

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 620/JP/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Raju Jodhani S/o Sh. Shanker Lal Jodhani 108, R. K. Puram Colony, Foy Sagar Road, Ajmer	बनाम Vs.	Income Tax Officer, Ward 1(2), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AMQPJ 2290 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Satish Shivnani, CA
राजस्व की ओर से / Revenue by : Smt. Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 04/07/2024
उद्घोषणा की तारीख / Date of Pronouncement: 22/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 28/06/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2011-12 which in turn arise from the order dated 21.12.2018 passed under section 143(3) r.w.s. 147 of the Income Tax Act, by ITO, Ward 1(2), Ajmer.

2. At the outset of the hearing the bench noted that there is a delay of 43 days in bringing the present appeal. The assessee vide its application filed for condonation delay contended that the assessee has sufficient reasonable cause in bringing the present appeal which is delayed by 43 days only. The Id. AR of the assessee repeated the contentions / reasons advanced by the assessee in his application for condonation of delay which reads as under ;

AFFIDAVIT


I Raju Jodhani son of Mr. Shankarlal Jodhani, resident of Ajmer, hereby declare that :-

I am a senior citizen and cardiac Patient and living alone. Although I am a business man but not much literate then too I have furnished submission, and made compliances with regards to directions of the Honourable commissioner appeal in due time.

2. I have neither received any intimation nor any appeal order after 28/06/2023 therefore I have furnished grievances on 29/06/2023. Copy is enclosed and it has been resolved on 26/07/2023 (Almost one month later). Further The ITO ward 2(2) Ajmer dated 26/07/2023 has communicated the resolution wide dated 25/07/2023. It was available on portal on 30/07/2023. Then only after numerous requests and grievances submitted on the Income tax portal, the appeal order was made available to me on 30/07/2023. Therefore it is prayed that the order of commissioner appeal was served upon on 30/07/2023.

3. Accordingly kindly allow me to furnish appeal before the Honourable Income Tax Appellate Tribunal. It is humbly requested that the order was served upon appellant on 30/07/2023. Therefore delay in submission of appeal may be deemed 9 days.
4. I am a cardiac patient and not aware of the appeal proceedings therefore it is prayed that delay may be condoned and appeal may be accepted before your honour with your mercy petition before your honour.
5. Further Your honourable sir it is prayed before your honour that please consider the facts and circumstances. Therefore we request with folded hands to your honour that on our part the appeal is submitted as the CIT(A) order appeared on the portal only after the resolution of the grievances was communicated by ITO ward 2(2) Ajmer. The Copy is enclosed.
6. It is prayed before your honourable sir that the order of commissioner appeal is served upon assessee as it is prayed in the above para. Please consider the facts and circumstances of the case. Please appeal paper may be accepted. Further it is requested that delay condonation application is submitted before your honour. Please grant the permission and accept the appeal papers.




Raju Jodhani
(Deponent)

2.1 Per contra, the Id. DR did not raised specific objection, considering the fact that the assessee is senior citizen as well as having the health

issues.

2.2 We have heard both the parties and perused the materials available on record. The Bench Noted that the present appeal is delayed by 43 days. The assessee in the condonation petition stated that he is senior citizen and has health issue too. He lives alone. He also contended that though the order under challenge is dated 28.06.2023 but was served upon the assessee on 30.07.2023 and if that date is considered the period of delay is only 9 days. In the light of these facts and considering the various judicial precedent where in the courts has considered the explanation prevented the assessee and thereby ignored the delay on account of the technicality of the reasons. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk. Based on these observations the delay of 43 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause and the appeal is considered to be decided based on the merits of the cash.

3. In this appeal, the assessee has raised following grounds: -

"It is humbly requested to your honour that the grounds of appeal are as follows:

1) The notice u/s 148 was issued only on the ground that the property under consideration was overvalued by the Collector stamps, Ajmer.

2) The matter of cash deposited in the bank account was not mentioned at the time of issuance of the notice u/s 148 of the Income tax act 1961.

3) The Learned AO had made the ex parte decision in respect of the cash deposited in the bank account, without granting opportunity of hearing to the assessee.

4) The Learned AO had made addition of cash deposited in the bank account, due to the ITR was not filed by the assessee.

5) It is humbly requested that as per the Income tax Act 1961, ITR is mandatory to be filed only in the cases where the Income of the assessee was above the maximum exemption limit. It is requested humbly that the assessee had explained during the proceedings before the AO and the Honourable Commissioner (APPEALS), that the cash deposited was out of the past accumulated savings of many years and the assessee had started earning from the age of early 18 years.

6) It is humbly requested that the Income tax Act 1961 also does not bind everyone to file the Income tax returns. If there is any taxable income during the year under consideration, which is above the maximum exemption limit, then only the assessee is bound to file the ITR. It is humbly requested that the AO had not granted any opportunity to the assessee before making any addition, in respect of cash deposited in the Bank and not granted the natural justice.

7) It is humbly requested to your honour that, merely on the basis, that the ITR is not filed cannot be justified in concluding that the assessee had no income. There are many persons who have below taxable income and therefore they don't file the ITR. It does not mean that the person has no income. The Persons below taxable limit does not file the ITRs, but they do have income which is below taxable.

8) In the matter of 115 ITR 524(SC) "Brij Bhushan Lal PradumanKumar vs. CIT (1978)

Held "The authority making a best judgement assessment must make an honest and fair estimate of the income of the assessee and through arbitrariness cannot be avoided in such an estimate, the same must not be capricious but should have a reasonable nexus to the available material and circumstances of the

case."

9) *It is further requested humbly that the assessee had replied to the Commissioner appeals from time to time and on 29th June 2023 also and the commissioner appeals Order is dated 28th June 2023. Besides that we had made many requests also regarding to the issuance of the order but the Order of commissioner appeals was not made available on Income tax Portal. Therefore we had to make many requests on the grievance section of Income tax Portal. Ultimately after many requests we could hardly have the order of commissioner appeals on Income tax portal.*

10) *It is prayed before your honour that beyond the facts and the appeal authority has not considered the submission of assessee and the commissioner appeal has sustained the addition of Rs.440000/- which was made addition by assessing officer.*

Please consider the facts and circumstances and allow the relief.

The grounds may be added, modified, crave/add during the appeal proceedings, etc."

4. Succinctly, the fact as culled out from the records is that the assessee has sold a residential land with boundary wall situated at village Makarwali, Tehsil & District Ajmer for a consideration of Rs. 15,00,000/- on 01.11.2010 and the DLC value of the same was taken by the Sub-Registrar-2, Ajmer for an amount of Rs. 22,69,350/-. However, the Collector (Stamp), Circle-Ajmer vide his order dated 12.06.2012, has enhanced the DLC value of the above immovable property from Rs. 22,69,350/- to Rs. 38,90,830/-. On verification it was noticed that the assessee has not filed his return of income for the year under consideration. Accordingly, notice u/s 148 of the IT. Act, 1961 was issued on 23.03.2018 after taking appropriate approval from competent authority.

The above notice was sent through speed post & which was duly served upon the assessee. Due to change of incumbent, notice u/s 142(1) was issued on 19/07/2018. In response to notice u/s 148, the assessee filed electronically return on 17/08/2018 declaring total income of Rs. 1,50,760/- and he has requested the Id. AO to provide reasons for reopening of his case. Accordingly the reasons recorded u/s 147/148 was also provided through e-mail on 14.09.2018. Notice u/s 142(1) & 143(2) along with query letter was issued online on 11/10/2018.

4.1 The assessee was asked to furnish the documentary evidence in respect of cost and value taken for sale consideration. The assessee has not furnished any evidence in respect of cost of construction. The assessee is also intimated that the collector stamp has enhanced the value of the property for stamp purpose at Rs. 39,18,580/-. The matter was also referred to the DVO for valuation of the aforesaid property and also cost/construction. The DVO vide his report No. 395 dated 10.12.2018 decided the fair market value of the property for financial year 2010-11 at Rs. 49,65,200/-. As per provision of section 50-C(3) vide letter dated 14.12.2018 the assessee was asked as to why the sale consideration may

not be taken at Rs. 39,18,580/- as enhanced by the Collector Stamp, Ajmer.

4.2 The assessee filed the reply on 18.12.2018 contending that cost of land taken by AVO is unrealistic and infeasible. However, the Id. AO taken the value at Rs. 39,18,580/- and accordingly added a sum of Rs. 16,49,230/- as long term capital gain chargeable to tax.

4.3 During the year under consideration a sum of Rs. 4,40,000/- deposited in cash against which the assessee was asked to justify the source of cash deposited into the bank account. The assessee submitted that the said cash is sourced from earlier withdrawal and savings. The explanation given by the assessee was considered but acceptable as the same is not supported by any evidence. Thus, the cash deposited by the assessee was added as concealed income of the assessee.

4.4 Interest income of Rs. 4,210/- was earned on the saving bank account of the assessee with HDFC bank. As the said income was not shown by the assessee in the ITR the same was added as concealed income of the assessee.

Based on the above observation the income of the assessee was determined at Rs. 22,24,200/- as against the returned income of Rs. 1,50,760/-.

5. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“8. Decision

I have carefully considered the submissions made by the appellant, the facts on record, the AO's remand report and the applicable law in this regard.

On perusal of the grounds of appeal filed vide Form 35, it is noted that the grounds are not clearly and succinctly worded and not numbers in a comprehensible manner. Hence for a better understanding and appreciation of the issues involved, the grounds are re-framed as under:

Ground 1: Against the cost of acquisition and improvement and valuation of the property transferred during the relevant A. Y by the DVO

Ground 2: Against the addition of Rs. 4,40,000/- as unexplained cash deposit:

Ground 3: That reasons recorded u/s 147 are not valid, as it is recorded from borrowed information.

In the course of appellate proceedings the appellant filed revised/additional grounds vide submission dated 16.06.2023 as under:

"It is humbly requested, Before your honour, that in the Grounds of Appeal previously the assessing officer has taken the value Rs 3890830/- which was ascertained by the Collector (Stamp), Circle-Ajmer vide his order dated 12.06.2012, the enhanced DLC value of property was Rs.2269350/-. The assessee has preferred the Appeal before the Honourable Tax Board Rajasthan, Ajmer and the Honourable Rajasthan Tax Board has sustained value of Rs. 2269350/- which was valued by the Registration department at the time of registration of the sale deed (copies is enclosed). This is the

modified Grounds of Appeal before your honour, during the Appeal period and it is prayed humbly to allow the relief. This value of Rs.2269350/- has also been discussed by the assessing officer in the body of the assessment order at Page.2.

Thus as a result of the order of Honourable Rajasthan Tax Board, Ajmer, the basis of issuance of notice u/s 148 ceases to exist. Therefore all the proceedings done u/s 148 becomes invalid. Therefore it is humbly prayed to your honour that as the grounds of issuance of notice u/s 148 becomes null and void. Therefore it is humbly prayed to your honour to kindly quash the demand raised.

It is humbly requested to your honour, to kindly consider the modified grounds of appeal before your honour, in the Form No.35 dated 23/01/2019.

As the above revised/additional grounds are directly pertinent to the issues being agitated, and as I am satisfied that these are bona fide grounds which could not have been raised earlier for the reason that the order of Honourable Rajasthan Tax Board, Ajmer, was received subsequent to filing of appeal, the revised/additional grounds are admitted and considered for adjudication as under:

Ground 4: As a result of the order of Honourable Rajasthan Tax Board, Ajmer, the basis of issuance of notice u/s 148 ceases to exist and all the proceedings u/s 148 becomes invalid and the demand raised may be quashed.

The reframed grounds of appeal are adjudicated as under:

Vide Ground of appeal No. 1 the appellant contends that the DVO has erred in valuating the property which was transferred during the relevant A.Y and in respect of which capital gains was computed at Rs. 1799994 by the A.O. However, it is pertinent to note that as recorded in the assessment order, in assessing the capital gains, the sale consideration was considered applying the provisions of section 50C at Rs.39,18,580/-i.e the value decided by the Collector Stamp, Ajmer. Further the cost of construction claimed by the assessee was accepted, being lower than the cost of construction as per the DVO. Hence, as the Cost of acquisition and improvement was taken as claimed by the assessee and not according to DVO's valuation, the above ground of appeal is not maintainable and is dismissed.

Grounds of appeal No.3 & 4 vide which the appellant is questioning the validity of the proceedings u/s 147 are inter-related and hence taken up together for adjudication.

The appellant has contended vide Ground 3 that the reasons recorded u/s 147 are not valid, as it is recorded from the borrowed information and has relied

on the judicial decisions in the case of *Nirmala Agarwal vs. ACIT (2018) 64 ITR (Tribunal) 658 (Jaipur)* and *BirBahadur Singh Sijwali vs. ITO, Ward-1. Co. 366 (Delhi-Trib)*.

In the instant case, the assessee had sold land situated at Village Makarwali, Tehsil & District Ajmer for a consideration of Rs. 15,00,000/- on 01-11-2010 and the DLC value of the same was taken by the Sub-Registrar-2, Ajmer at Rs.22,69,350/-. However, the Collector (Stamp), Circle-Ajmer vide his order dated 12.06.2012, enhanced the DLC value of the above immovable property from Rs.22,69,350/- to Rs.38,90,830/-. As the assessee had not filed his return of income for the year under consideration, notice U/s 148 of the I.T. Act, 1961 was issued on 23-03-2018. It is pertinent to note that despite having transferred immovable property which resulted in capital gains the assessee did not file his return of income u/s 139. As no return had been filed by the assessee, and as there was no response to the enquiry letter sent by the A.O, asking to explain the above transaction, the A.O had reason to believe that income had escaped assessment.

In the case of *Nirmala Agarwal vs. ACIT (2018) 64 ITR (Tribunal) 658 (Jaipur)* relied upon by the assessee, the re-opening was on the basis of statement recorded by investigation wing and cross examination was not provided; whereas the case *Bir Bahadur Singh Sijwali vs. ITO, Ward-1, Haldwani* was a case where cash deposits were found in the assessee's bank account, and the Tribunal observed that the reasons recorded for reopening the assessment did not make out a case that the assessee was engaged in some business and the income from such a business had not been returned by the assessee. The instant case however is a case of transfer of Immovable property where no return of income was filed, and the information based on which the case was re-opened was not some third party statement but the order of Collector (Stamp), Circle-Ajmer enhancing the DLC value of the above immovable property. This is an order passed by a judicial authority and thus has legal sanctity which can only be challenged by due judicial process. Hence, I find no merit in the appellant's contention that the proceedings u/s 147 are not valid as being based on borrowed information.

Further, it has been submitted the assessee went in appeal against the order of Collector (Stamp), Circle-Ajmer enhancing the DLC value of the above immovable property. The assessee submitted that the Honourable Tax Board, Rajasthan, Almer decided in his favour and sustained the value of the property at DLC rate only i.e. Rs.22,69,350 and the value of Rs 38,90,830 as confirmed by Collector stamps was rejected. A copy of the order of the Tax Board was submitted, and it is seen that vide above order the value of the property sold by the assessee was confirmed at DLC rate i.e. Rs. 22,69,350/-. However, it is also pertinent to note that at the time of initiation of proceedings u/s 147 the prevailing value of the property was the enhanced value of Rs. 38,90,830 as per the order of the Collector stamps, Circle- Ajmer. The basis of issuance of notice u/s 148

was valid at the time of issue of notice and completion of proceedings u/s 147. It is only due to further appeal filed and subsequent adjudication of the issue by the higher authority that the valuation of the property has been reverted/revised. Hence, this post facto decision does not alter the validity of the notice u/s 148 and the resultant proceedings. However, the A.O is directed to pass necessary orders to rectify the computation of long term capital gains in the hands of the assessee taking into account the revised/reverted valuation of the immovable property at Rs. 22,69,350/- by the order of the Honourable Tax Board Rajasthan, Ajmer dated 12.02.2021, and the demand raised on this account may be reduced accordingly. This ground is treated as partly allowed.

Ground No. 2 is against the addition of Rs. 4,40,000/- as unexplained cash deposit

During assessment proceedings, the A.O on perusal of bank statement of the assessee's account with HDFC Bank, Ajmer, noted that the assessee had deposited cash totaling Rs.4,40,000/- during the financial year 2010-11. The assessee submitted that the cash was deposited out of past saving and out of withdrawals from Bank. The A.O noted that the assessee had not shown any evidence that after withdrawing he had deposited the same in bank account. Further, as the assessee had also not filed any return of income in earlier years, the plea of past saving was found not acceptable and hence, the cash deposit of Rs.4,40,000/- was treated as found unexplained money. In remand proceedings also, the assessee was unable to explain the above cash deposits.

In the present appellate proceedings, it was submitted that the assessee was around 50 years old in F.Y 2010-11 and belonging to Sindhi Community, and having earning from an early age 18 years and thus he had enough cash liquidity out of which he had deposited cash in the bank account. It was further submitted that he had made withdrawals from his account with State Bank of India which was deposited in his HDFC account. It was further stated during VC hearing that the assessee had been earning some income from poultry business but as the same was below taxable threshold therefore he had not filed income tax return for the A.Y. 2011-12 or for earlier years.

Having duly considered the assessee's submissions, and the facts on record, it is noted that the claim of the sources for the cash deposit are not authenticated in any way other than by self serving statements. In the absence of any returns filed there is no evidence to support the claim of business income earned in preceding years or even in the relevant year. The claim of withdrawal from one account and re-deposit into another account cannot be accepted as explanation for the source of the cash deposit in a case where no returns are filed and there is no evidence to prove that the assessee had earned such income as claimed. It is also relevant to note that in the account with SBI there are again cash deposits on various occasions. Unexplained cash deposits in one account cannot be taken to be an acceptable source for cash deposits in the other account. This being the case, the

addition made by the A.O of Rs. 4,40,000/- as unexplained cash deposit is upheld and appellant's ground is dismissed.

9. Accordingly, in the result, the appeal filed by the appellant is partly allowed.”

6. Feeling dissatisfied with the order of Id. CIT(A)/NFAC, sustaining the addition of Rs. 4,40,000/- being the amount of cash deposited by the assessee into the bank account. To support the various grounds so raised by the Id. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below.

“It is humbly prayed before your honour, that in the body of the assessment order for A.Y. 2011-12 , the A.O. has made addition of Rs. 4,40,000/- on account of cash deposited in HDFC Bank, treating as unexplained cash.

It is prayed that without providing proper opportunity of hearing and before rejecting the submission of assessee, the opportunity of hearing was not granted and the AO has made addition of Rs.4,40,000/- as cash deposit in bank and during the assessment proceedings the AO has not discussed and not asked assessee the reason for not filing Income Tax Return in the previous years, neither this question was asked from assessee that why not this addition may be made. Thus opportunity of hearing and explanation for non filing of the ITRs in the previous years , was not granted by the assessing officer. The grounds of appeal was also submitted before the Honourable Commissioner of Income Tax(Appeals), Regarding addition of Rs. 4,40,000/- the assessee is 49 years old in the year under consideration , who belongs to Sindhi Community, these are the earning from the early age and he has enough cash liquidity out of it, he has deposited cash in bank account. He has below taxable income, therefore he has not filed income tax return for the A.Y. 2011-12.

It is further prayed that the Honourable Commissioner of Income Tax(Appeals) has upheld the addition of Rs. 4,40,000/- which is made by the assessing officer. It is prayed before your honour that assessee is above 50 years old person and by nature of Sindhi Community they are doing any business to meet out the expenses for household and keep cash with him for the business uncertainty and unseen expenses in the family and in the social responsibility etc, he has

accumulated enough cash of Rs. 8,30,969/- before the financial year 2010-11 and he has below taxable income therefore he was not required to furnish income tax return as per the section 139(1) of the Income tax Act 1961.

Further it is prayed that Shri Raju Jodhani with his wife Seema Jodhani has joint account in the State bank of India ,Account no.: 10158211236 and from this statement it is self explained that during the year the assessee has withdrawn the cash . The Details of the cash withdrawal from the joint account with wife Seema are as follows :

Date	Amount withdrawn
13/08/2010	125000
25/02/2011	160000
02/03/2011	300000

Thus In the HDFC Bank account No.: 02021930004193, amount of Rs.4,40,000/- (Deposited Rs. 200000 dated 20/12/2010 , Rs. 140000 dated 12/03/2010 and Rs. 100000 , dated 24/03/2011) is from the sources of old cash savings and withdrawals from the joint account which is mentioned in the SBI and evident from the bank statement enclosed and abovementioned information.

Therefore it is prayed that the sources for cash deposited are submitted before your honour and it is prayed that if the assessee has below taxable income it is not mandatory for the assessee to file the Income Tax return every year.

The notice issued u/s 147/148 was on the ground of property sold during the year , the matter of cash deposit was no where mentioned or raised in the above said notice issued u/s 148 . It is prayed that Commissioner Of Income Tax (Appeals) has allowed relief in respect of the ground on which addition were made in the assessment order and in the reason of notice issued u/s 148 , grounds of cash deposited in bank , is not mentioned in the body of the assessment order. Therefore it is requested to consider the facts and circumstances. Please delete the additions made by the concerning officer.

It is humbly requested that I Am BP patient and have cardiac problem and I have viral fever. Therefore please adjourn the case for 30 days and oblige.

Honourable Sir, It is humbly requested before your honour that opportunity of hearing may be granted , before passing order by your good self . It is further prayed that if any information is required it may be submitted separately. I will be grateful to your honour.”

7. In support of the contention so raised in the written submission reliance was placed on the bank statement of HDFC Bank, SBI Bank and affidavit of the assessee regarding the cash deposited into the bank account.

8. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. AO and Id. CIT(A). She also submitted that the assessee has not filed any ITR earlier and has filed the ITR only after 148 issued in the case of the assessee. The Id. DR also relied upon the following case laws to support the fact that when the proceeding u/s. 148 is undertaken the addition can also be made related to other grounds / issues;

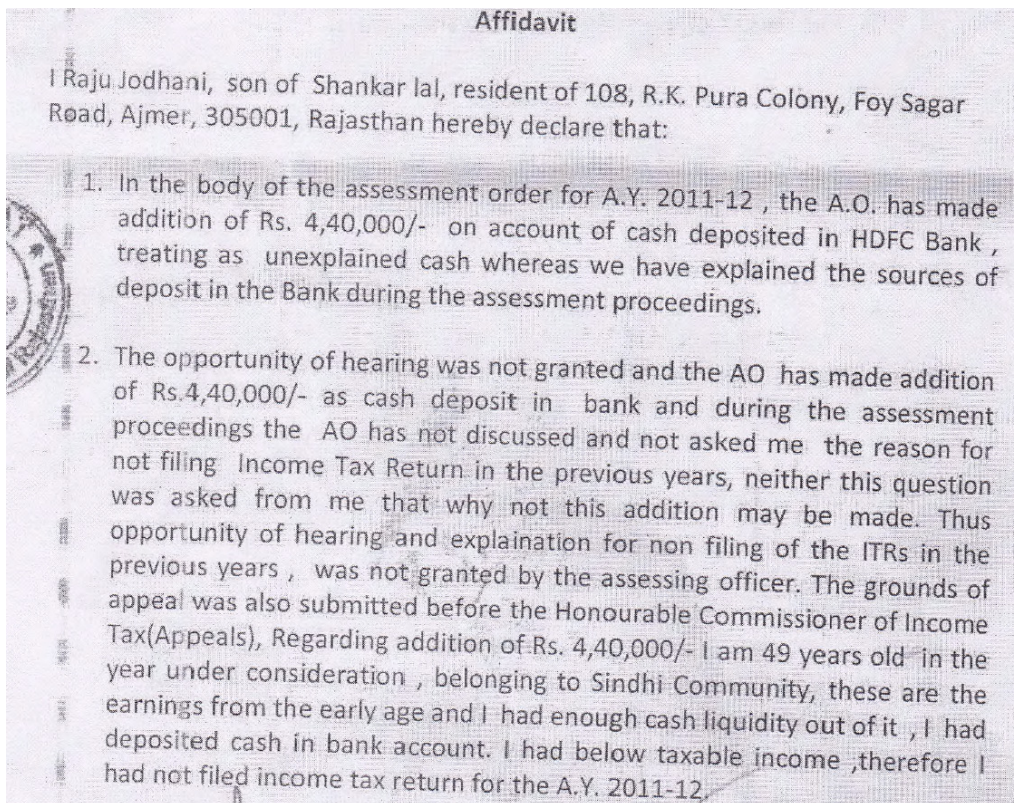
S. No.	Particulars	Page no.
1	[2015] 60 taxmann.com 333 (Karnataka) High Court of Karnataka N Govindaraju v. Income-tax officer, Ward-8(2), Bangalore	1-18
2	[2012] 25 taxmann.com 124 (Punjab & Haryana) High Court of Punjab and Haryana Majinder Singh Kang vs. Commissioner of Income-tax	19-22
3	[2014] 52 taxmann.com 51 (Punjab & Haryana) High Court of Punjab & Haryana Commissioner of Income tax vs. Mehak Finvest (P.) Ltd.,	23-26

9. We have heard the rival contentions and perused the material placed on record. The only issue under challenge in this case is the source of cash

deposited by the assessee is to be considered as explained or unexplained. The brief facts as emerges on the issue is that during the assessment proceeding Id. AO noted that the assessee has deposited a sum of Rs. 4,40,000/- into the bank account of the assessee. The assessee was asked upon to explain the source of cash deposited into the bank account. The assessee explained that source of the deposit of cash is out of earlier withdrawal and savings. The Id. AO noted that sale consideration in respect of the sale of property was received by cheque and the assessee did not support the contention that after withdrawing the cash the same was deposited into the bank account. Accordingly, the cash deposited by the assessee was considered as undisclosed income of the assessee. Before the Id. CIT(A) he noted that the claim of the sources for the cash deposit are not authenticated in any way other than by self serving statement and no evidence was filed therefore, the claim of the assessee that he has made withdrawal from one account and has deposited into the other account cannot be accepted and thus he sustained the addition.

9.1 The Id. AR of the assessee while arguing the case of the assessee drawn our attention that as in the case of the assessee the assessment was re-opened to verify the capital gain which was done and for that the assessee has received the relief from the order of the Id. CIT(A). As regards

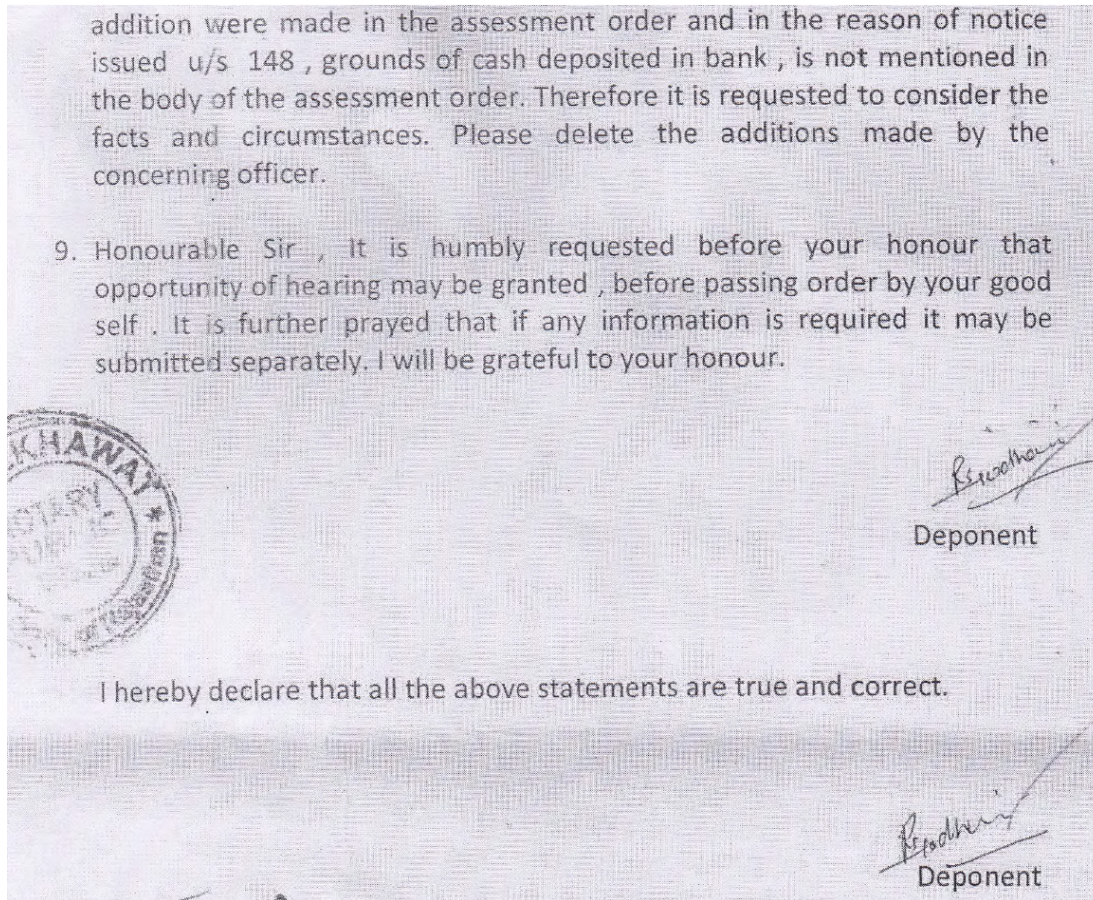
the addition of Rs. 4,40,000/- being the amount of deposit of cash by the assessee submitted the details of the source of cash deposit and therefore, before making the addition of Rs. 4,40,000/- the assessee was not given any show cause notice to justify the source and therefore, Id. AR submitted that the order of the Id. AO and that of the Id. CIT(A) violated the principles of natural justice. As the assessee was not allowed to support the claim the assessee has filed a detailed affidavit in support of deposit of cash into the bank account. The content of the affidavit filed by the assessee reads as under:



3. The Honourable Commissioner of Income Tax(Appeals) has upheld the addition of Rs. 4,40,000/- which is made by the assessing officer.
4. I am above 50 years old person and by nature of Sindhi Community we are doing any business to meet out the expenses for household and keep cash with me for the business uncertainty and unseen expenses in the family, and in the social responsibility etc, I had accumulated enough cash of Rs. 8,30,969/- before the financial year 2010-11 and I had below taxable income therefore I was not required to furnish income tax return as per the section 139(1) of the Income tax Act 1961 .
5. I with my wife Seema Jodhani have joint account in the State bank of India, Account no.: 10158211236 and from this statement it is self explained that during the year the assessee has withdrawn the cash . The Details of the cash withdrawal from the joint account with my wife Seema are as follows :

Date	Amount withdrawn
13/08/2010	125000
25/02/2011	160000
02/03/2011	300000

6. Thus In the HDFC Bank account No.: 02021930004193, amount of Rs.4,40,000/- (Deposited Rs. 200000 dated 20/12/2010 , Rs. 140000 dated 12/03/2010 and Rs. 100000 , dated 24/03/2011) is from the sources of old cash savings and withdrawals from the joint account which is mentioned in the SBI and evident from the bank statement enclosed and above mentioned information .
7. The sources for cash deposited are submitted before your honour and it is prayed that if the assessee has below taxable income it is not mandatory for the assessee to file the Income Tax return every year.
8. The notice issued u/s 147/148 was on the ground of property sold during the year , the matter of cash deposit was no where mentioned or raised in the above said notice issued u/s 148 . It is prayed that Commissioner Of Income Tax (Appeals) has allowed relief in respect of the ground on which



As it is evident that the assessee was not given any show cause notice before making the addition. The assessee already contended before the lower authority that the source of deposit of cash into the bank account was from the withdrawal made from the joint account maintained by the assessee with her wife Ms. Seema Jodhani. The assessee also filed a bank statement to support the withdrawal of cash in addition to the affidavit. It is also evident from the bank statement that the assessee has withdrawn a sum of Rs. 5,85,000/- and out of that amount he has deposited a sum of

Rs. 4,40,000/- . This explanation furnished by the assessee cannot be brushed a set because the assessee has not filed any ITR for the immediately previous year and even for that the assessee has submitted that withdrawal was made from the joint and account with his wife and the assessee has income below the maximum amount not chargeable to tax and therefore, he was not under obligation to file ITR. The bench noted the overall facets of the dispute but when all the aspect of the matter has been clarified by filling an affidavit and the same has not been controverted by the Id. AO through the Id. DR we find no reason to sustain the addition of Rs. 4,40,000/- in the hands of the assessee. Since all the grounds are surrounded for an addition of Rs. 4,40,000/- we need to deal with all the grounds of the assessee separately and based on this observation the appeal of the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 22/07/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/07/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Raju Jodhani, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(2), Ajmer
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. 620/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar