

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 299/JP/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Saroj Luniwal 116, Goverdhan Colony New Sanganer Road, Jaipur	बनाम Vs.	The ITO Ward- 1 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABFPL 9856 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 01/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 20 /06/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 22-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2013-14 raising therein following grounds of appeal.

- “1. That on the facts and circumstances of the case and in law, the ld CIT(A) grossly erred in not quashing the assessment order passed u/s 147 as illegal ad bad in law.
2. That on the facts and in the circumstances of the case and in law the ld. CIT(A) grossly erred in sustaining an addition of Rs.6.10

lacs u/s 69A of the Income Tax Act, 1961 by treating the cash deposits in bank account as unexplained thereby ignoring all the material evidence on record including the fact that the source of cash deposits was the earlier cash withdrawals from the bank account.

3. That on the facts and circumstances of the case and in law the Id CIT(A) grossly erred in passing appellate order at the back of the appellant without providing opportunity being heard.”

2.1 At the outset of hearing of the appeal of the assessee, the Bench noticed that the Id. CIT(A) has passed the ex-parte order by dismissing the appeal of the assessee with following observations at page 14 of his order.

“.. It is clear from the above that the appellant has granted several opportunities to represent his case during both assessment and appellate proceedings but the appeal is not interested in prosecuting the appeal filed. In the appellate proceedings, burden of proof lies on the appellant to prove that the facts and the findings of the AO are incorrect. In this regard, appellant has not produced/furnished any supporting documents before the undersigned to substantiate his concern and explain his ground of appeal and statement of fact.

In view of the above, it is clear that the appellant is not aggrieved with the assessment order impugned herein and is not interested in pursuing the same. Accordingly, the additions/disallowance as challenged in the Grounds of appeal and the appeal memo are hereby confirmed.”

2.2 The Bench has heard both the parties and perused the materials available on record. The Bench after considering the facts of the present case decided to deal with ground no 2 firstly as it relates to challenging the additions made and upheld by the revenue authorities u/s 69A of the Income Tax Act.

2.3 After having heard the Counsel of both the parties and after going through the order passed by the revenue authorities and the documents placed on record, I find that that as per the facts of the present case, the additions in this case were made on account of the fact that the assessee had deposited cash in his bank account. However, at the outset Id AR apart from relying upon written submissions, reiterated that cash was withdrawn from his bank account in the month of March 2012 and he redeposited back the same after around three month in July, 2012 and this entire position was duly explained by the assessee during the course of assessment proceedings vide its letter dated 9th March 2022 which has already been acknowledged by the AO in his assessment order at page 3 in para 4 & 5 of the said order.

2.4 As per the Id. AR since the purpose for which the cash was withdrawn was not met, therefore the same cash was redeposited back in the same bank account as per the details mentioned by him in his written submission which even otherwise is not an undisputed fact.

2.5 I also noticed that the AO repeated same query vide letter dated 13th March, 2022 but the same remained unreplied by the assessee. On the perusal of the said letter I found that AO has again repeated the same question to the assessee, although assessee was duty bound to reply the said notice but as per learned AR the said letter remained unnoticed by the assessee. The fact remains

that when once the assessee stated that the said amount which was deposited was withdrawn previously and the same amount was re-deposited in the same bank account, however still the additions were made by totally ignoring the material evidence on record in the form of bank statements wherein sufficient cash was withdrawn just three months prior to its deposit back in the same bank account.

2.6 After having gone through the entire facts of the present case, I am of the view that once the assessee has discharged his onus by explaining the source of cash deposits, as cash withdrawals from the same bank account three months earlier then in that eventuality the onus shifts upon the revenue authorities to prove that the cash was utilised somewhere else and in this case the revenue authorities failed to discharge their onus, rather they acted merely on surmises and conjunctures while making the additions. For this view, I draw strength from the decisions of **Hon'ble Supreme Court in the case Dhakeshwari Cotton Mills Ltd. 26 ITR 775** wherein **Hon'ble Supreme Court** *held that a suspicion remains a suspicion unless the same is established and can never take placed of reality.* Therefore, in my considered view, the assessment cannot be made on guesswork without any reference to any material on record. Withdrawal/ deposit of cash from his bank account are exclusive prerogative of the assessee. On the contrary, the Revenue has not brought any material on record to prove any other source of income from which cash was deposited in the bank account by the assessee.

Apart from above, the Bench also relies upon following case laws concerning the issue of the assessee.

1. Shri M. Prabhakar (ITA No. 1727/Hyd/2014 dated 11-11-2016-Hyderabad Bench).
2. CIT vs K Sreedharan, 201 ITR 2010 (Kerala)
3. Sunil Mathur vs ITO (ITA No. 660/JP/2019 dated 01-11-2021-ITAT Jaipur Bench)
4. Smt.Krishna Agarwal vs ITO (ITA No. 53/JOdH/2021 dated 07-09-2021 –ITAT Jodhpur Bench)
5. R.K. Dave vs ITO (94 TTJ 19- Jodhopur Bench)

Hence, from the totality of the facts and circumstances of the case discussed above and also taking into consideration the judgements cited above, it is held that there being no material with Income Tax Authorities to show that the amounts of cash deposits in question, admittedly withdrawn from bank were utilized for any other purpose, no addition could be made only on the ground that there was time gap between the withdrawals and the corresponding cash deposits. Consequently, the Bench feels that the ld. CIT(A) is not justified in confirming the addition. Thus the Ground No. 2 of the assessee is allowed and consequently the addition stands deleted..

2.7 Since the Bench has decided the appeal on merit, therefore, it is not required to adjudicate upon other grounds of appeal of the assessee.

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

Order pronounced in the open court on 20 /06/2024.

Sd/-

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

जयपुर / Jaipur
दिनांक / Dated:- 20/06/2024

***Mishra**

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

1. The Appellant- Saroj Luniwal, Jaipur
2. प्रत्यर्धी / The Respondent- The ITO, Ward- 1 (2), 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. 299/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar