

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 202/JP/2020
निर्धारण वर्ष / Assessment Years : 2010-11

Smt. Shweta Goyal W/o Sh. Kuldeep Goyal B-279, Janta Colony, Jaipur.	बनाम Vs.	The ITO, Ward-5(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AINPG 7191 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C. L. Yadav (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (ACIT)

सुनवाई की तारीख / Date of Hearing : 23/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 08/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A)-II, Jaipur dated 16.01.2020 for the assessment year 2010-11 wherein the assessee has taken the following grounds of appeal:-

- "1. The Ld. CIT(Appeal)-2 erred in facts and law in confirming the addition of Rs. 5,00,000 without appreciating the facts. The addition was made on wrong assumption and contrary conjecture to the real facts.*
- 2. The Ld. CIT(Appeal)-2 erred in appreciating the addition of Rs. 5,00,000 of unexplained source of marriage gifts received on the*

of marriage of the appellant from relatives. The gift received were pertain to the A.Y. 2009-10. The addition was illegal and was also contrary to the real facts and against the law therefore the addition kindly may be deleted and quashed.

3. The Ld. CIT(Appeal)-2 failed to appreciate the findings of Ld. AO ward 5(2), Jaipur, in his remand report dated 09.10.2019, that "The Affidavits produced in the shape of evidences submitted by the A.R. of the Assessee, appear to the genuine and the sources of cash deposit appears to be explained"

2. Briefly the facts of the case are that the assessee had not filed return for AY 2010-11. On the basis of information that the assessee had deposited cash of Rs.11,00,000/- in her bank account with HDFC Bank, notice U/s 148 was issued on 30.03.2017 in response to which return of income was filed on 29.04.2017 showing an income of Rs.1,90,460/- which was assessed u/s 143(3) r/w 147 by the AO at Rs. 6,90,460/- creating a demand of Rs. 2,14,970/-. Addition was made for Rs. 5,00,000/- towards undisclosed investment on account of cash deposited in bank account. On appeal, the Ld.CIT(A) confirmed the addition and against the said findings, the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that the assessee had deposited cash of Rs.17,25,000/- in her bank accounts. The source of these deposits was availability of opening cash balance and cash withdrawal of Rs.5,00,000/- from one of her bank accounts. The source of the opening cash balance was out of cash gifts received by the assessee on the occasion of her marriage from friends and relatives and cash savings with her over a period of six years. The

assessee had been working with ICICI since 2005. The assessee provided copies of gift deeds along with copies of IDs of the donors. She provided copy of her marriage certificate to show that the impugned cash gifts were received on the occasion of marriage. It may not be out of place to mention that the assessee belongs to Agarwal community where huge cash gifts are customary.

4. It was submitted that the AO doubted the cash gifts of Rs. 5,00,000/- received by the assessee from her grand mother-in-law, Asharfi Devi, and her great grand-mother-in-law, Kampoori Devi. He held that the donors are non tax payers and do not have any source of income and also do not maintain any bank account. The AO has based his conclusion on surmises and conjectures. He was told that the donors have regular income from sale of milk and cattle feed. It may be mentioned that the Ld.AO before making the impugned addition did not even issue a show cause notice in this regard. Had he done so, the assessee would have adduced further evidence to substantiate her stand. The AO disbelieved the evidence and submission put forth by the assessee, on his whims and fancy. As a matter of fact, the assessee had duly discharged the onus lay on her by providing the confirmations and ID of the donors. If the AO had any doubts, he could have made further enquiries independently but he chose not to do so and straight away went on to make the additions.

5. It was further submitted that before the Id. CIT(A), additional evidence in the form of gift deeds from the donors, viz. Smt. Asharfi Devi and Smt. Kampoori Devi were filed. Affidavit of Shri Bhagwan Das,

who was made custodian of the cash gifts was also filed. The Ld.CIT(A), having powers co-terminus with that of AO, could have herself examined these documents by making further enquiries, but she chose to send these documents to the AO for remand report. The AO, after examining Shri Bhagwan Das, the custodian of cash gifts and satisfying himself, accepted the genuineness of the gifts made. But surprisingly the Ld.CIT(A) not concurring with the AO, held that only on the basis of affidavit, which is a self serving document, the gifts cannot be accepted as genuine.

6. It has been held by the Delhi High Court in the case of CIT v. Shiv Dhooti Pearls & Investment Ltd. [2015] 64 taxmann.com 329 (Delhi) that in terms of section 68, assessee is liable to disclose only source(s) from where he has himself received credit and it is not burden of assessee to show source(s) of his creditor nor is it burden of assessee to prove creditworthiness of source(s) of sub-creditors. With the production of gift deed and identity of the donors and the genuineness of the transaction (gift on marriage) the assessee had discharged initial onus placed on her. In the event, the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the creditworthiness of the donors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the CIT(A) that the credit worthiness of the donors remained unverified and simply on the basis of affidavit, gift shown cannot be accepted as genuine is a long drawn conclusion, and is of no avail. The revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be

required to bridge the gap between the suspicions and proof in order to bring home this allegation. If the CIT(A) had any doubt about the material placed on record, it could gather the necessary information from the sources to which the said information was attributable to. She could have cross examined Shri Bhagwan Das, which she failed to do. On the contrary, without seeking any further clarification from the AO on the remand report, on the basis of surmises and conjectures, she has confirmed the addition made by the AO. It was submitted that gift of Rs. 3,10,000/- made by Shri Mithhan Lal Goyal, who had entrusted the gift amount to his son, Shri Bhagwan Das, in regard to which deposition has been made by Shri Bhagwan Das has been accepted as genuine. In the same affidavit, Shri Bhagwan Das has also stated to have received gift amounts from Smt. Asharfi Devi and Smt. Kampoori Devi to be handed over to the appellant, which is not being held as genuine by the Ld.CIT(A). It is been held in a catena of cases that a document is to read as a whole. It is not open to the authorities to accept a particular content and to reject the other, to suit its purpose.

7. It was submitted that in the case of Mehta Parekh & Co. vs. CIT (1956) 30 ITR 181, the Hon'ble Supreme Court laid down that when none of the Authorities considered it necessary to cross examine the deponent with reference to the statement made in the affidavit, it was not open to the Revenue in the circumstances to challenge the correctness of the statement made by the deponent made by the deponent in the affidavit. In other words, consequently the assessee was entitled assume that the authorities were satisfied with the affidavit as sufficient proof on this point.

8. It was submitted that the assessee would also like to rely on the decision on similar lines rendered by the Delhi High Court in the case of CIT vs. Silver Streak Trading Pvt. Ltd. (2010) 326 ITR 418. Further, the Allahabad High Court in the case of L. Sohanlal Gupta vs. CIT(1958) 33 ITR 786 was confronted with the question of rejection of affidavits. The Hon'ble High Court held that rejection of affidavits is not justified unless assessee has either been cross examined or called upon to produce documentary evidence in support of affidavit sworn by him.

9. It was further submitted that the assessee would also like to place reliance on the decision of Hon'ble Supreme Court in the case of Behari Lal Ram Charan Vs. ITO 1981 AIR 1585. Though this decision was rendered in the context of Section 226(3), but the issue was with respect to validity of affidavit. In the appeal the Court held-

- (a) For reaching an objective conclusion that in his opinion the statement on oath made on behalf of the garnishee is false in any material particulars, the Income Tax Officer would have to give notice to the party concerned, hold an enquiry for determining whether the statement on oath is false and if so in which material particulars and what amount is in fact due from the garnishee to the assessee. In such an enquiry, he would have to follow the principles of natural justice and reach an objective conclusion.
- (b) Once a statement on oath is made on behalf of the garnishee that the sum demanded is not due from him to the assessee, the burden of showing that the statement is false is on the Revenue which would be bound to disclose to the garnishee all such evidence or material on which it proposes to rely. The Revenue

should also show on the basis of relevant evidence that the statement on oath is false. It is only then that personal liability for payment can be imposed on the garnishee under clause (vi).

In the instant case, after receiving the affidavit of the accountant, the Income Tax Officer, without giving any notice and without holding any enquiry, straightaway reached the conclusion that the statement in the affidavit was false and held the petitioners personally liable under clause (vi). Although the Income Tax Officer did set out in the notice dated December 31,1966 the reasons for reaching this conclusion he did not offer any opportunity to the petitioners to show that the reasons that weighed with him were not correct. His decision was therefore invalid. Notice dated December 31,1966 and January 11, 1967 must therefore be set aside.

In view of the above submission and the case laws which are squarely applicable to the case of the assessee, it was submitted that the addition of Rs.5,00,000/- may kindly be deleted.

10. Per contra, the Id. DR relied on the finding of the lower authorities and our reference was drawn to the findings of the Id. CIT(A) which are contained at para 2.5 of her order which reads as under:-

"2.5 Ground No. 1 and 2 are being taken up together as they are interrelated. I have perused the facts of the case, the assessment order, the submissions of the appellant and remand report alongwith rejoinder. As per information available with the Assessing Officer that assessee had deposit cash of Rs. 11,00,000/- in her bank account with HDFC during the year

under consideration but no return of income was filed. Therefore, case was reopened u/s 148 of the Income-tax Act 1961 response to this notice assessee filed her return of income on 29.04.2017 declaring total income of Rs. 1,90,460/- under the head salary from M/s. Neelkanth Publishers (P) Ltd. and interest from bank.

During the assessment proceeding assessee filed copies of bank account statement showing two bank account, one is Punjab National Bank and other HDFC Bank Ltd. As per accounts statement filed by the assessee, assessee was deposited cash of Rs. 17,25,000/- during the year under consideration. Out of total Rs. 17,25,000/-, Rs. 5,00,000/- remain unverified and same was added to the total income of the assessee.

2.5.1 During the present proceedings AR of the assessee filed additional evidence under rule 46A and the same was sent to Assessing Officer for his comments. Vide remand report dated 21.10.2019, Assessing Officer stated that they cannot be verified due to death of donors and according to him they appear to be genuine. However the creditworthiness of the donors remained unverified.

2.5.2. On perusal of above report, I find that in support of gift, assessee filed only affidavit of father in law of assessee which is self serving and not supported by any bank account, nor was there any evidence of source of donors. Therefore, simply on basis of this affidavit, gift shown cannot be accepted as genuine. Therefore, the addition made is hereby confirmed. These grounds of appeal are dismissed.

11. Further, Id. DR has relied upon the following decisions:-
 - M/s Nova Promoters & Finlease P. Ltd. v s. CIT (2012) 18 Taxman.com 217 (Delhi HC)

- Blowell Auto P. Ltd. vs. ACIT (2009) 177 Taxman 261 (Punj & Haryana)

12. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to source of cash deposit amounting to Rs 5 lacs in the bank account maintained by the assessee during the financial year 2009-10 relevant to impugned assessment year 2010-11. The explanation of the assessee is that said deposit has been made out of cash gifts received by her on the occasion of her marriage which was solemnised on 16.02.2009 i.e, during the financial year 2008-09 relevant to previous assessment year 2009-10. Further, it has been submitted that the cash gifts have been received from Smt. Asharfi Devi, grandmother in law and Smt. Kampoori Devi, Great grandmother in law. Admittedly, both these relatives had expired long back on 20.05.2004 and 28.01.2002 respectively as per their death certificates on record and were not alive at the time of marriage and it was submitted that before their death, they have appointed Shri Bhagwan Das, father-in-law of the assessee, as custodian and he has handed over the cash gifts to the assessee on their behalf at the time of marriage. In support, copy of gift deeds and affidavit of Shri Bhagwan Das were filed before the Id CIT(A) who has called for the remand report from the AO. In his report, the AO stated that the original affidavits were produced for verification which appears to be genuine and the source of cash deposit appears to be explained. We therefore find that once the AO has examined the documents so produced by the assessee and recorded his satisfaction regarding the identity of the donors, the genuineness of the gift and the source of

such gift, the assessee has discharged the necessary onus cast on her and no addition can be made in her hands. Hence, the addition so made is directed to be deleted.

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

Order pronounced in the open Court on 08/04/2021.

SdSd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur

दिनांक / Dated:- 08/04/2021.

*Santosh

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

1. अपीलार्थी / The Appellant- Smt. Shweta Goyal, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(2), Jaipur.
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. 202/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar