

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 614/JP/2023  
निर्धारणवर्ष/AssessmentYears : 2018-19

|   |             |                              |
|---|-------------|------------------------------|
| Shri Rajoo Singh<br>Chirawal Gurjar<br>Bharatpur    | बनाम<br>Vs. | ITO,<br>Ward-1<br>Bharatpur. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: JSMPS 3351 F |             |                              |
| अपीलार्थी / Appellant                               |             | प्रत्यर्थी / Respondent      |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary ( Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 07/11/2023  
उदघोषणा की तारीख / Date of Pronouncement : 12 /12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal filed by the assessee is directed against the order of the Id. CIT(A) dated 24-08-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2018-19 wherein the assessee has raised the solitary ground of appeal as under:-

“The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs.5,38,100/- u/s 69A of the I.T. Act, 1961 on account of cash deposit in the bank account by allowing credit of only 50% of the withdrawal made from the bank account on estimated basis ignoring that the entire deposit in the bank account is out of opening cash balance, income earned during the year and withdrawal from bank account.”

2. Brief facts in this case as noted from the assessment order are that the assessee had not filed the Income Tax Return for the year under consideration. It is observed by the AO that for the year under consideration, there is cash deposit of Rs.10,76,200/- and cash withdrawal of Rs.9,72,000/- from three banks account maintained with Axis Bank (PB10-15). The AO, however on the basis of Axis Bank A/c No. 2393 as mentioned at pages 6 to 9 of the assessment order observed that there is cash deposit of Rs.8,69,400/- and the amount is also withdrawn from the bank account. Thus the assessee is using the bank account for business purpose but he failed to offer any reasonable reply. Accordingly he treated the entire cash deposit of Rs.10,76,200/- in the three bank accounts as unexplained u/s 69A of the Act and made addition for the same.

3. Being aggrieved from the assessment order, the assessee carried the matter before the ld. CIT(A) who taking into consideration all the facts and circumstances of the case noted that *“Therefore, it is estimated that 50% of cash deposits are out of earlier withdrawals and 50% are unexplained. In view of above, addition of Rs.5,38,100/- made u/s 69A is hereby confirmed and the balance addition of Rs.5,13,100/- is hereby deleted. The relevant grounds of appeal are partly allowed.* The exact narration of ld. CIT(A) findings are reproduced as under:-

“6. I have carefully considered the grounds of appeal, statement of facts and the written submission filed by the assessee. The assessee has filed copy of bank 1 statement for the Account Number 911010009862393 with Axis Bank Ltd. On perusal of the same, it is found that the appellant has deposited cash as well as withdrawn cash throughout the year. The AO himself has noted that cash deposit in the said account was to the extent of Rs. 8,69,400/- whereas withdrawal was to the extent of Rs. 9 72,000/- Therefore, it is obvious that the AO should have allowed the benefit of cash withdrawal to some extent which were made before the cash deposits However, the exact amount of cash available for re-deposit out of earlier withdrawals cannot be ascertained as the exact utilization and purpose of withdrawal of a cash amount is not known. Any cash withdrawal may be fully or partly consumed for different purposes or may be available for re-deposit subsequently. The appellant has prepared a statement of peak credit considering deposits and withdrawals of all the three bank accounts. As per the said statement, the peak credit of Rs. 3,30,000/- has been worked out. However, the said working is not completely reliable for the reason that it has been assumed that the entire amounts withdrawn were available for re-deposit and balance was worked accordingly which is not correct as the appellant will use the withdrawals for household expenses and other purposes. Therefore, it is estimated that 50% of cash deposits are out of earlier withdrawals and 50% are unexplained. In view of above, addition of Rs. 5,38,100/- made u/s 69A is hereby confirmed and the balance addition of

Rs.5,38,100/- is hereby deleted. The relevant grounds of appeal are partly allowed.’’

4. Now the assessee is before us against the order of the Id.CIT(A) praying that the addition confirmed by the Id. CIT(A) be directed to be deleted for which written submission is filed by the Id. AR is as under:-

***Submission:-***

1. It is submitted that after the order of Ld. CIT(A), there remains no dispute as to the fact that from the bank account assessee has made cash withdrawal of Rs.9,64,000/- and made cash deposit of Rs.10,76,200/-. Thus the excess of cash deposit over cash withdrawal is Rs.1,12,100/-.

2. It may be noted that AO has accepted that Axis Bank A/c No.2393 in which there is cash deposit of Rs.8,69,400/- and cash withdrawal of Rs.9,64,000/- is used for the purpose of business. Having held so, AO was not justified in considering the entire cash deposit in the bank account as unexplained. The Ld. CIT(A) appreciated this fact but he also erred in allowing credit of only 50% of cash deposit ignoring that assessee has income from welding job work, agriculture income and also the past savings which is utilized in incurring the household expenses and partly in making deposit in the bank account. Further Axis Bank A/c No.6908 (**PB 14**) and 7132 (**PB 15**) is gold loan account from which assessee was disbursed loan of Rs.1,08,000/- on 20.07.2017 and Rs.2,04,000/- in the last year which was also available for deposit in the bank account. Therefore, addition of 50% of the cash deposit confirmed by Ld. CIT(A) is unwarranted and unjustified.

3. Reliance is placed on the following cases:-

**R.K. Dave Vs. ITO (2005) 94 TTJ 19 (Jodhpur) (Trib.)**

The relevant Para 6 of the order reads as under:-

6. We have heard both the parties and given our thoughtful consideration to the rival submissions with reference to facts, evidence and material on record. From the facts discussed above, it is obvious that the assessee had placed cash flow statement before the authorities below. A copy of the same is also placed at p. 33 of the paper book. It is also not in dispute that the assessee had withdrawn an amount of Rs. 45,000 on 9th July, 1990 and 10th July, 1990. It is not the case of the Revenue that the amounts so withdrawn were utilized elsewhere. Mere fact that the assessee could not explain the time gap between the amount withdrawn and the investment in NSCs or where the amount was kept would not itself justify the addition. The claim of the assessee could have been rejected only if the source of balance in the bank account was not established or it could have been demonstrated that the amount so withdrawn was utilized elsewhere. This is not the case here. Therefore, we do not find any justification for sustaining the impugned addition. Accordingly, the order of CIT(A) is set aside and the addition is deleted. This ground of appeal is allowed.

**ITO Vs. Mrs. Deepali Sehgal ITA No.5660/Del/2012 order dt. 05.09.2014 (Delhi) (Trib.)**

The relevant Para 8 of the order reads as under:-

8. In view of above we noted that the AO, in his remand report could not bring out any fact that the cash withdrawn from Saving Bank Account and partnership overdraft account was used for other purpose anywhere else then, merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount can not be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. The AO rejected the explanation of the assessee on hyper technical basis which is not acceptable. On careful perusal of the decisions relied by the Ld. D.R. we are of the view that the facts of the present case are clearly distinguishable as in the present case the explanation offered by the assessee is reliable and acceptable on the touchstone of the prudence of an ordinary man but merely on the ground that the act of assessee created huge interest liability on partnership firm does not enable revenue authorities to consider the cash withdrawn and its deposit to same bank account after a substantial gap of time, as unexplained income u/s 69 A of the Act. Hence, we reach to a conclusion that the AO made addition without any legal and justified reason which was rightly deleted by the CIT(A). Hence, both the grounds of the assessee are being devoid of merits and dismissed.

In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.’’

5. The ld. AR of the assessee in addition to the written submission submitted that the assessee is earning agricultural income as well as also engaged in the business of welding job work. As the income from all the sources are below the maximum amount not chargeable to tax has not filed the return of income. The addition made / confirmed are purely on presumptions and assumptions. Based on these arguments the ld. AR of the assessee that the finding of the lower authority though ex-parte against the set of facts as placed on record.

6. On the other hand, the ld. DR supported the order of the ld. CIT(A) and submitted though the assessee remained non-compliant before the AO and further, the arguments raised by the ld. AR of the assessee is required to be tested based on the arguments advanced. As the ld. CIT(A) has granted the relief on adhoc basis, therefore, it would be better if the matter be decided by the ld. AO after hearing the facts and evidence of the assessee.

7. We have heard both the parties and perused the materials available on record. In this case, it is noted that the AO made an addition of Rs.10,76,200/- in the hands of the assessee by holding that *“Thus in the absence of ITR filed by the assessee and as the assessee has not responded to departmental notices, the cash*

*credit found in the bank account of the assessee at Rs.10,76,200/- is deemed to be unexplained money within the meaning of Section 69A of the I.T. Act and required to be added to the total income of the assessee for the year under consideration.*

However, the ld. CIT(A) has confirmed the addition of Rs.5,38,000/- u/s 69A as made by the AO and deleted balance addition of Rs.5,38,000/-. We feel that the action of the ld. CIT(A) in confirming one part of addition of Rs.5,38,100/- u/s 69A and deleting the other part of addition of Rs.5,38,100/- whose total amount comes to Rs 10,76,200/- does not appear as justified without any logic. On the other hand the ld. AR of the assessee argued before us that the assessee is earning income from agriculture activity and also having welding job work income. But as the income from all the sources are below the maximum amount not chargeable to tax the assessee has not filed the return of income and the assessment was also made on ex parte. Since the assessee is before us against one part of addition of Rs.5,38,100/- u/s 69A argued all these aspect of the matter which has not been considered by the lower authority, therefore, it would be in the interest of equity and justice to restore this particular issue of apportioned amount of addition of Rs.5,38,100/- u/s 69A to the file of the AO to decide it afresh by taking into consideration the submissions advanced before us through written and allow the

relief to the assessee if any in accordance with the law. Considering these aspects of the matter the appeal of the assessee is allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purpose as indicated hereinabove.

Order pronounced in the open Court on 12/12/2023.

Sd/-

( डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/12/2023

\* Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

अपीलार्थी / The Appellant- Sh. Rajjo Singh, Bharatpur

1. प्रत्यर्थी / The Respondent- ITO, Ward-1, Bharatpur, Jaipur.
2. आयकरआयुक्त / CIT
4. आयकरआयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्डफाईल / Guard File {ITA No.614/JP/2023}

आदेशानुसार / By order

सहायकपंजीकार / Asst. Registrar