

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 92/JP/2017
निर्धारण वर्ष/Assessment Year : 2010-11.

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|-----------------------------------------------------------------------------------------|-------------|-------------------------------------------------|
| Shri Niranjani Lal Saini, Vijay Mandir Road, In front of corner Vitler, Alwar. | बनाम Vs. | The Income Tax Officer, Ward 1(1), Alwar. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACQPS 0719 N | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 09/03/2017
उदघोषणा की तारीख / Date of Pronouncement : 10 /03/2017

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

This appeal by the assessee is directed against the order of Ld. CIT(A), Alwar dated 04.11.2016 pertaining to A.Y. 2010-11. The assessee has raised the following grounds of appeal :-

" 1. The Id. CIT (A) has erred on facts and in law in confirming the addition of Rs. 75,99,501/- by holding that the deposit to the extent of Rs. 75,99,501/- in the bank account of the assessee remains unverified. He has further erred in confirming the addition even when the AO in the remand report has accepted the source of deposit in the bank account out of the sale proceeds of vegetables fruits, etc.

2. The assessee craves to alter, amend and modify any of the grounds of appeal.
3. Necessary cost be allowed to the assessee.

2. The only effective ground is against confirming the addition of Rs. 75,99,501/- by holding that the deposit to the extent of Rs. 75,99,501/- in the bank account of the assessee remained unverified.

3. Briefly stated the facts of the case are that the case of the assessee was reopened and the assessment under section 148 read with section 144 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 8th March, 2016. While framing the assessment, the AO made addition of Rs. 1,07,64,551/- on account of cash deposited in the bank account of the assessee. Aggrieved by this, the assessee preferred an appeal before Id. CIT (A), who after considering the submissions, confirmed the addition to the extent of Rs. 75,99,501/-.

4. Now the assessee is in appeal before this Tribunal.

5. The Id. Counsel for the assessee reiterated the submissions as made in the written brief. He contended that in the remand report so called, the AO had verified all the transactions and the Id. CIT (A) was not justified in not accepting the remand report. He submitted alternatively that the Id. CIT (A) ought to have applied peak credit theory. In support, he has relied on the judgments of Hon'ble Rajasthan High Court rendered in the cases of Sind

Medical Stores vs. CIT (2015) 117 DTR 78 (Raj.), CIT vs. Ishwardass Mutha, 270 ITR 597 (Raj.), judgment of Hon'ble Andhra Pradesh High Court rendered in the case of CIT vs. Purushottam Jhavar (2014) 220 Taxman 74 (AP). The Id. Counsel also placed reliance on the decision of Coordinate Bench of the Tribunal in the case of ITO vs. Mahesh Kumar Jayantilal Vora, 3 SOT 96 (Rajkot) in support of the contention that in the case of unexplained deposit, only peak credits should be taken as by aggregating the deposits, they tend to get taxed twice.

5.1. On the contrary, the Id. D/R opposed the submissions and placed reliance on the judgment of the Hon'ble Punjab & Haryana High Court rendered in the case of Dayal Singh & Sons vs. CIT, 335 ITR 90 (P&H).

5.2. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. We find that in remand report, the AO has stated that the assessee has deposited cash out of sales of vegetables, fruits etc. during the assessment year 2009-10 in bank account. There is no evidence stating party-wise purchases. In the absence of the same, we are unable to accept the contention of the Id. Counsel for the assessee that all the deposits are explained. However, we find that there are both deposits and withdrawals from the bank account. Under these facts, respectfully following the judgment of the Hon'ble Rajasthan High Court in the case of Sind Medical Stores vs. CIT (supra), we direct the AO to work out the

peak credit and make addition on the peak credit. The ground raised is allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes in terms of the direction herein above.

Order pronounced in the open court on 10 /03/2017.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-p
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /03/2017.

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

1. अपीलार्थी / The Appellant- Shri Niranjana Lal Saini, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO Ward 1(1), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 92/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar