

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCH 'A', JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
Before : Shri Ramesh C.Sharma, AM & Shri Vijay Pal Rao, JM

आयकर अपील सं./ITA No. 569, 570 & 571/JP/2019
निर्धारण वर्ष/Assessment Year : 2014-15 to 2016-17

Shri Vaibhav Lakhi 4-JA-14, Jawahar Nagar Jaipur	बनाम Vs.	The DCIT Central Circle-3 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFAPL 1481 K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by :Shri P.C. Parwal, CA
राजस्व की ओर से/ Revenue by : Shri Varinder Mehta, CIT-DR

सुनवाई की तारीख/ Date of Hearing : 04/07/2019
घोषणा की तारीख/ Date of Pronouncement : 10 /07/2019

आदेश/ ORDER

PER VIJAY PAL RAO, JM

These three appeals of the assessee are directed against the composite order of the ld. CIT(A)-4, Jaipur dated 4-02-2019 for the Assessment Year 2014-15 to 2016-17 respectively. Since the common issues are raised in these three appeals, therefore, for the sake of

convenience, these three appeals were heard together and are being disposed off by this composite order.

2.1 For the Assessment Year 2014-15, the assessee has raised following grounds:-

“1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 45,997/-u/s 68 of the I.T. Act, 1961 by treating the deposit in the HSBC Bank account, Hong Kong as unexplained cash credit without giving any finding on this ground.

2. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 45,107/- u/s 69C of I.T. Act, 1961 on account of unexplained expenditure incurred through credit card of Bank of America by not accepting the contention of assessee that payment of this card was made by his uncle Shri Sailesh Lakhi who is residing in USA.”

3.1 Ground No. 1 is regarding addition of Rs. 45,997/- made by the AO u/s 68 of the Act on account of deposit made in HSBC Bank, Hong Kong as an unexplained cash credit/ unexplained investment.

3.2 The assessee is a partner in M/s. Lakhi Gems and also handles the marketing activities of M/s. Bihari Lal Holaram, partnership firm. During the course of assessment proceeding, the AO noted that the assessee is maintaining a bank account in HSBC Bank, Hong Kong which is not disclosed by the assessee . In response, the assessee has explained that he

is looking after the marketing activities of M/s. Bihari Lal Holaram, partnership firm and M/s. Lakhi Gems. In connection with business of these two firms, the assessee used to visit outside India and, therefore, opened an account in Hong Kong to make small payments like train ticket, taxi charges etc. The assessee further explained that this account was opened on behalf of these firms and a sum of USD 700 was deposited. The assessee explained that these two firms in the petition filed before the Id. Settlement Commission have offered this deposit in bank account to tax as an undisclosed income. The AO though accepted the fact that these firms have offered this amount in their petition to the Id. Settlement Commission yet no order or decision of Id. Settlement Commission was made till the passing of assessment order. Accordingly, the AO made an addition of the said amount of Rs. 45,997/- on account unaccounted cash in the hands of the assessee.

3.3 The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3.4 Before us, the Id.AR of the assessee submitted that this account was opened in the name of the assessee on behalf of these two firms i.e.

M/s. Bihari Lal Holaram, partnership firm and M/s. Lakhi Gems. Therefore, the amount of USD 700 was deposited on behalf of those firms. The Id.AR of the assessee also referred to the settlement petition u/s 245C of the Act on 31-10-2017 as well as the order of the Id. Settlement Commission dated 22-04-2019 and submitted that the undisclosed income offered by these firms including this amount has been accepted by the Id. Settlement Commission which would amount to double taxation on the same income. Hence, the Id.AR of the assessee submitted that once the said amount belonged to the partnership firms and already offered to tax by the firms then the same cannot be added in the hands of the assessee.

3.5 On the other hand the Id. DR submitted that the order of the Id. Settlement Commission is prior to the impugned order of the AO as well as the Id. CIT(A). Therefore, until and unless it was settled by order of the Id. Settlement Commission, the amount deposited in the bank account in the name of the assessee was rightly added in the hands of the assessee.

3.6 We have considered the rival submissions as well as relevant material on record. At the outset, we note that the amount of USD 700

was found deposited in HSBC Bank, Hong Kong. The AO has dealt with this issue in para 7.3 and 7.4 of the assessment order as under:-

“7.3 In view of the above facts and discussion, it is clear that the HSBC account no. 121-1386171-833 maintained by the assessee at Hongkong, pertains only to the assessee and not to the two business firms M/s. Bihari Lal Holaram, partnership firm and M/s. Lakhi Gems as alleged. Further, the assessee has himself admitted that the account and its deposits are unaccounted. Hence, the deposits of USD 700 made during the FY 2013-14 in this bank account are held to be unaccounted cash credits in the hands of the assessee in terms of Sec.68 of the I.T. Act, 1961. After applying the conversion rate @ Rs.65.71 per dollar, the unaccounted deposits aggregate to Rs. 45,997/- . Hence, the amount of Rs. 45,997/- is held as unaccounted cash credit in the hands of the assessee and added to his total income for the year under consideration. Penalty proceedings u/s 271(1)(c) of the I.T. Act are initiated for concealment of income in the form of unaccounted deposits in the HSBC, Hongkong Bank account.

Addition of Rs. 45,997/-

7.4 The partnership firms of the assessee M/s. Bihari Lal Holaram, partnership firm and M/s. Lakhi Gems have filed an application u/s 245C of the I.T. Act before the Income Tax Settlement Commission for the A.Y. 2010-11 to A.Y. 2017-18. In their petition, the unaccounted amount of USD 700 has been offered for taxation before the Hon'ble ITSC. However, the addition is being made here since the undisclosed bank account is in the name of the assessee. This addition is subject to the outcome of ITSC order since the same thing cannot be taxed twice.”

Thus it is clear that the AO has also considered this fact that the addition made in the hands of the assessee is subject to the outcome of the Id. Settlement Commission order since the same income cannot be taxed twice. Now the Id. Settlement Commission vide its order dated 22-04-2019 has already accepted the said income offered by these two firms.

We have carefully perused the order of the Id. Settlement Commission wherein this amount of Rs. 45,977/- was also part of the undisclosed income offered by these two firms for the A.Y. 2014-15. The total undisclosed income was offered at Rs. 28,71,319/- which was divided between two firms M/s. Bihari Lal Holaram, partnership firm and M/s. Lakhi Gems. in ratio of 95% : 5%. Finally, the said amount was accepted as offer to tax by these two firms as per the order of the Id. Settlement Commission. Once this amount of Rs. 45,977/- has already been offered for taxation in the hands of the two partnership firms as per the order of the Id. Settlement Commission dated 22-04-2019 then the addition in the hands of the assessee is not sustainable. Accordingly, the same is deleted.

4.1 The ground No. 2 is regarding addition on account of unexplained expenditure incurred through credit card of Bank of America. This ground is common in all three Assessment Years.

4.2 During the course of assessment proceeding, the AO noted that the assessee was holding a Credit Card of Bank of America and certain payments have been made through the Credit Card. The assessee

furnished the details of payments made through credit card and also explained that payment of credit card bill has been paid by his uncle Shri Sailesh Lakhi who is a resident in USA. The AO was not satisfied with the explanation of the assessee and held that the assessee has incurred the unexplained expenditure through Bank of America Credit Card for all these three years and accordingly made the addition of the respective amounts as under:-

A.Y.	Amount
2014-15	Rs. 45,107/-
2015-16	Rs. 3,09,003/-
2017-17	Rs. 81,920

4.3 The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

4.4 Before us, the Id.AR of the assessee submitted small payments were made through credit card by the assessee during his visit to USA. The Credit Card bill was paid by his uncle Shri Shailesh Lakhi, r/o USA as the billing was also made at the address of Shri Shailesh Lakhi in USA. The Id.AR has also referred to the confirmations of Shri Sahilesh Lakhi regarding payment of the credit card bill. Thus the Id.AR has submitted that the AO has not controverted the confirmation as well as

the source of payment of the credit card as explained by the assessee. However, the AO has made addition only on assumption that the assessee must have incurred expenditure on visit of his uncle to India and thereby it is a Hawala transaction. The Id.AR of the assessee submitted that there is no basis of such assumption by the AO and expressing the view that it is a hawala transaction. The Id.AR of the assessee has also contended that when the source of payment of the credit card has been explained by the assessee then it cannot be treated as unexplained expenditure.

4.5 On the other hand, the Id. DR has submitted that assessee has not disclosed the transactions carried out through credit card. When the AO asked the assessee about the credit card payments then the assessee explained that the payments of the credit card bill has been made by his uncle. The Id. DR relied on the orders of the authorities below.

4.6 We have considered the rival submissions as well as relevant material on record. The assessee in his reply before the AO has explained the source of payment of credit card bill for all the three years as such payments were made by his uncle Shri Shailesh Lakhi, resident of USA. The assessee also filed the confirmation of his uncle Shri Shailesh Lakhi

regarding the payment of the credit card bill of the assessee. These facts were not disputed by the AO in his following findings in para 7.2. and 8 of his order for the Assessment Year 2015-16.

“7.2 The reply of the assessee has been considered but not found acceptable. This is because the credit stands in the name of the assessee. Further, various expenses through the card have admittedly been made by the assessee. As such, the assessee was required to disclose such expenditure as well as the credit card through which such expenditure was made in his books. Moreover, it is also a case where unaccounted expenditure has been incurred by the assessee abroad whereas the payment of this unaccounted expenditure has been made by some other person, in this case, by his relative staying abroad.

As per the confirmation of Sh. Sailesh Lakhi, this credit card was used to make minor payment for his nephew or other relatives visiting to USA. This shows that the assessee in turn has been incurring expenditure of his uncle during visit of Sh. Sailesh Lakhi to India and was indulged in one sort of hawala transaction.

Thus from the above fact, it is clear that the assessee has incurred unaccounted expenditure through the Bank of America and the confirmation filed by Sh. Sailesh Lakhi. Hence, the undisclosed expenditure of Rs. 3,09,003/- incurred by the assessee through the credit card during the F.Y. 2014-15 is held as his unaccounted expenditure in terms of Sec. 69C of the I.T. Act, 1961 and added to the income of the assessee for the A.Y. 2015-16. Penalty proceedings u/s 271(1) © are initiated for concealment of income by not disclosing the expenditure made through the Bank of America credit card.

Addition of Rs. 3,09,003/-

8. Subject to these remarks the income of the assessee is computed as under:-

(i)	Income as per return filed u/s 153A	Rs. 6,30,550/-
(ii)	Add:-	
	As per Para 7.2 above	<u>Rs. 3,09,003/-</u>
	Total income	Rs. 9,39,553/-
	R/o	Rs. 9,39,550/-

Assessed u/s 143(3) r.w.s. 153A at Rs. 9,39,550/- interest u/s 234A, 234B, 234C and 234D is / are charged for late filing of return and default in making advance tax payment, if applicable.”

Thus the expenditure incurred by the assessee through credit card itself is not an unexplained expenditure but only the payment of credit card bill can be considered as unexplained expenditure. Once the assessee has produced all the details and confirmations regarding payment of credit card bill which has not been controverted by the AO then said payment of credit card bill made by the uncle of the assessee, r/o USA, cannot be held as unexplained expenditure of the assessee. The assessee has established the source of payment and if there is a violation or financial irregularity in the payment of credit card bill by the assessee's uncle then the same cannot be treated as unexplained expenditure in the hands of the assessee. Hence, the addition made by the AO on this account for all the three assessment years is not sustainable when the source of payment is not in dispute. Accordingly, we delete the addition made by the AO on account of credit card expenditure.

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

Order pronounced in the open court on 10 /07/2019.

Sd/- (रमेश सी शर्मा) (Ramesh C. Sharma) लेखा सदस्य / Accountant Member	Sd/- (विजय पाल राव) (Vijay Pal Rao) न्यायिक सदस्य / Judicial Member
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जयपुर / Jaipur

दिनांक / Dated:- 10 /07/ 2019

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Vaibhav Lakhi, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-3, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.569 to 571/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar