

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.390/Ind/2024
Assessment Year : 2017-18

Vijay Kumar Chopda, Village Talwada Bujurg, Barwani	<u>बनाम/</u> Vs.	Income-tax Officer, Sendhwa,
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AORPC9984J		
Assessee by	Shri Santosh Deshmukh, CA	
Revenue by	Shri Ashish Porwal, Sr. DR.	
Date of Hearing	28.08.2024	
Date of Pronouncement	02.09.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 28.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl./JCIT (A)-1, Kolkata ["CIT(A)"] which in turn arises out of assessment-order dated 18.11.2019 passed by learned ITO, Sendhwa ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee-individual furnished his return of income of AY 2017-18 declaring

a total income of Rs. 2,18,010/- [consisting of interest income] and agricultural income of Rs. 2,29,100/- [Gross agricultural receipts of Rs. 9,19,400 (-) Expenses for agriculture of Rs. 6,90,300]. The case was selected for scrutiny and notices u/s 143(2)/142(1) were issued. During assessment-proceeding, the AO asked the assessee to explain source of cash deposits of Rs. 12,30,000/- made in bank a/cs during demonetization period. In response, the assessee explained four sources, namely (i) Gift of Rs. 2,00,000/- received from father, (ii) cash balance of Rs. 2,30,000/- held by assessee, (iii) Receipt of Rs. 6,00,000/- from sale of agricultural produce and (iv) Recovery of Rs. 2,00,000/- from loans given to friends/relatives. The AO accepted first two sources.

2.1 So far as 3rd source of receipt of Rs. 6,00,000/- from sale of agricultural produce is concerned, the assessee filed copies of Form B-I and B-II for land holdings and Bills of sale of agriculture produce. The AO issued notice u/s 133(6) to one Shri Piyush Gupta, proprietor of M/s Piyush Traders, Barwani Road, Anjad to whom the assessee sold agricultural produce, for verification of bills issued by that party. However, Shri Piyush Gupta did not respond to AO's notice. For this reason, the AO rejected Bills of M/s Piyush Traders submitted by assessee. The AO then estimated/accepted agricultural receipts at Rs. 3,60,000/- according to landholding of assessee and treated excess sale of Rs. 2,40,000/- [Rs.

6,00,000 (-) Rs. 3,60,000/-] as unexplained money u/s 69A and made addition to that extent.

2.2 Then, in relation to the 4th source of receipt of Rs. 2,00,000/- by way of recovery of loans, the assessee submitted complete details of 12 persons to whom loans were given and recovered back in a letter on 20.09.2019. However, the AO suspected assessee's submission as a story by stating that the loans ranged from Rs. 12,500/- to Rs. 19,000/-; that the loans were given during 06.04.2016 to 15.07.2016 and recovered during 04.11.2016 to 07.11.2016 before demonetization, accordingly the AO show-caused assessee. In response to "show-cause notice", the assessee submitted one more reply on 11.11.2019 stating that he had already filed the relevant details and was in the process of submitting further documents. But the AO made an addition of Rs. 2,00,000/- u/s 69A.

2.3 This way, the AO made a total addition of Rs. 4,40,000/- consisting of Rs. 2,40,000/- (+) Rs. 2,00,000/- and determined total income of assessee at Rs. 6,58,010/-. The AO also accepted agricultural income of Rs. 2,29,100/- declared by assessee in return.

2.4 Aggrieved, the assessee carried matter in first-appeal and challenged the additions made by AO but did not get any success. Now, the assessee has approached this Tribunal by way of next appeal.

3. Before us, Ld. AR for assessee made following contentions:

- (i) In so far as the receipt of Rs. 6,00,000/- shown by assessee from sale consideration of agricultural crop, it is submitted that the assessee is basically agriculturist engaged in agricultural activities and located in a small village called 'Talwada Bujurg'. Ld. AR carried us to Page No. 74-77 of Paper-Book where the bills of agricultural crops sold by assessee to M/s Piyush Traders, Barwani Road, Anjad, as filed to AO are placed. Referring to same, Ld. AR demonstrated that there are four bills which contain complete details such as Bill.No., Date, Name and address of M/s Piyush Traders, Name and address of assessee, Item, Quantity, Rate, Value, a clear mention that M/s Piyush Traders made cash payment to assessee, Signature of assessee (as seller) and Signature of person of M/s Piyush Traders (as purchaser). Further, all four Bills also contain 'TIN - 23172202451' which was a 'Registration No. (Tax Payer's Identification No.)' of M/s Piyush Traders under Sales-tax law. Thus, the Bills are very much genuine and there is no single infirmity in the Bills to raise eyebrow to suspect that they were not genuine Bills. Ld. AR also drew us to Page 26 of Paper-Book where a screen shot of online query raised by assessee in "Dealer Search" section of Department of Commercial Taxes, Madhya Pradesh is filed. This screen shot which is a Govt. record, clearly shows that M/s Piyush Traders was a registered dealer under 'Sendhwa Circle' of Sales-tax Department from 25.11.1994 with same "TIN -

23172202451" as mentioned in the Bills. Thus, Ld. AR strongly contended that there was no reason to suspect the Bills submitted by assessee. Ld. AR went further on explaining that the AO has taken an adverse view against assessee only because M/s Piyush Traders did not respond to the notice sent by AO u/s 133(6) but it was a prerogative of M/s Piyush Traders to respond or not to respond to AO's notice, the assessee had no control over M/s Piyush Traders to make it respond to AO's notice. Therefore, Ld. AR contended, the AO was grossly wrong in drawing a conclusion against assessee only on the basis of non-response of notice by M/s Piyush Traders without pointing out a single defect in the Bills. In this regard, Ld. AR placed a strong reliance upon decision of Hon'ble Delhi High Court in ***PCIT Vs. Wel Intertrade (P) Ltd. (2023) 152 taxmann.com 663 (Delhi)*** which is although a case for addition made by AO u/s 68 on account of unexplained loans but in that case, the Hon'ble Court categorically held an important point that once the assessee had filed relevant documents of loan-creditor to AO, the AO cannot draw any conclusion against assessee and make addition merely because the notice issued by AO u/s 133(6) remains unanswered by concerned creditor. As an ancillary submission, Ld. AR also mentioned that the assessee also filed pakka bills of M/s Sai Traders, Anjad for fertilizer, seeds, etc.

purchased by assessee for agriculture, copies at Page 78-80 of Paper-Book to establish the agricultural income.

- (ii) For the receipt of 2,00,000/- shown by assessee from recovery of loans given to friends/relatives, Ld. AR demonstrated that the assessee filed complete details in a tabular format containing names, addresses, loan given, date of loan, amount received and date of receipt in Para 3.1.3 of reply-letter filed to AO on 20.09.2019 in response to notice u/s 142(1), copy of assessee's letter is filed at Page 72-73 of Paper-Book. In the very same para, the assessee also submitted to AO that he was a part of group of friends in which they always give small amounts to each other in case of need and on such transactions, nobody charged interest and that his friends returned loans prior to demonetization but the assessee could not deposit money in his bank a/c due to Diwali festival. While submitting thus, Ld. AR also carried us to some important documents filed in the Paper-Book, namely (i) Page 65-66 of Paper-Book where a "notice u/s 142(1)" dated 07.11.2019 issued by AO fixing the date of hearing on 11.11.2019 is placed, (ii) Page 63-64 of Paper-Book where one more notice titled "Show-cause Notice" of same date 07.11.2019 issued by AO fixing the "Hearing date and Time" as "22.11.2019 – 11:00 AM" is placed and (iii) Page 68-69 of Paper-Book where the "e-proceeding" details downloaded from departmental website is placed, which

contains the details of both of the above notices reflecting 'response due date' of 11.11.2019 for the first notice u/s 142(1) and 22.11.2019 for the second notice titled "Show-Cause Notice". Then, Ld. AR carried us to Page 67 of Paper-Book where an e-filing acknowledgement dated 11.11.2019 is placed in which the assessee filed response to the first notice u/s 142(1) stating that *"..... I have already complied all the requirements/evidences raised under previous notices. Further, I am in the process to reply your recent show-cause notice and will posted in before due date"*. This reply filed by assessee is also acknowledged and re-produced by AO at two places in Para 4 and 6 of assessment-order. By means of these documents, Ld. AR submitted that the assessee originally filed complete details of loans in a letter on 20.09.2019 and thereafter filed a reply on 11.11.2019 in response to the notice u/s 142(1) stating that the details had already been filed and also demanding time from AO for filing further documents. Thereafter, the assessee in fact collected documents from all 12 persons to whom loans were given in the shape of their A/c Confirmations and Aadhar Cards as ID proofs (death-certificate of one deceased), copies of these documents are filed at Page 27-62 of Paper-Book. These documents were ready by assessee for filing before 22.11.2019 i.e. the date fixed by AO in "Show-Cause Notice" but surprisingly, the AO passed assessment-order on 18.11.2019 itself before expiry of response date.

Thereafter, the assessee also collected notarized affidavit of 11 persons (excluding one deceased) and during first-appeal, the assessee filed all evidences to CIT(A) with a letter for consideration of additional evidences in terms of Rule 46A but the CIT(A) also passed order without taking cognizance of assessee's request/evidences merely stating that the assessee has not filed evidences. Ld. AR submitted that the evidences filed by assessee before CIT(A) are already available in Paper-Book at Page 27-62 in which all parties have given details of loans taken/repaid by them from/to assessee and those details are in conformity with the details filed by assessee to AO on 20.09.2019. Further, the aadhar cards of parties (death certificate of one) are also on record. Hence, the assessee's claim of recovery of loans is duly proved by evidences also. Therefore, looking to the small quantum, the addition of Rs. 2,00,000/- must be deleted.

4. Ld. DR for revenue vehemently supported the orders passed by lower-authorities and re-iterated the observations noted by lower-authorities. Ld. DR, however, agreed that the case involves smaller amounts and the Bench may take a view as per its own wisdom.

5. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. The controversy in present case relates to a small addition of Rs. 4,40,000/- made by AO while finalizing assessment.

Basically, the AO show-caused assessee to explain source of a total deposit of Rs. 12,30,000/- made in bank accounts during demonetization period and when the assessee made submission, the AO accepted sources partly and rejected partly. The AO's rejection was to the extent of Rs. 4,40,000/- which resulted in impugned addition. This rejection is with respect to two sources as discussed in foregoing para of this order. The learned Representatives of both sides have made their submissions which we analyse and adjudicate in following terms:

- (i) The assessee declared net agricultural income of Rs. 2,29,100/- [Gross agricultural receipts of Rs. 9,19,400 (-) Expenses for agriculture of Rs. 6,90,300] for the whole financial year 2016-17 relevant to AY 2017-18 under consideration in the return of income. During the course of assessment-proceeding, when the AO asked assessee to explain the source of deposits in bank a/c made during demonetization period, the assessee explained that gross receipts of Rs. 6,00,000/- relatable to agriculture were used for making deposits. The assessee also filed bills of agricultural crops sold to M/s Piyush Traders, Barwani Road, Anjad. Ld. AR has rejected bills of M/s Piyush Traders only for the reason that the notice issued by him u/s 133(6) was not responded by M/s Piyush Traders. But on perusal of copies of bills filed to AO and also placed in Paper-Book, we find that there are four bills which contain complete details such as Bill No., Date, Name

and address of M/s Piyush Traders, Name and address of assessee, Item, Quantity, Rate, Value, a clear mention that M/s Piyush Traders made cash payment to assessee, Signature of assessee (as seller) and Signature of person of M/s Piyush Traders (as purchaser). Further, all four Bills also contain 'TIN - 23172202451' which was a 'Registration No. (Tax Payer's Identification No.)' of M/s Piyush Traders under Sales-tax law. There is also a screen shot taken from "Dealer Search" section of Department of Commercial Taxes, Madhya Pradesh which clearly shows that M/s Piyush Traders was a registered dealer under 'Sendhwa Circle' of Sales-tax Department from 25.11.1994 with same "TIN - 23172202451" as mentioned in the Bills. There is no single defect in any of the bills found or pointed out by AO. When such is the situation, it is not justified on the part of AO to reject assessee's bills merely for the reason that M/s Piyush Traders did not respond to the notice u/s 133(6) issued by AO. The case of assessee is certainly covered by the view taken by Hon'ble Delhi High Court in ***PCIT Vs. Wel Intertrade (P) Ltd. (2023) 152 taxmann.com 663 (Delhi)*** holding that once the assessee had filed relevant documents, the AO cannot draw any conclusion against assessee and make addition merely because the notice issued by AO u/s 133(6) remains unanswered by the noticee. As a matter of fact, we may also take note that the assessee declared net agricultural income of Rs. 2,29,100/-

[Gross agricultural receipts of Rs. 9,19,400 (-) Expenses for agriculture of Rs. 6,90,300] for the whole financial year 2016-17 in the return and the AO has accepted and assessed net agricultural income of Rs. 2,29,100/-. The receipt of Rs. 6,00,000/- shown as source from agriculture for making deposit during demonetization period was also a part of total agricultural receipts of Rs. 9,19,400/- shown by assessee for the financial year 2016-17. Since the AO has accepted net agricultural income of Rs. 2,29,100/- generated by assessee from gross receipts of Rs. 9,19,400/-, the receipt of Rs. 6,00,000/- forming part of overall receipts of Rs. 9,19,400/- is also accepted by assessee. Therefore also, the AO is not justified in adopting a contradictory stand of rejecting the receipt of Rs. 6,00,000/- while assessing the very same receipts as part of gross-receipts of Rs. 9,19,400/- and for that matter net agricultural income of Rs. 2,29,100/- for the whole year.

- (ii) For the receipt of 2,00,000/- shown by assessee from recovery of loans given to friends/relatives, we find that the assessee has filed complete details in a tabular format containing names, addresses, loan given, date of loan, amount received and date of receipt in Para 3.1.3 of reply-letter filed to AO on 20.09.2019 in response to notice u/s 142(1). Further, in the very same para, the assessee also submitted to AO that he was a part of group of friends in which they

always give small amounts to each other in case of need and on such transactions, nobody charged interest and that his friends returned loans prior to demonetization but the assessee could not deposit money in his bank a/c due to Diwali festival. Thus, the assessee filed preliminary details on 20.09.2019. Thereafter, the assessee again filed a reply on 11.11.2019, in response to notice dated 07.11.2019 u/s 142(1), stating that he had already filed details and demanding further time to file more documents. The AO issued show-cause notice dated 07.11.2019 also fixing the hearing on 22.11.2019 but passed assessment-order on 18.11.2019 itself, even prior to the appointed day. Be that as it may, the assessee has filed supporting evidences of all loan given and recovered at Page 27-62 of Paper-Book which are A/c Confirmations, Notarised Affidavits of parties and Aadhar Cards of parties as ID proofs (death certificate in case of one deceased), copies of these documents were also filed to CIT(A). On examination, we find that the parties have given their A/c Confirmations in which details of loans taken from assessee and repayments made to assessee with dates are mentioned which tally with the details submitted by assessee to AO. The same details are also testified by respective parties by way of notarized affidavits (except one person which had already deceased). The id proof of parties in the shape of aadhar cards are also available. The evidences filed by assessee prove the

transactions claimed by assessee. In that view of matter, the addition of Rs. 2,00,000/- made by AO is found not sustainable.

6. In view of above discussions and for the reasons stated therein, we arrive at a conclusion that the addition of Rs. 4,40,000/- [Rs. 2,40,000/- + Rs. 2,00,000/-] made by AO deserves to be deleted. Consequently, the said addition is deleted. The assessee succeeds in this appeal.

7. Resultantly, this appeal is allowed.

Order pronounced in open court on 02.09.2024

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 02.09.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore