

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. 509 & 510/JP/2024
निर्धारण वर्ष / Assessment Year : 2011-12 & 2016017

Shri Satish Chandra Gupta 116/158, Agarwal Farm, Mansarovar Jaipur 302 020	बनाम Vs.	The ITO Ward 2(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACSPG 2286 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta, Advocate
राजस्व की ओर से / Revenue by: Shri Rajesh Kumar Meena, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 04/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 10/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals have been filed by the assessee against two different orders of the Id. CIT(A) dated 29-02-2024 and 13-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 and 2016-17 respectively raising therein following grounds of appeal.

ITA No.509/JP/2024 – A.Y. 2011-12

“1. The impugned order u/s 147 rws 143(3) of the I.T. Act, 1961 dated 27.12.2018 as well as the notice u/s 148 and proceedings u/s 147/148 are illegal, bad in law, barred by limitation, without jurisdiction, without

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approval/satisfaction from the proper or competent authority, against the principle of natural justice and various other reasons or and further contrary to the real facts of the case hence the same may kindly be quashed.

2. Rs.9,70,000/- : The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.9,70,000/- made by the ld. AO on account of cash deposits in the bank account as alleged undisclosed investment from undisclosed source u/s 69. The Ld. AO and CIT(A) also erred in not considering the evidences, vital facts and material available on record in their true perspective and sense. Hence the addition so made by the ld. AO and confirmed by the ld. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

3. The ld. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B,C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

ITA No.510/JP/2024 – A.Y. 2016-17

1. The impugned order u/s 143(3) of the I.T. Act, 1961 dated 24.12.2018 as well as the notice and proceedings are illegal, bad in law, barred by limitation, without jurisdiction, without approval/satisfaction from the proper or competent authority, against the principle of natural justice and various other reasons or and further contrary to the real facts of the case hence the same may kindly be quashed.

2. Rs.9,00,000/- : The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.9,00,000/- made by the ld. AO on account of cash deposits in the bank account as alleged undisclosed investment from undisclosed source u/s 69. The Ld. AO and CIT(A) also erred in not considering the evidences, vital facts and material available on record in their true perspective and sense. Hence the addition so made by the ld. AO and confirmed by the ld. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

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3. The ld. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B,C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

2.1 First of all, the Bench takes up the appeal of the assessee for the assessment year 2011-12 for adjudication.

2.2 Apropos Ground No. 1 to 3 of the assessee, it is noticed that the ld. CIT(A) has dismissed the appeal of the assessee and the relevant para as to confirming the addition of Rs.9.70 lacs by the ld. CIT(A) is reproduced as under:-

“In view of the above facts and circumstances, I find no infirmity in the decision of the AO to make addition of Rs.9.70 lacs as peak credit u/s 69 of the Act. Hence, I am not inclined to interfere with the decision of the AO. Accordingly, the above grounds of appeal are hereby dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee has filed a written submission praying therein that the ld. CIT(A) is not justified in confirming the addition of Rs.9.70 lacs made by the AO u/s 69 of the Act. He submitted that the AO has not been able to point out even a single defect or discrepancy in the cash book furnished including the opening cash balance. Thus, he submitted that when the AO has accepted the cash book wherein he has not found any defect then as to how the addition can be made even on account of peak amount. He further submitted that peak credit theory is applicable only when there is no evidence,

explanation, details, source etc and in the present case all the things were available.

Hence, no addition is liable to be made by taking the peak credit and the AO has accepted the debit entries and other side not accepting the credit entries. The ld. AR of the assessee further submitted that material and evidences in support of cash deposits have not been disproved with the help of any contrary evidence. The ld. AR of the assessee further submitted that the only reason given by the AO or ld. CIT(A) for not accepting the explanation of the assessee that the assessee has failed to explain the purpose of withdrawals made from bank and has failed to substantiate the contentions that withdrawals made from bank were not utilized for which the ld. AR submitted that the assessee was trying to purchase immovable properties during the year and thus adequate cash was required for making payment. He further submitted that the assessee had duly produced the cash book which has not been disputed by the AO and there is a gap of few days only in the withdrawals and deposits of the amount. Conclusively, he submitted that lower authorities are not justified in confirming the addition of Rs.9.70 lacs which should be deleted .

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

2.5 The Bench has heard both the parties and perused the materials available on record including the written submissions of the ld. AR of the assessee. Brief facts of the case are that the AO made an addition of Rs.9.70 lacs as peak credit u/s 69

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of the Act in the absence of satisfactory explanation required to be made u/s 69 of the Act which has been confirmed by the ld. CIT(A). It is an undisputed fact that the amount was withdrawn from the bank by the assessee. Naturally, the huge withdrawal was according to the assessee for a purpose and objective. From the very beginning, the explanation put forth by the assessee was that withdrawal was to pay earnest money for purchase of immovable property which did not materialize. Thus considering the explanation put forth by the assessee, the Bench is of the view that the same is not fanciful and sham story rather it was perfectly plausible and should be accepted, unless there was justification and ground to hold to the contrary. Delay of some months in redeposit of part amount is the sole and only reason to disbelieve the assessee. Persons can behave differently even when placed in similar situations. Due regard and latitude to human conduct and behavior has to be given and accepted when we consider validity and truthfulness of an explanation. One should not consider and reject an explanation as concocted and contrived by applying prudent man's behaviour test. Principle of preponderance of probability as a test is to be applied and is sufficient to discharge onus. Probability means likelihood of anything to be true. Probability refers to appearance of truth or likelihood of being realised which any statement or event bears in light of the present evidence (Murray's English Dictionary). Evidence can be oral and cannot be discarded on this ground. It is noticed that ITAT Delhi

Bench in the case of ACIT v. Baldev Raj Charla reported in 18 DTR 413 (Del) has held that where there were sufficient cash withdrawal to cover cash deposits, merely because there was time gap between withdrawal of cash and cash deposits, addition on account of cash deposits cannot be made. It was held as under:-

"23. Ground No. 2 of the cross-objection in the case of Shri B.R. Charla reads as under:

"Whether the learned CIT(A) has erred in law and facts of the circumstances of the case in disallowing a relied of addition made by the AO on account of bank deposits amounting to Rs. 2,58,000 out of total deposits amounting to Rs.23,39,200 ?"

24. It is submitted by learned Authorised Representative of the assessee that learned CIT(A) was not justified in confirming the addition to the extent of Rs.2.58 lakhs out of total deposits amounting to Rs. 23,39,200. It is submitted by him that for serial No. 3 regarding deposit of Rs. 31,000 on 14th June, 1996, amounts were withdrawn from AWI to the extent of Rs. 10,000 on 3rd April, 1996; Rs. 10,000 on 24th April, 1996; Rs. 6,000 on 6th May, 1996; Rs. 5,000 on 21st May, 1996; Rs. 17,000 by withdrawal from SBI, Mayapuri on 17th May, 1996 and hence the addition made by the AO and confirmed by learned CIT(A) is not correct.

25. Regarding deposit of Rs. 1,27,000 on 28th June, 1997, Rs. 22,000 on 18th Sept., 1997, Rs. 26,000 on 3rd Oct., 1997 and Rs. 52,000 on 7th Nov., 1997, it was submitted that for these deposits also, the withdrawals were made by the assessee from AWI and although there is some time gap between these withdrawals and subsequent deposits with the bank, the explanation of the assessee cannot be rejected without pointing out any other user of these withdrawals by the assessee.

26. Learned Departmental Representative of the Revenue supported the orders of the authorities below.

27. We have heard the rival submissions and perused the material available on record and have gone through the orders of the authorities below. We find that this explanation of the assessee was found correct that against these five deposits on dt. 14th June, 1996, Rs. 31,000; 21st July, 1997, Rs. 1,27,000; 18th Sept., 1997, Rs. 22,000; 4th Oct., 1997, Rs. 26,000 and on 7th Nov., 1997, Rs. 52,000 there were sufficient cash withdrawals from AWI and from SBI, Mayapuri, but this addition has been confirmed by learned CIT(A) on the basis that there is time gap between

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the assessee's withdrawals from his own partnership M/s AWI or from his own bank. There is finding recorded by the learned AO or by learned CIT(A) that apart from depositing these cash into bank as explained by the assessee, there was any other user by the assessee of these amounts and in the absence of that, simply because there was a time gap, the explanation of the assessee cannot be rejected and hence the addition confirmed by the learned CIT(A) is not correct. We, therefore, delete the same. This ground of the assessee is allowed.

28. In the result, the cross-objection of the assessee in the case of Shri B.R. Charla is partly allowed whereas the remaining three cross-objections are dismissed.

29. In the combined result, all the four appeals of the Revenue are dismissed along with three cross-objections and one cross-objection in the case of Shri B.R. Charla is partly allowed.”

The Bench noted the decision of the Jurisdictional ITAT Jaipur Bench in the case of Radhey Shyam Agarwal v. ITO in ITA No. 33/JP/2014 wherein it was held that cash withdrawn and retained for 10 months cannot be the basis of making addition of the amount invested from the said amount. The Bench feels that when source of cash deposit is explained and it is evident that it is the own cash of the assessee which has been deposited in bank account, then there is no question of making addition under the unexplained money u/s 69A of the IT Act 1961. Recently ITAT Jodhpur Tribunal under the same facts and circumstances in the case of Krishna Agarwal vs. ITO in ITA No. 53/JODH/2021 dt. Sep 7, 2021 (2021) 63 CCH 0048 Jodh Trib held that:-

“Income from undisclosed sources—Unexplained cash—Assessee derives income from renting of commercial property and other income under head "income from other sources" and filed her return of income—Case of assessee was selected for limited scrutiny to verify "Cash deposits during year—AO treated cash deposits as

undisclosed income of assessee by making addition as unexplained cash deposits in bank account u/s 69A—CIT(A) has confirmed addition made by AO—Held, it is not in dispute that bank account which is in name of assessee has been operated by her and cash has also been deposited by her—Thus, factum of bank account belonging to assessee and deposit of cash by assessee herself is not in dispute and therefore, in such circumstances, Assessing officer is well within his jurisdiction to enquire about source of such deposits and seek explanation from assessee and examine whether explanation so furnished is reasonable, appropriate and satisfactory in facts and circumstances of present case—Assessee has explained that out of earlier year's cash withdrawals from her bank account which were available as cash balance assessee had deposited a sum in her bank account during year under consideration—Assessee in her return of income for A.Y 2016-17 has disclosed sale consideration on sale of plot of land for Rs 1,31,45,200/- and offered capital gains to tax—Sale consideration equivalent to stamp duty value has been duly disclosed by assessee and there is no finding that assessee has received any amount over and above declared sale consideration—Therefore, given that sale consideration has been received directly in assessee's bank account, source of cash withdrawals in earlier two years has been clearly demonstrated by assessee and we see no reason but to accept said explanation which is clearly demonstrated through sale documentation and tax filings by assessee—Cash was withdrawn for purposes of purchase of another property by assessee for her son however, transaction couldn't fructify and as a result, assessee decided to re-deposit amount in bank account—In an ideal situation, such an explanation is expected to be supported by some documentary evidence  however, mere absence of supporting documentation cannot be a reason enough to allege any malafide in explanation so submitted especially where assessee has explained and duly disclosed source of deposits in bank account out of which withdrawals have been made and has thus established necessary linkage and availability of cash in hand—Mere time gap between withdrawals and deposits cannot be a sole basis for rejecting explanation of assessee regarding availability of cash in hand where there is no material that amount so withdrawn has been utilized somewhere else and thus supports case of assessee—Addition so made be deleted—Assessee's appeal allowed.

The Bench further take into consideration the decision of Kamal Deewan in ITA No.135/Jp/2024 dt.22.04.2024 on the same facts and circumstances wherein it has been held:-

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“It is noted that all these observation of the AO shows while making the addition by his own assumption, presumption and guess work and thus the AO failed to state that where the assessee has used the earlier withdrawals made from the bank account when the withdrawals are more than the deposits. There may be various reasons to withdraw cash from bank and it is not necessary that the withdrawals must been utilized, when the AO has failed to bring any documentary evidence that the earlier withdrawals has been used anywhere and the cash deposits were other than the cash withdrawals. It is not the case of trading additions where past history is used for estimations. Hence in this case, the past years withdrawals history cannot be used in this type of cases. It is the settled law that no addition can be made on the basis of assumption, presumption, suspicion and guess work, without any material evidences. Further the facts of the present case are similar to the judgment of Coordinate bench in the case of Krishna Agarwal vs. ITO in ITA No. 53/JODH/2021 dt. Sep 7, 2021 (2021) 63 CCH 0048 Jodh. We also find that the similar case has been followed by the Jodhpur Bench in the case of Smt. Suraj Kanwar Devra vs ITO ITA 50/Jodh/2021 dt. 23.11.2021 dt. 23.11.2021 . “

Further the Bench noticed that the lower authorities have not provided that as to where such withdrawals have been utilized nor there is any evidence on record that the earlier withdrawals have been utilized in any other assets or for any other purpose. The assessee has submitted evidence in the form of bank statements that the cash has been utilized in re-depositing in the bank account and a documentary evidence cannot be discarded on the basis of assumption, presumption, suspicion and guess work. In view of these facts and circumstances of the case, the Bench feels that addition of Rs.9,70,000/- confirmed by the Id. CIT(A) is directed to be deleted. Hence, the appeal of the assessee is allowed.

3.1 As regards the appeal of the assessee for the assessment year 2016-17, wherein it is noticed that the Id. CIT(A) has dismissed the appeal of the assessee by observing as under:-

“6. DECISION

The first two grounds relate to the addition of Rs 9,00,000 as income from undisclosed sources.

The fact remains that during the assessment proceedings, the AO observed that the appellant had deposited cash of Rs. 1,32,00,000 in the bank account held with ICICI Bank. On being asked by the AO to explain the source of cash deposits of Rs. 1,32,00,000 alongwith supporting documentary evidences, the appellant submitted that he had on various occasions deposited cash in his savings bank account in out of opening cash in hand and out of the cash withdrawals. However, the A.O found the explanation of the appellant as not acceptable. The assessee had stated that withdrawals from banks were not utilized and were kept as cash in hand and redeposited again. The Assessing Officer after perusing the bank statement was not impressed with the explanations of the appellant that the cash deposited in his aforesaid bank account was sourced from the cash withdrawals preceding the same and accordingly rejected the contention of the appellant and made an addition of Rs 9,00,000/- working out the peak credit in A/c no 675201500036 as the income of the appellant from undisclosed sources.

The AO had also observed that the appellant had not explained the source of cash deposit and necessity of withdrawal. During appellate proceedings, the appellant reiterated the same submissions. The appellant further stated that the appellant has withdrawn and deposited the money in order to facilitate purchase of immovable property. The submissions of the appellant are considered and not acceptable as to purchase a property one need not pay cash. Further he need not withdraw

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and deposit the money thorough out the year. The explanation of the appellant for cash deposit is not acceptable

Thus, it is a fact that the credit was treated as unexplained by the AO because source of money has not been established to be believable. The burden of proof was on the appellant to prove the claim made by him in his return of income. The AO has no material as to how the appellant has earned income and therefore the appellant and the appellant only has to furnish material to prove his case that the income is from business. Apparently, if the appellant does not furnish any such material, the appellant cannot be discharged of his burden of proving it. Further, I find that the explanation of the appellant was not found fully acceptable in the appellate proceedings as well. However as there has been cash withdrawals and deposits through out the year the AO's working of peak credit cannot be faulted. Hence, the addition is confirmed. This ground is dismissed.

The next ground relates to charging of interest u/s 234A, 234B and 234C. Levy of interest is consequential and mandatory. Hence, this ground is dismissed.

3.2 The Bench in the case of the assessee observed that the issue raised in the appeal of the assessee for the assessment year 2011-12 is similar to the case of the assessee for the assessment year 2016-17. Hence, the decision taken by the Bench in the case of the assessee for the assessment year 2011-12 shall apply mutatis mutandis for the assessment year 2016-17. Thus the appeal of the assessee is allowed.

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4.0 In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 10 /07/2024.

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 10 /07/2024

*Mishra

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

1. The Appellant- Shri Satish Chandra Gupta, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 2 (4), 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. 509 & 510/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar