

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 80/JP/2020
निर्धारण वर्ष/Assessment Years : 2011-12

Shri Bhup Singh 498 Anah Gate, Ward No. 7, Bharatpur.	बनाम Vs.	The ITO, Ward-2, Bharatpur.
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CTQPS 5712 N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri O.P. Batheja (ITP)
राजस्व की ओर से / Revenue by : Shri K.C. Gupta (ACIT)

सुनवाई की तारीख / Date of Hearing : 30/07/2020
उदघोषणा की तारीख / Date of Pronouncement : 03/08/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A), Alwar dated 19.11.2019 for the assessment year 2011-12 wherein the assessee has taken the following grounds of appeal:-

"1. That the Id. CIT(A) has erred in confirming addition of Rs. 7,00,000/-, ignoring the submissions and documentary evidences filed by the appellant, remand report of the AO and his own finding in para 5.6 of the appellate order.

2. That the Id. CIT(A) has erred on facts and in law in giving direction u/s 150(1) of the Act, which is beyond his power.

3. Additional ground: (i) That the Id. AO erred in law in initiating proceedings u/s 147/148 on the basis of AIR information without any independent application of mind without even examining the truthfulness of the information. Therefore, the proceedings initiated simply on the basis of AIR information without any verification etc., on the basis of wrong facts is bad in law, void ab initio and deserves to be quashed.

(ii) The Id. Pr. CIT, Alwar has also accorded approval u/s 151(1) in a routine and mechanical manner without any application of mind and without going through the relevant information having wrong facts and figures. The proceedings deserve to be quashed on this count also.”

2. Briefly, the facts of the case are that the assessment was completed U/s 144 r.w.s. 147 of the Act dated 04.12.2018 wherein the Assessing Officer has made an addition of Rs. 61,32,671/- towards unexplained U/s 69A of the Act. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and requested for admission of additional evidence under Rule 46A of the Income Tax Rules.

3. The Id. CIT(A) after calling for the remand report from the Assessing Officer and the rejoinder submitted by the assessee has held that since the Assessing Officer in the remand proceedings has admitted that there only two FDRs of Rs. 5,00,000/- each and Rs. 7,00,000/- which are fresh deposits made during the year, there is no justification

left for the addition made by the Assessing officer, however, the source of fresh deposit of Rs. 7,00,000/- was held devoid of any credible evidences, he accordingly, sustained the addition to the extent of Rs. 7,00,000/- and the remaining addition made by the Assessing officer is deleted. Against the said findings of the Id CIT(A) sustaining the addition of Rs 7,00,000/-, the assessee is in appeal before us.

4. During the course of hearing, the Id. AR submitted that the assessee is having 27 bighas of agricultural land and no other source of income except agricultural income. It was submitted that Rs. 2,40,000/- was deposited in his bank account out of his agricultural income and proof regarding the land holding and the source of such deposit has been confirmed by way of an affidavit of the assessee which has not been properly appreciated by the lower authorities. It was further submitted that Rs. 4,60,000/- was received by the assessee from his son Shri Mahaveer Singh by way of a gift who had sold a plot of agricultural land on the same day and in support, copy of sale deed of land sold by the assessee and affidavit of assessee's son was submitted before the Id CIT(A) which has again not been properly appreciated. It was further submitted that rest Rs. 40,000/- was deposited out of previous cash withdrawal of Rs. 50,000/- from the same bank on 16.12.2010. It was accordingly submitted that the AO in his remand report, the Id CIT(A) in his appellate order have not controverted the submissions of the assessee, contents of the affidavit and other documentary evidences furnished by the assessee, therefore, the addition of Rs. 7,00,000/- sustained by the Id. CIT(A) may kindly be deleted.

5. Per contra, the Id. DR submitted that the assessment in this case was originally completed U/s 144 of the Act. Therefore, there is no information available before the Assessing Officer regarding the source of such deposits and accordingly the addition was made by the Assessing officer. It was further submitted that during the appellate proceedings, the assessee submitted certain additional evidences and matter was remanded to the Assessing Officer wherein the latter has confirmed that the assessee has made fresh cash deposits of Rs. 7,00,000/- during the year. It was further submitted that the Id. CIT(A) has dully considered the submission of the assessee as well as the affidavits and other documentary evidences with regard to source of such deposits in para 5.7 of his order and since the same were found not credible, the Id AR contention is devoid of any merit. It was accordingly submitted that the assessee's submissions as well as evidences submitted during the appellate proceedings have been duly considered by the Id. CIT(A) and the contention of the Id. AR that the same have not been duly considered is not correct. He accordingly supported the findings by the Id. CIT(A).

6. We have considered the rival contentions and perused the material available on record. The limited issue under consideration is whether the assessee has offered satisfactory explanation in support of cash deposit of Rs 7 lacs in his bank account during the year and whether such explanation is supported by any verifiable evidence on record or not. The assessee has submitted that the source of such cash deposit is out of his agriculture income, gift received from his son and from previous cash withdrawals. In support, it is claimed that the land

holding, affidavit of the assessee, the affidavit of son of the assessee, copy of the sale deed have been submitted before the lower authorities and which have not been properly appreciated and have not been controverted. On the other hand, the contention of the Id DR is that the same have been duly considered and not found credible, hence rejected by the Id CIT(A). In order to appreciate the rival contentions, during the course of hearing, we asked the Id AR whether the documentary evidences have been furnished before us. In response, he submitted that the same have not been submitted for the reason that the same have not been controverted and thus accepted by the lower authorities. Given that the documentary evidence in support of the assessee's explanation is not available before us, we are unable to take a view in the matter and we deem it appropriate that the matter is set-aside to the file of the Id CIT(A) who shall examine the same afresh and pass a speaking order after providing reasonable opportunity to the assessee. In the result, the ground no. 1 is allowed for statistical purposes.

7. In ground no. 2, the assessee has challenged the action of the Id CIT(A) in giving directions u/s 150(1) of the Act to bring to tax interest on FDRs without any show-cause notice. Since we have set-aside the other matter, this matter is also set-aside to the file of the Id CIT(A) to decide the same afresh after providing reasonable to the assessee. In the result, the ground is allowed for statistical purposes.

8. In the additional grounds of appeal, the assessee has challenged the initiation of proceedings u/s 148 and approval granted by the Id Pr

CIT u/s 151 of the Act. It was submitted that the AO has issued notice U/s 148 on the basis of some AIR information for verification of the source of FDRs of Rs. 40,32,671/- and cash deposits of Rs. 21,00,000/- in the bank account of the assessee. As per him the escaped income in the case of the assessee for the A.Y. 2011-12 was Rs. 61,32,671/- for which he has issued notice U/s 147/148. Whereas, on the basis of submissions of the assessee and statement of grandson of the assessee recorded by AO, the AO has admitted that during the year there were fresh cash deposits of Rs. 7 lakhs only and the assessee had acquired FDRs of Rs. 10 lakhs only, that too out of maturity amounts of FDRs of earlier year. The proceedings initiated by the AO U/s 147/148 on the basis of wrong facts, simply for verification of source of bank deposits and without any tangible material are bad in law and deserve to be quashed. It was submitted that the approval has been accorded by the Id Pr CIT, Alwar on basis of wrong facts without any application of mind.

9. We find that it is a case where the assessee has not filed any return of income prior to the issue of notice u/s 148 of the Act. Basis information received from AIR that there are deposits in the assessee's bank accounts, the AO again issued notices to the assessee, however there was no compliance on part of the assessee. Therefore, basis such AIR information, the notice u/s 148 has been issued. It is therefore a case where there is tangible information in possession of the AO that there are deposits in the assessee's bank account and thereafter, the AO has taken steps to reach out to the assessee to verify such deposits and to file his return of income, however, there has been complete non-

compliance on part of the assessee, therefore, in such circumstances, where the AO forms a prima facie belief that the income has escaped assessment and issue notice u/s 148, we donot see any infirmity in the action of the AO in exercising his jurisdiction u/s 147 of the Act and in the action of the Id Pr CIT in according his approval. As far as variation in the quantum of deposits as stated in the reasons and finally assessed pursuant to the first appellate proceedings is concerned, we find that the quantum of deposits is based on the information shared by the bank with the Revenue department and forms part of the AIR information and where based on subsequent examination during the assessment and appellate proceedings, there is variation in such quantum of deposits, the same cannot be a basis to hold the very initiation of reassessment proceedings as bad in law. The decisions relied upon by the Id AR are distinguishable on facts and thus, doesn't support the case of the assessee. In the result, the ground of appeal is dismissed.

In the result, the appeal is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 03/08/2020.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur

दिनांक / Dated:- 03/08/2020.

*Santosh

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

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

1. अपीलार्थी / The Appellant- Shri Bhup Singh, Bharatpur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2, Bharatpur.
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. 80/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar