

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

श्रीसंदीप गोसाई,न्यायिक सदस्य एव श्रीराठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 661/JP/2023
निर्धारणवर्ष / Assessment Year : 2017-18

Lisamma Sebastian Plot No. 6, Shakti Vihar Borkheda, Kota	बनाम Vs.	The ITO Ward -2(2) Kota
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ADFPL 4934 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 06/12/2023
उदघोषणा की तारीख / Date of Pronouncement: 21 /02/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The Assessee has filed an appeal against the order of the Id. CIT(A) dated 07-09-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 wherein the assessee has raised following grounds of appeal.

“ 1. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.2,32,87,584/- made by AO u/s 69A of the Act ignoring that it is not the amount of cash deposit but cash withdrawal from the bank account and therefore, section 69A is not

applicable. He has further erred in taxing such amount u/s 115BBE 60%.

2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the above addition on the ground that in the absence of basic proof of doing business, the transaction in the bank account cannot be considered as business receipt without requiring the assessee to furnish the evidence of carrying on the business and without considering the financial statements on the basis of which assessee earned income of Rs.1,71,885/- considering the transaction in the bank account.

3. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the above addition without appreciating the fact that the cash deposit in the bank account is only Rs. 1,96,68,010/-, source of which is out of cash withdrawal and thus no addition is justified and since the transaction in bank account are business transaction, what can be assessed is only the business income.

2.1 Apropos Ground No. 1 to 3, of the assessee, the only issued involved in this appeal is addition of unexplained money u/s69A amounting to Rs.2,32,87,584/-. It is noted that the ld. CIT(A) has dismissed the appeal of the assessee by observing at para 4.1 to 6.5 of his order as under:-

4.1 The only issue involved in this case is addition of unexplained money u/s 69A of Rs. 2,32,87,584/-

4.2 The AO in the assessment order held that as per departmental inputs, during the FY 2016-17, the assessee had deposited in cash an amount of Rs. 1,90,68,010/- in current account bearing No. 0726002100053459 maintained with Punjab National Bank and also withdrawn an amount of Rs. 2,32,87,584/- In absence of any information from assessee's side in respect of the source of cash deposits, the entire total credits in the bank account amounting to Rs. 2.32.87,584/-is treated as unexplained money.

4.3 The appellant vide letter dated 9 11 2022 has submitted that during FY 2016-17 the amount received in our bank account has been considered as income by the assessing officer when in fact the same represents amount received on behalf of goods sold made during that year. We would like to further explain that we had not filed the income tax return for that assessment year due to lack of knowledge. Further, we had not received the notices issued by your goodself earlier and therefore could not comply the same on timely basis.

4.4 I have considered the facts of the case, grounds of appeal, assessment order and submissions of the appellant. During the course of appellant proceedings, the assessee has submitted the copy of the ledger extract of PNB Bank Book of M/s. Kairaly Garlic Centre, Kota, Assessee did not file the return of income, she filed ROI only when notice was given. She filed a copy of ROI and few documents, which did not support the income declared to first notice Assessee did not comply with the show cause notice given by the AO, but filed appeal against the assessment order

4.4.1 The AO held that the non compliance on the part of the assessee to various statutory notices /letter issued from time to time, it is evident that assessee is persistently intransigent in not complying. Assessee has failed to discharge the primary onus cast upon it to furnish the details required to complete the proceedings in the case.

4.4.2 Along with submissions filed by the appellant, I have gone through the PNB Bank book The appellant has submitted bank book for the period 01/04/2016 to 31/03/2017 during the appellate proceedings. It is noticed that the pass book contain the receipts and payments. The appellant has not furnished the cash book or purchase register or sales register. The appellant neither furnished any books of accounts nor the Audit report. The cash sales made by the assessee had been credited in the books of account

4.5 First ground of appeal is against reopening the assessment. Appellant contended that the AO has erred in re-opening the assessment u/s 147 of the Act as it is illegal, unjustified, arbitrary and against the facts of the case. Appellant failed to justify this ground of appeal either in SOF or by filing written submissions. Mere taking a ground using the words that the reopening is illegal arbitrary etc. is not sufficient. The appellant has to prove by argument and demonstration as to how the reopening is illegal. It transpires from the record that the assessee did not file the return of Income voluntarily in spite of having income and deposits in the bank account. Based on the information, the case was reopened by issuing notice u/s 148. Appellant has not brought on record any reason to show that the reopening is illegal.

4.5.1 The case was reopened by the AO based on the information with him that the appellant deposited cash in her bank account, following due procedure and issue of notice u/s 148. The re-assessment proceedings were completed by the AO, after affording sufficient opportunities to the appellant. Section 147 along with the first proviso is reproduced here under

"If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereinafter in this section and in section 148 to 153 referred to as the relevant assessment year)

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully, and truly all material facts necessary for his assessment, for that assessment year."

4.5.2 The section merely says that the AO has to have reason to believe that any income chargeable to tax has escaped assessment. Reason to believe can be on the basis of any information which comes to the knowledge of the AO. The information was not anonymous information but authenticated information received from the bank. The AO or any reasonable person in his place would not ignore or overlook this kind of information. If the AO is not satisfied with the reason, he would not have issued notice u/s. 148. The very fact that reasons are recorded and notice u/s. 148 was issued goes to show that the AO had applied his mind and was satisfied himself about the re-opening of the case. The IT Act envisages that the AO should only have a reason to believe to re-open a case, he need not establish beyond doubt that there is escapement of income before issuing the notice.

5.5.3 Reliance is placed on the following judgment:-

1) Rohilkhand Educational Charitable Trust vs CCIT and Others 365 ITR 233(Ali) wherein the Hon'ble High Court held AO should have relevant and credible material with him to form requisite reason to believe that income of assessee has escaped assessment. Material available on record has rational connection and relevant bearing on such formation of belief for issuing valid notices for re-assessment-sufficiency or correctness of material was not to be considered at this stage.

2) Sun Pharmaceuticals Industries Ltd Vs DCIT 353 ITR 474 (Guj) where the Hon'ble High Court held that formation of belief by AO is essentially within his subjective satisfaction at the stage of issue of notice, only question is whether there was relevant material on which reasonable person could have formed requisite belief.

3) N.K. Industries Ltd vs ITO 362 ITR 542 (Guj) where the Hon'ble HC held if a particular issue is brought to the notice of the AD by audit party and AO of his/her application of mind finds this ground as valid, reopening of assessment cannot be quashed merely because such ground was brought to the notice of AO by the audit party,

5.5.4 The AO is not required to carry out any investigation before reopening as held by Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd v ITO 236 ITR 34 (SC) Hon'ble Apex Court held that in determining whether commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at the stage of reopening. In view of this, the action of the AO to reopen the case by issuing of notice u/s, 148 is held to be valid. The first ground of appeal is dismissed

6 Second ground is raised against addition of Rs. 2,32,87,584/- as unexplained cash deposit. Department detected cash deposit in the bank account and gave notice of reopening. Assessee filed ROI claiming the amount as business receipts and offered income. Assuming the assessee was doing business, what prevented her filing ROI voluntarily before the due date u/s 139 of the Act. During the scrutiny assessment, if she is taking a plea that she is doing business, she has to file nature of business, sufficient evidence of purchases and sales, vouchers thereof, trading/business license issued by local authority, place of business etc. to substantiate her claim. In the absence of some basic proof of doing business, it is not possible to accept the cash deposits in bank as business receipts. Appellant not filed any such evidence to prove that she was actually doing

some business during the assessment. She has not filed any such evidence either as part of SOF or written submissions during the appeal proceedings.

6.1 As per section 69A of the Act, assessee has to explain to the satisfaction of the AO the cash deposited by her. If the assessee fails to explain or the explanation is not satisfactory, the section provides that the money is deemed to be income of the assessee for the year in which it was deposited. In this case the assessee failed to explain her claim that it relates to business. Therefore, the amount is liable to be added under deeming provision of 69A Section 69A reads as under

Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money bullion, jewellery or valuable article is not recorded in the books of account if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money bullion jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year

6.2 In the present case the assessee is found to be the owner of the money in the financial year and no explanation is offered by her, the money is deemed to be the income of the assessee for such financial year as per section 69A of the Act. Reliance in this regard is laced on the following decisions.

25 taxmann.com 440 Manojkumar Jain (ITAT Delhi)

34 taxmanan.com 5 M.H Raney (ITAT Mumbai)

49 taxmann.com 101 Sarwankumar Sharma (Guj)

56 taxmann.com 284 Bhagwandas D Vachani (Gui)

6.3 In 25 taxmann.com 440 Manoj kumar Jain (ITAT Delhi) Hon'ble ITAT Delhi held as under.

"9. We have heard both parties and gone through the material available on record. We have also gone through the bank account of M/s. Dynamic Solutions with Jain Co-operative Bank Ltd. From the copy of bank account we find that the assessee has deposited cash in the bank account. The cash deposited has been transferred it to various accounts in the same branch. The assessee has not explained source of cash deposited. The assessee has not withdrawn cash from the bank on the basis of which it could be argued that the same cash was deposited in the bank account and, therefrom peak credit of deposits in the bank account should have been worked out. Therefore, the contention of the assessee that the Assessing Officer should have determined the peak credit is not supported by any evidence. However, we also find that on February 10, 2006 an amount of Rs. 1,75,000 has been transferred by cheque No. 568596 and another amount of Rs. 1,750 vide cheque No. 263276. We also find that on 29th March, 2006 amount of Rs. 18,00,000 has been transferred from account No. C-736 The Assessing Officer had also noted that an amount of Rs. 1,00,000 was also withdrawn from cash. The source of the balance amount has not been explained. Therefore, the addition made by the Assessing Officer except the above amount of Rs. 19,76,750 (Rs. 1,75,000 plus Rs. 1,750 plus Rs. 18,00,000) has to be upheld. Accordingly, we do not find any infirmity in the order of the learned Commissioner of Income-tax (Appeals) confirming the addition to this extent"

6.4 Hon'ble ITAT Mumbai in M H Raney 34 taxmann.com 5 (ITAT Mumbai) dealing with cash deposits held as under.

"The assessee's explanation is vague and unsubstantiated rather, being limited to the working of the quantum of the unexplained funds involved, contending recycling, so as to impact the addition to income exigible on account of the unexplained nature and source of the investment. The peak credit theory is based on recycling of funds, implying systematic activity, while neither the nature of the deposits nor their utilization, stands

explained, so that the plea is not maintainable at the threshold. Scrutiny (of the bank account statement) reveals it to be inconsistent with not only the explanation of the amounts being possibly-used for charitable purposes, but also with the fact of the same being, apart from withdrawn in cash, also by cheques for ostensibly personal purposes, on a regular basis and in no insignificant sums. Further, the pattern of withdrawal reveals the account to be employed for transfer of funds in the main, ie, deposit of cash at one place and its withdrawal at other, the funds being withdrawal almost in toto, and soon after their deposit. The assessee has been wholly unable to discharge the onus of a satisfactory explanation qua cash deposits, including the quantum of funds involved and, accordingly, its appeal fails"

6.5 In view of the above discussion and the case laws relied, it is held that the AO correctly held that the assessee failed to discharge the onus vested on her. Therefore, the addition of Rs. 2,32,87,584/- made by the AO is confirmed u/s 69A of the Act as the source of which remain unexplained and unsubstantiated. Ground No. 2 of the appeal is dismissed. “

2.2 During the course of hearing, the ld. AR of the assessee submitted that the addition confirmed by the ld. CIT(A) is not justified which should be directed to be deleted and thus submitted the following written submission.

(1) At the outset it is submitted that the Appellant in her submission dt. 22.08.2023 (PB 2-3) before Ld. CIT(A) has filed the complete bank ledger and the financial statements for the year under consideration. From the same it is evident that appellant is engaged in the business of trading of Garlic. The trade license issued by Krishi Upaj Mandi, Kota stating that the Appellant is entitled to do trading of Agricultural Produce in accordance with the Rajasthan Krishi Upaj Mandi Rules, 1963 under the name and style of Kairaly Garlic Centre is at PB 19. Further from the sales bills on sample basis available at PB 20-30 and ledger account of few parties at PB 31-38, it is evident

that appellant is carrying on the business of trading in Garlic from 5-36, Road No.5, IPAI, Kota, Rajasthan. The Ld. CIT(A), if has any issue about ascertaining the nature of business carried out by the appellant, could have asked her to clarify the same but inspite of request made by the appellant, it has not sought any clarification. Thus, when it is evident from the financial statements that Appellant has undertaken trading business of Garlic and has provided sufficient evidences in support of the same and the same is further evident from PB 19-30 of the paper book, addition confirmed by Ld. CIT(A) on the ground that in the absence of some basic proof of doing business, it is not possible to accept the cash deposit, in the bank as business receipt is unjustified.

(2) It may be noted that the AO in making the addition has referred to the decision of Hon'ble Supreme Court in case of Dev Dutt Vs. UOI B SCC 725 to held that natural justice are not codified but what it require is fairness by the authority concerned. Natural justice is the natural sense of what is right and wrong. Therefore, the AD on the basis of said principle laid down by Hon'ble Supreme Court was unjustified in making the addition of the total credits in the bank account by ignoring the debit in framing the order u/s 144 and the Ld. CIT(A) has erred in confirming the same.

(3) It may be noted that from the financial statements filed before the Ld. CIT(A) [PB 4-5]. the sales of the applicant is Rs 2,67,96,128 and gross profit is Rs 5,06,185 giving a g.p rate of 1.89 percent which is reasonable in the wholesale trading business of garlic. Hence addition made by AD and confirmed by Ld. CIT(A) by treating the entire deposit in the bank account as unexplained by ignoring the withdrawals is unjustified & incorrect. From the bank statement it can be noted that the maximum in balance in the bank at any point of time is Rs 6,78,923 on 13.06.2016 (PB 42) and therefore also addition of its 2,32,87,584 made by the lower authorities is uncalled for

4. It may be pointed out that in the assessment order the AO has mentioned that the amount withdrawn from the bank account is Rs 2,32,87,584 for which addition is made u/s 69A of the Act. The amount withdrawn from the bank account cannot be added to income. In fact the figures noted by AO in the assessment order are incorrect.

The aggregate of deposit in the bank account during the year is Rs 2,59,91,210 and the aggregate of withdrawal from the bank account is Rs 2,60,98,650 (PB 52). Further the amount of cash deposit in the bank account is only Rs 1,96,68,010, the source of which is partly out of the sale proceeds and partly out of the earlier withdrawals from the same bank account. Thus invocation of section 69A and the consequent addition made by AO and confirmed by CIT(A) is unjustified.

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

2.3 On the other hand, the ld. DR supported the order of the ld CIT(A).

2.4 We have heard both the parties and perused the materials available on record. The assessee is engaged in the business of trading of Garlic. She has not filed return of income. The AO on the basis of input that assessee had made deposit in her current account maintained with PNB and also withdrawn Rs.2,32,87,584/- and also that Form No.26AS reflect amount received from contract Rs.69,200/- and bank interest of Rs.954/ issued notice u/s 148 dt. 19.03.2021. The assessee did not respond to the notices issued and therefore the AO by referring to the decision of Supreme Court in case of CIT VS Calcutta Agency Ltd. 19 ITR 199 where it is held that onus to prove the genuineness of any transaction lies on the assessee, which assessee has failed to discharge, treated the total credit in the current account of Rs.2,32,87,584/ as unexplained and made addition u/s 69A of the Act by passing the order u/s 144. Before the Ld CIT(A) assessee vide submission dated 22 August 2023 (PB 2-3) explained that the

amount deposited in the bank account represent sale of goods. In support of the same the bank account ledger explaining all the debit credit entries (PB 6-18) and the financial statements (PB 4-5) were filed. It is noted that the Ld. CIT(A) at para 6 of its order held that the assessee failed to file details on nature of business, sufficient evidence of purchase and sales, vouchers thereof, trading/ business license issued by local authority, place of business, etc. to substantiate her claim and therefore in the absence of some basic proof of doing business held that it is not possible to accept the cash deposits in the bank as business receipt Accordingly after reproducing section 69A of the Act and referring to certain case laws it confirmed the addition of Rs.2,32,87,584/- u/s 69A of the Act. The relevant narration at para 6.5 is reproduced as under:-

“6.5 In view of the above discussion and the case laws relied, it is held that the AO correctly held that the assessee failed to discharge the onus vested on her. Therefore, the addition of Rs.2,32,87,584/- made by the AO is confirmed u/s 69A of the Act as the source of which remain unexplained and unsubstantiated. Ground Nos. 2 of the Department is dismissed.”

After considering the materials available on record, we found that the lower authority made the addition by taking the entire deposit in the bank account as unexplained. We note that in the bank account, there is simultaneous withdrawal also or payment made to certain parties claimed to be against purchase of goods (PB 39-52). Therefore, the deposit in the bank cannot be added to income as such. The peak amount in the bank account on 13-06-2016 is Rs.6,78,923/- (PB 42). The assessee before the Id.CIT(A) has filed the balance sheet and the P & L account according to which on Garlic sales of Rs.2,67,96,128/-, it declares net profit of Rs.1,71,855/- (PB-5). The trading license issued by the Krishi Upaj Mandi (PB-19) proves that assessee is carrying on business. The assessee has requested that appropriate profit rate be applied on the sales but in the absence of proper verification we reject this contention of the assessee. However, at the same time, the entire deposit cannot be assessed to tax ignoring the withdrawals. Therefore, in the interest of justice, we estimate the income of the assessee at Rs.7.00 lacs which is more than the peak amount in the bank and the balance addition is directed to be deleted.

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

Order pronounced in the open court on 21 / 02/2024.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 21 /02/2024

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Lisamma Sebastian, Kota
2. प्रत्यर्धी / The Respondent- ITO, Ward 2(2), Kota
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.661/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar

