011 to 05-02-2012. Thus the total availability of cash was arrived at Rs.6.08,404/- as on search date 05-12-2012 and out of that Rs.6.00lacs was claimed as source of cash found and seized of Rs.20 lacs.. From the entire conspectus of the case, it shows that the assessee has proved the availability

of cash of Rs.6.00 lacs from her regular income which is directed to be deleted. In this view of the matter, we do not concur with the findings of the ld. CIT(A) and thus the appeal of the assessee is allowed.

8.0 In the result, the appeal of the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 18/09/2023

**Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench