

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 674/JP/2023  
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Sarvan Meena 38, Navdurga Colony Malviya Nagar, Jaipur	बनाम Vs.	The ITO Ward Sikar Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEHPM 1776 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Gupta  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 07/02/2024  
उदघोषणा की तारीख / Date of Pronouncement: 02 /05/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 20-09-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 wherein the assessee has raised the following grounds of appeal.

“1. On the facts and circumstances of the case the Hon’ble CIT, (Appeals) has grossly erred in not considering the facts that the notice issued u/s 143(2) by the Ld. A.O. Sikar was invalid as he was not a jurisdictional A.O. The assessee has raised this objection before the Ld. AO. Therefore, the assessment completed thereafter based on this notice is invalid in the eyes of law and therefore illegal and deserves to be quashed or set aside.

2. Without prejudice to GOA-1, On the fact and circumstances of the case the Hon'ble CIT, (Appeals) has grossly erred in not considering the facts and circumstances of case and completed the assessment. Therefore, the assessment made by Ld. AO is illegal and deserves to be quashed.

3. On the fact and circumstances of the case the Hon'ble CIT, (Appeals) has grossly erred in confirming the addition made by the Ld. AO on account of an addition u/s 69A despite the fact that all the requisite information has already been filed and there was no room available for further assumption. The addition of income u/s 69A and initiation of proceedings u/s 271AAC by Ld. AO was illegal and deserved to be quashed.”

2.1 Brief facts of the case are that the assessee has filed her return of income for the year under consideration on 14.3.2018 declaring the total income at Rs. 9,93,890/- & agriculture income at Rs. 5,15,000/- in ITR-2. The case of the assessee was selected for **limited scrutiny through CASS**. The reason for the limited scrutiny case is *“Large agriculture income shown in ITR and large cash deposits during demonetization”*. The details of e-proceedings notices issued in chronological order and the response submitted by the assessee was as under:

Notice date	Issued u/s	Reply date	Remarks
24.09.2018	ITO Sikar. 143(2)		
09.04.2019	ITO Sikar. 142(1)		Replied on 18/04/2019
25.04.2019	ITO Sikar. 142(1)	07.10.2019	Not aware and once came in to notice replied immediately.
30.05.2019	ITO Sikar. 142(1)	07.10.2019	
23.08.2019	ITO Sikar. 142(1)	04.10.2019	Not aware and once came in to notice replied immediately.
07.10.2019	ITO Sikar. 142(1)	10.10.2019	
04.11.2019	ITO Sikar. 142(1)	08.11.2019	
11.11.2019	ITO Sikar. 143(3)	24.11.2019	

29.11.2019	ITO Sikar. 143(3)		
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During the assessment proceedings, the assessee objected to the initiation of assessment proceedings as the notice u/s 143(2) was issued by the non-jurisdictional AO. The assessee replied and explained the source of cash deposit with special mention that she is an old (Age-62 years during A.Y. 2017-18) and widow lady and doesn't have any other source of income except as declared but the A.O. disregard the facts and concluded the assessment by holding as under:-

“3.7. Basically, the assessee cooked a story of agriculture income & cash deposit out of cash withdrawals of 20 months ago to explain the nature & source of cash deposited during demonetization period. The assessee had not earned any agriculture income during the year under consideration & cash withdrawal of Rs.20,00,000/- was already used by the assessee for the purposes for which cash was withdrawn. The cash withdrawal made on 03.04.2015 can not be source of cash deposit during demonetization period due to long span of time i.e. 20 months which is also not found justified & logical. The assessee failed to the nature & source of cash deposited during demonetization period. Hence, the nature & source of total cash deposit of Rs. 14,92,000/- remained unexplained.

3.8 In view of the facts discussed above, the cash deposit of Rs. 14,92,000/- in bank account of the assessee during demonetization period represents income assessable u/s 69A of the L.T.Act, 1961. Basically assessee has earned income during the year under consideration out of undisclosed sources which she deposited in the bank accounts. Therefore, the cash deposit at Rs 14,92,000/- is treated as deemed income as unexplained money u/s 69A of the Income Tax Act, 1961 and same amount of Rs. Rs. 14,92,000/- is added to the total income of the assessee.

2.2 In first appeal, the Id.CIT(A) has dismissed the appeal of the assessee by observing as under:-

“3. The only addition made in the assessment order and against which this appeal has been filed is of Rs. 14,92,000/- on account of unexplained cash deposit in her bank account. AO has written that notices were issued u/s 143(2) and 142(1) on multiple occasions. But assessee could not produce any satisfactory evidence ever to prove that the cash was from a source which is disclosed to Income tax and which has been fully taken into consideration for computation of total income. Appellant claimed that the cash of Rs. 14,92,000/- deposited on 30.11.2016 and 23.12.2016 was out of Rs. 20,00,000/- (twenty lakh) withdrawn from bank on 3.4.2015 for personal use and for gift to her daughter. AO wrote that assessee could not explain when asked why she did not gift to daughters and also did not utilize for personal expenses for so many months as planned and, ultimately, deposited in cash on 30.11.2016 and 23.12.2016, i.e., after keeping this huge sum in cash at home about 20 months. AO also wrote that finding no other way to explain, assessee lastly challenged jurisdiction of AO over the case.

4. I think that this is indeed a relevant issue. No reasonable man will keep such huge amount in cash particularly when she had easy access to bank and she could deposit back to bank if she did not gift to her daughter or use for personal expenses. She has not furnished any proof or explanation in support of claim that she did not utilize it as planned immediately after withdrawal. In this context, the principle of law laid down by hon'ble Supreme Court in Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC) that human probability is a very big factor which can negate even direct evidence like cheque book, bank statement etc also. Therefore, such withdrawal of Rs. 20 lakh on 3.4.2015 cannot be accepted as source of cash deposits in November and December, 2016. She was found to be owner of this amount of money and this was not disclosed in her books of accounts. Therefore, it is liable for addition as special income u/s 69A of the Act as done by the AO. Consequently, I do not find any merit in the appeal filed by the appellant. Addition is confirmed.

5. In the result, the appeal is dismissed.”

2.3 During the course of hearing before us the ld. AR of the assessee has filed the written submissions with the prayer that the ld. CIT(A) is not justified in confirming the addition of Rs.14,92,000/-

2.4 On the other hand, the ld. DR strongly supported the order of the lower authorities and also refuted the submissions of the assessee advanced during the course of hearing.

2.5 We have heard both the parties and perused the materials available on record. From the arguments of the ld. AR of the assessee, it is observed that ld. CIT, (Appeals) erred in not considering the facts that the notice issued u/s 143(2) by the A.O. Sikar was invalid as he was not a jurisdictional A.O. The assessee raised this objection before the AO. Hence, the assessment was completed thereafter based on this notice is invalid in the eyes of law and therefore illegal and deserves to be quashed. Further, it is also noted that that the assessee is living in Jaipur from so many years and since then the address mentioned in ITR from the A.Y. 2008-09 is of Jaipur. The notice issued u/s 143(2) by the A.O. is not in accordance with law as he was not the jurisdictional A.O. and the assessee objected the same during the assessment proceedings.

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ITA NO. 674/JP/2023  
SARVAN GUPTA VS ITO, WARD-SIKAR

Acknowledgement Number : 447373830140318

Assessment Year : 2017-18

<b>ITR-2</b>			
For Individuals and HUFs not carrying out business or profession under any proprietorship			
<b>PERSONAL INFORMATION</b>			
Name	SARVAN MEENA		
PAN	AEHPM1776N	Aadhaar Number	367922696447
Date of Birth / Formation (DD/MM/YYYY)	01-Jun-1958	Status	Individual
<b>ADDRESS</b>			
Flat / Door / Block No	38	Town / City / District	JAIPUR,JAIPUR
Name of Premises / Building / Village		Road / Street / Post Office	NAVDURGA COLONY
Area / Locality	MALVIYA NAGAR	State	RAJASTHAN
Country	INDIA	Pin code	302017

The copy of ITRs from the A.Y. 2008-09 to 2017-18 reflecting the address of the assessee as filled in ITR form is filed as **Annexure-1**. A bare perusal of the ITRs submitted by the assessee clearly shows that the ITRs are regularly filed with the updated address of Jaipur and the AO, Sikar was not the jurisdictional A.O. of the assessee in the assessment proceedings and even the notices issued by the AO, Sikar to the assessee were at the address of Jaipur and therefore, it is amply clear that the AO was well aware about the updated address of the assessee and the assessment proceedings and order passed by the AO. Sikar was against the law. The copy of notices issued by AO at the address of Jaipur is filed as Annexure-2. It is also noted that previously also assessment against the assessee had held vide Assessment Order dated 30.01.2015 for the A.Y. 2012-13 and in the same order the address

mentioned of the assessee is of Jaipur only. The copy of Assessment Order dated 30.1.2015 is filed as **Annexure-3**. We also noticed that the A.O. rejected the assessee's submission for the jurisdictional issue by referring to the decision of the Hon'ble Apex Court in the case of PCIT, Mumbai Vs. I-Ven Interactive Limited, Mumbai. The facts of the case were totally different and not applicable in the case of the assessee. In that case the notice was issued on address which was mentioned in PAN database but in the present case, all the notices were issued to the assessee at Jaipur address only. We also rely on following decisions in connection with jurisdictional issue.

1. The **Hon'ble ITAT, Kolkata the case of Jigna Chetan Mehta v. Assistant Commissioner of Income Tax, Circle-33, Kolkata decided on 23.06.2023** concluded that *"We thus, unhesitatingly hold that ACIT, Circle-31, Kolkata had no valid jurisdiction over the assessee on the date of issuing notice u/s. 143(2) of the Act. Revenue has not controverted this fact by placing any other contrary material on record to indicate otherwise. Since a valid notice u/s. 143(2) has not been issued, the assessment proceedings carried thereafter deserve to be quashed. We, therefore, respectfully following the ratio laid down by 7 ITA No.616/Kol/2022 Jigna Chetan Mehta, AY: 2012-13 Hon'ble jurisdictional High Court in the case of PCIT Vs. Shree Shoppers Ltd. (supra), allow the additional grounds raised by the assessee and quash the assessment proceedings completed u/s. 143(3) r.w.s 147 of the Act. Since we have quashed the assessment proceedings, the grounds relating to the merits of the case are rendered mere academic in nature and are, therefore, not adjudicated upon. Accordingly, the appeal of the assessee is allowed."*

2. **In the order passed by Hon'ble New Delhi, ITAT decided on 02.09.2019 titled as Nishi Kapoor V. ITO, Ward-2(1), Faridabad concluded that-** *In view of the above discussion, I am of "the view that the assumption of jurisdiction u/s 147/148 of the Act is illegal and bad in law and, as such, liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment u/s 147/148 of the Act. Resultantly the entire addition stands deleted."*

Thus, considering the aforesaid judgments and facts of the case that the AO, Sikar was informed about the new address of the assessee and even then, issuance of notice u/s 143(2) of the Act by non-jurisdictional AO, Sikar is not in accordance with law. Therefore, the Assessment order dated 26.11.2019 is without jurisdiction and illegal therefore the same deserves to be quashed and set aside. It is further noted from the submissions of the assessee that without prejudice to GOA-1, On the fact and circumstances of the case the Id CIT, (Appeals) has erred in not considering the facts and circumstances of case and completed the assessment. Therefore, the assessment made by AO is illegal and deserves to be quashed and for which assessee submits that for the year under consideration, the assessee derives the income from family pension, interest income & agriculture income. The assessee during the demonetization period deposited an amount of Rs. 14,92,000/- in cash (Rs. 14,43,000/- on 30.11.2016 & Rs. 49,000/- on 23.12.2016) in her bank account. It is pertinent to mention here that the assessee also submitted the information of her cash deposits in “Cash Transactions 2016” form as sought by the Income Tax Department Transaction Number : 3632334793. The copy of the same is filed as **Annexure-4**. It is pertinent to mention here that the assessee had withdrawn an amount of Rs. 20,00,000/- on 03.04.2015 for her personal use and to gift her daughter/children. For your ready reference, the copy of Statement of bank

account is filed as **Annexure-5**. We also noted that the assessee's husband Late Sh. Bharat Ram Meena served the Government of India as an IAS officer. After his sad demise, the assessee was getting a family pension from the Government of India. The copy of bank statement reflecting the pension income received by the assessee is filed as **Annexure-6**. The assessee is filing ITR regularly and previously her case was selected for scrutiny in the A.Y. 2012-13 and income was assessed as such. Being an old lady, her health did not remain very good and she remained dependent on others even for banking transactions. Therefore, the amount of Rs. 20,00,000 was withdrawn from the bank account on 03/04/2015. This withdrawal was made by her as she wants to keep this amount separately for family functions, expenditure so as to pay gifts to daughter /children, to give some offerings to her daughter in law etc. The details of cash deposit and cash withdrawal during the F.Y. 2015-16 & F.Y.2016-17 as under:

Date	Particulars	Amount	Remarks
03.04.2015	Cash Withdrawal	20,00,000	F.Y. 2015-16 To clear Insurance premium Payment
18.11.2015	Cash Deposited	2,00,000	
30.11.2016	Cash deposited	14,43,000	F.Y.2016-17 During the Demonetization period-08.11.2016 to
23.12.2016	Cash deposited	49,000	31.12.2016

			Rs. 3.08 Lac expanded during the period (03.04.2015-23.12.2016) for some petty expenses and in social offerings.
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Hence, considering the facts, it is amply clear that the assessee had deposited the cash out of previous withdrawal done by her and there was no other source of income for the assessee except family pension, interest income & agriculture income which only received through banking channels and shown in ITR. We feel that the AO completed the assessment without referring to the facts and assumes the amount of cash deposit from unexplained source. It is also noted that the Id CIT (A) vide his order dated 20.09.2023 dismissed the appeal filed by the assessee by considering the judgment of Hon'ble Supreme Court in the case of Sumati Dayal v. CIT (1995) 214 ITR 801 (SC) whereby *it was stated that human probability is a very big factor which can negate even direct evidence like cheque book, bank statement etc also. Therefore, such withdrawal of Rs. 20 lakh on 3.4.2015 cannot be accepted as source of cash deposits in November and December, 2016. She was found to be the owner of this amount of money and this was not disclosed in her books of accounts. Therefore, it is liable for addition as special income u/s 69A of the Act as done by the AO. Consequently, he did do not find any merit in the appeal filed by the appellants and confirmed*

*the addition.* It is noted that the facts of the present case are different and the same does not apply to the assessee's case. In the present case the assessee has submitted that the cash deposited during the period of demonetization was from the cash withdrawal made by her. It is relevant to note that Assessee was an old, widow and illiterate lady, the source of her income during the relevant year was family pension, interest income and Agriculture Income only, there was no cash deposit history in the past as well. The withdrawal of cash was well explained and the situation of redeposit was also explained. We also noted that the facts and decision of judgement made by Hon'ble Apex court in case of Sumati Dayal does not apply in the present case based on the facts and circumstances of the case. Hence, the action of the . A.O. was not justified which deserves to be quashed . It is also noteworthy to mention that it is clearly evident that the amount of cash deposited by the assessee during the year was from cash withdrawal made by the assessee and the same was just the re-deposit of her own funds, and thus the same cannot be considered as unexplained money in terms of the provisions of section-69A of the Act. Hence, considering the aforesaid provisions of the section 69A it is clearly evident that the same is not applicable in assessee's case as the assessee was not maintaining any set of books of accounts and she was under no obligation to maintain books of accounts. The cash deposited in bank accounts during

demonetization has been explained fully. The assessee was not having any other source of income other than declared one. The A.O. failed to establish any other source of income. Therefore, the addition made to the returned income u/s 69A is unjustified and therefore deserves to be quashed. Conclusively, in view of above deliberation in the case, we do not concur with the findings of the ld. CIT(A) and thus allow the appeal of the assessee..

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

Order pronounced in the open court on 02 /05/2024.

Sd/-

( डा० मीठा लाल मीना )  
(Dr. Mitha Lal Meena)  
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02 /05/2024

\*Mishra

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

1. The Appellant- Shri Sarvan Meena, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward , Sikar
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 674/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar