

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. 345/JP/2024
निर्धारण वर्ष/Assessment Year : 2010-11

Smt. Permila Devi Yadav Bhoj Ka Bair Hajipur Bansaiur, Alwar	बनाम Vs.	The ITO Ward-Behror Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABJPY 1796 K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से/ Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख/Date of Hearing : 06/05/2024
उद्घोषणा की तारीख/Date of Pronouncement: 02/08/2024

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. Addl. CIT(A)-2, Mumbai dated 16-02-2024 for the assessment year 2010-11 raising therein solitary ground of appeal as under:-

“The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs.12.00 lacs made by AO by treating the cash deposit in the bank account as unexplained.”

2.1 As per the facts of the present case, the AO made additions of Rs. 12 lacs as the Assessee could not substantiate the deposit of the said amount in her saving bank account. On appeal the Id. CIT (A) also upheld the additions made by the AO.

2.2 Now before me, the assessee raised the same arguments as were raised by her before the lower authorities. It was submitted that the deposit of cash of Rs. 12 lakh made on 30th January 2010 in her bank account was deposited out of cash withdrawals from her own bank account between the month of July 2008 to December 2009. In this regard the date wise cash withdrawal from the bank account has also been filed before me which is appearing at page number 17 and 26 of the order of Id. CIT (A) appeal and according to the appellant the withdrawal of the cash amount from her own bank account was the source for the deposit of cash again in her bank account where as on the contrary Id. DR appearing on behalf of the revenue refuted the claim of the assessee and relied upon the orders passed by the revenue authorities

2.3 After having gone through the records and also after hearing the parties at length and while considering the judgements sighted by both the parties and after perusal of the orders passed by the revenue authorities I am of the view that the revenue authorities have nowhere refuted the fact that the assessee had not withdrawn the said amount from her own bank account but rather denied the

relief to the assessee only on the ground that it was highly improbable that the withdrawals made by the assessee since the year 2008 to 2009 was deposited in 2010. However I am of the view that it is the settled position of law that merely because there was time gap between withdrawal of cash and cash deposit, explanation of the assessee cannot be rejected when there is no finding recorded by the lower authorities that there was any other user by the assessee of the cash withdrawn. Moreover if the revenue wants to disbelieve the plea of the assessee then in that eventuality it must show that the previous withdrawals of cash would not have been available with the assessee on the date of deposit of cash in the bank account. But in this case, the revenue authorities have proceeded purely on the assumption and surmises that cash would not be lying idle with the assessee for such a long time, whereas the Assessee has satisfactorily explained the source of funds out of which deposit of cash was made in the bank account. Apart from this the cash withdrawal has not been doubted by the lower authorities and nothing has been brought on record suggesting that the cash withdrawal from the bank of the assessee has been incurred either as revenue expenses or capital expenses therefore in the absence of any documentary evidence I can safely presume that the cash withdrawals from the bank was available with the assessee which was subsequently deposited with the bank therefore the same cannot be treated as undisclosed income of the

assessee on this proposition. I also relay upon the decision of the coordinate benches of ITAT in the case of :-

(1) Vinatha Madhusudan Reddy Vs. ACIT (2018) 54 CCH 0151 Mum) (Trib.) (Case laws compilation PBI 1-5):-

It is seen that the cash deposits in the bank account are preceded by withdrawal from the very same bank account. The cash flow statement filed by the Assessee explaining availability of cash on the various dates of deposit of cash in the bank account has not been disbelieved by the Revenue authorities. They have proceeded on the basis that since there was sufficient time lag between the dates of withdrawal of cash from the bank account and the dates of deposits, the availability of cash cannot be believed. The legal position in this regard is that if the deposit of money in the bank account is preceded by withdrawal of money from the very same bank account then the source of funds is prima facie demonstrated or explained by the Assessee. The Karnataka High Court in the case of SR. Ventakaratnam Vs. CIT (1981) 127 ITR 0807 has held that once the Assessee discloses the source as having come from the withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the Assessee did with that money and cannot chose to disbelieve the plea of the Assessee merely on the surmise that it would not be probable for the Assessee to keep the money unutilized. The ratio laid down in such judgment will apply to the facts of the present case. If the revenue wants to disbelieve the plea of the Assessee then it must show that the previous withdrawal of cash would not have "been available with the Assessee on the date of deposit of cash in the bank account. The AO and CIT(A) have proceeded purely on assumption and surmises that cash would not be lying idle with the Assessee for such a long time. The Assessee has satisfactorily explained the source of funds out of which deposit of cash was made in the bank account. Therefore, addition is deleted

(2). Kamilaben R. Patel Vs. ITO (2019) 71 ITR (Trib)
0048 (Ahd.) (Case laws compilation)

Certain credit entries were reflecting the cash deposit in the bank account of the assessee. But the assessee failed to substantiate his claim for the source of such cash deposit. Therefore, the same was treated as undisclosed income and added to the total income of the assessee. The CIT(A) subsequently confirmed the view taken by the AO. CIT(A) rejected the contention of the assessee that the cash was deposited out of the cash withdrawal from the bank without adducing the cogent reasons. The cash withdrawal has not been doubted by the lower authorities, and nothing has been brought on records suggesting that the cash withdrawn from the bank has been incurred either as revenue expenses or capital expenses. In the absence of any documentary evidence, we can safely presume that the cash withdrawn from the bank was available with the assessee which was subsequently deposited with the bank. Therefore, we cannot treat the same as undisclosed income of the assessee.

(3) ACIT Vs. Baldev Raj Charla & Ors. (2009) 18 DTR 413 (Del.) (Trib.) The Hon'ble ITAT vide Para 27 held as under:-

We find that this explanation of the assessee was found correct that against these five deposits on dt. 14.06.1996, Rs. 31,000; 21.07.1997. Rs.1.27.000; 18.09.1997. Rs. 22,000, 4.10.1997, Rs.26,000 and on 7.11.1997, Rs. 52,000 there were sufficient cash withdrawals from AWI and from SBL Mayopuri, but this addition has been confirmed by learned CIT(A) on the basis that there is time gap between the assessee's withdrawals from his own partnership M/s AWI or from his own bank. There is no 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.

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(4) Neeta Breja Vs. ITO ITA No. 524/Del/2017 order dt. 25.11.2019 (Del.) (Trib) (Case laws compilation PB 14-17).
The Hon'ble Bench at Para 12 of its order held as under:-

12. In the present case also the learned assessing officer or the learned CIT A did not show that above cash was not available in the hands of the assessee or have been spent on any other purposes. Further the coordinate bench in ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi) also held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed."

(4) ITO Vs. Mrs. Deepali Sehgal ITA No.5660/Del/2012 order dt. 05.09.2014 (Delhi) (Trib.) The relevant Para 8 of the order reads as under.-

8. In view of above we noted that the AO, in his remand report could not bring out any fact that the cash withdrawn from Saving Bank Account and partnership overdraft account was used for other purpose anywhere else then, merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount can not be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. The AO rejected the explanation of the assessee on hyper technical basis which is not acceptable. On careful perusal of the decisions relied by the Ld. D.R. we are of the view that the facts of the present case are clearly distinguishable as in the present case the explanation offered by the assessee is reliable and acceptable on the touchstone of the prudence of an ordinary man but merely on the ground that the act of assessee created huge interest liability on partnership firm does not enable revenue authorities to consider the cash withdrawn

and it deposit to same bank account after a substantial gap of time, as unexplained income u/s 694 of the Act. Hence, we reach to a conclusion that the AO made addition without any legal and justified reason which was rightly deleted by the CIT(A). Hence, both the grounds of the assessee are being devoid of merits and dismissed

2.4 I have also gone through the cases referred by the revenue authorities in its order i.e. Roshan the Hatti vs CIT 107 ITR 938 SC. However the contents contained in the said case are not applicable in the facts of the present case because assessee introduced a capital of Rs 3,33,414/- at the start of the business on 30.03.1948 comprising of gold ornaments, stones, bank & cash balances. AO treated only Rs.20,000/- as explained & made addition for balance. CIT(A) considered Rs.1 lac as explained & balance as unexplained. This was affirmed by ITAT/Hon'ble High Court. Hon'ble Apex Court reversed the decision of lower authorities by holding that considering the facts that there is utter improbability amounting almost to impossibility of assessee having earned a large amount of Rs. 2,33,414/- as profit within few months in the disturbed conditions which then prevailed in India was a circumstance which ought to have been taken into account by the Tribunal which it failed to do so. Hence, in view of the above deliberation and facts of the case, the Bench does not concur with the findings of the Id. CIT(A) and directed the AO to delete the addition made by him. Thus the solitary ground of the assessee is allowed.

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

Order pronounced in the open court on 02 /08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02 /08/2024

***Mishra**

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

1. The Appellant- Smt.Permila Devi Yadav, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Behror, Alwar
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. 345/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar