

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

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

आयकर अपील सं./ITA No. 426/JP/2018
निर्धारण वर्ष/Assessment Year : 2014-15.

Shri Vicky Jethani, 56, Jeevan Vihar, Anasagar Circular Road, Ajmer.	बनाम Vs.	The Income Tax Officer, Ward 2(1), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN No. AERPJ 9554 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Subhash Porwal (CA)
राजस्व की ओर से / Revenue by: Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 11.09.2018.
घोषणा की तारीख / Date of Pronouncement : 14/09/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 1st February, 2018 of Id. CIT (A), Ajmer for the assessment year 2014-15. The assessee has raised the following grounds :-

“ That under the facts of the circumstances of the case the Id. CIT (A) has erred in :-

- (1) Considering that the assessment as made by A.O. is beyond jurisdiction and to be treated as null and void.
- (2) Considering gift received of Rs. 8,00,000.00 through banking channel from NRI Aunt as unexplained.
- (3) Any other manner with prior approval of the Hon'ble Bench.”

Ground No. 1 is regarding the validity of assessment being beyond jurisdiction of the AO.

2. The Id. A/R of the assessee has submitted that the AO selected the case of the assessee for limited scrutiny on account of increase in the capital account of the assessee. However, the AO while completing the assessment has travelled beyond the scope of scrutiny and also made addition of Rs. 3,20,000/- under sections 68 and 69 of the IT Act. Hence the Id. A/R has submitted that the order passed by the AO is illegal and liable to be quashed.

3. On the other hand, the Id. D/R has submitted that the AO has initiated the scrutiny proceedings on the issue of a sharp increase in the capital account of the assessee and further the addition made by the AO of Rs. 3,20,000/- under sections 68 and 69 of the Act was deleted by the Id. CIT (A). Therefore, the said issue does not germane in the present appeal when the Id. CIT (A) has already granted relief to the assessee. He has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. The assessee has taken an objection against the jurisdiction of the AO to make an addition apart from the issue of increase in the capital account of the assessee. We find that the AO selected the case for scrutiny on the issue of increase in the capital account of the assessee during the year under consideration and part of the same was due to an amount of Rs. 8,00,000/- has been claimed by the assessee as gift received. The AO while completing the assessment, apart from the addition of Rs. 8,00,000/- on account of gift has also made the addition of Rs. 3,20,000/- under section 68 of the Act. On further appeal, the Id. CIT (A) deleted

the said addition of Rs. 3,20,000/- made by the AO. Further, the Id. CIT (A) has considered this issue in para 4.3 as under :-

" 4.3. I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. The appellant had contended that since the notice issued u/s 143(2) was for limited scrutiny, therefore, the AO could not have made the addition of Rs. 8 lac and Rs. 3,20,000/- u/s 68 and 69. It is seen that the case was selected to examine the addition of Rs. 17,88,869/- in the capital account. The addition made by the AO are only with respect to the unexplained source of addition to capital account. Therefore, it is held that the AO has not travelled beyond the issue for which the case was selected for scrutiny. Hence, this ground of appeal is dismissed."

The Id. CIT (A) has considered the fact that the additions made by the AO are only with respect to the unexplained source of addition to the capital account and, therefore, the AO has not travelled beyond the scope of selected scrutiny. Even otherwise, when the assessee can challenge the further addition made by the AO which is beyond the scope of limited scrutiny and, therefore, such addition made by the AO would not nullify the entire assessment proceedings when the jurisdiction assumed by the AO by issuing the notice under section 143(2) was one of the issues in the assessment. Accordingly, in the facts and circumstances of the case when the Id. CIT (A) has finally deleted the addition made by the AO, then this issue does not germane to the present proceedings.

Ground No. 2 is regarding an addition of Rs. 8,00,000/- on account of gift.

5. During the assessment proceedings, the assessee explained that the said amount of Rs. 8,00,000/- was received from one Shri Raj Kumar of Hyderabad on account of some amount due to Smt. Poonam Kanjani, who is a NRI. The assessee further submitted that Smt. Poonam Kanjani is Aunt of the assessee and, therefore, the said amount was received from Shri Raj Kumar of Hyderabad on behalf of Smt. Poonam Kanjani. The assessee produced the Certificate from Bank of Baroda regarding the transfer of amount from the account of Shri Raj Kumar of Hyderabad to the account of the assessee. The AO did not accept this explanation of the assessee as a genuine transaction of gift received by the assessee from Smt. Poonam Kanjani and accordingly made the addition of said amount under section 68 being unexplained cash credit. The assessee challenged the action of the AO before the Id. CIT (A) and reiterated his contention that the amount in question is a gift received by the assessee from his Aunt Smt. Poonam Kanjani. However, the Id. CIT (A) has confirmed the addition made by the AO on the ground that the assessee has failed to produce any evidence that the said amount was received from Smt. Poonam Kanjani from UAE. The assessee produced the evidence to show only the transfer of the said amount from the account of Shri Raj Kumar of Hyderabad to the Bank account of the assessee.

6. Before us, the Id. A/R of the assessee has reiterated his contention and submitted that when the assessee produced the bank certificate regarding the transfer of money from the account of Shri Raj Kumar of Hyderabad to the account of the assessee, then the assessee has discharged his obligation to prove the

genuineness of the gift through banking channel and the creditworthiness of the creditor. He has further submitted that the AO without conducting further verification has rejected the explanation of the assessee and even the evidence filed by the assessee solely on the ground that the notice issued to Shri Raj Kumar of Hyderabad was received back undelivered with the postal remark that the recipient was not available at the address. The Id. A/R has further contended that the assessee has proved the identity, creditworthiness and genuineness of the transaction, therefore, no addition could be made under section 68 of the Act. Under the provisions of section 68 of the Act, once the existence of the person in whose name the credits are found in the books of the assessee is proved, and such persons owns such credit with assessee, the source of the source is not required to be proved. The assessee produced the confirmation of Smt. Poonam Kanjani as well as the confirmation from the Bank of Baroda regarding the remittance of the said amount. Hence, the assessee has discharged his obligation to prove the genuineness of the gift.

7. On the other hand, the Id. D/R has submitted that the assessee failed to prove that Smt. Poonam Kanjani is the close relative of the assessee and covered within the definition of family. Further, the genuineness of the transaction has not been proved when the assessee has received the money not directly from Smt. Poonam Kanjani, but the amount was received from one Shri Raj Kumar of Hyderabad who is not connected or related to the assessee. The nexus of the amount being transferred from the account of Smt. Poonam Kanjani to the account of Shri Raj Kumar of Hyderabad has not been proved. Hence the assessee has failed to establish the claim of gift and accordingly the AO was justified in making the

addition under section 68 of the Act. He has relied upon the orders of the authorities below.

8. Having considered the rival submissions as well as the relevant material on record, we note that the assessee has claimed the gift of Rs. 8,00,000/- received from Smt. Poonaj Kanjani stated to be the Aunt of the assessee and non-resident Indian based at UAE. In support of the claim, the assessee has furnished the Bank Certificate of Bank of Baroda regarding the remittance of the amount from the bank account of Shri Raj Kumar of Hyderabad. However, the assessee has claimed this gift from Smt. Poonam Kanjani and not from Shri Raj Kumar of Hyderabad. The assessee further explained that since Shri Raj Kumar owed the money to Smt. Poonam Kanjani and, therefore, as per her instruction he transferred the said money to the assessee. We find that apart from the mere contentions and submissions, assessee has not furnished a single evidence or document to show how this amount has come from Smt. Poonam Kanjani. In the absence of any documentary evidence of movement of the amount of Smt. Poonam Kanjani, the assessee has failed to establish the claim of gift from Smt. Poonam Kanjani. The assessee has thus not substantiated his claim of gift received from Smt. Poonam Kanjani and has produced the evidence only to the extent that the said amount was transferred from the bank account of one Shri Raj Kumar to the bank account of the assessee. To that extent, the fact can be accepted, however, when the assessee has not claimed any loan or gift from Shri Raj Kumar, then the claim of gift from Smt. Poonam Kanjani in the absence of any evidence has not been proved. Thus when the assessee has introduced the cash of Rs. 8,00,000/- and failed to establish and explain the same being a gift received from Smt. Poonam Kanjani, then the assessee has not

discharged his onus of proving the genuineness of the transaction of gift. The Assessing Officer has considered this issue at pages 2 to 4 as under :-

" Therefore in order to check the genuineness of the transaction letter was written to Shri Rajkumar at his Hyderabad address and the letter was returned by the postal authorities un-served. Therefore, the A.R. was asked to give show cause why the NRI gift should not be added to the Income of the assessee as the genuineness, creditworthiness and identity of the gift giver as near relative was not proved. The A.R was asked to submit the reply by 16/12/2016, however till the date of passing of the order no reply in this context was received. Hence the addition made in capital of the assessee on account of the NRI gift of Rs. 800000/- is made to the income of the assessee for the following reason :-

- 1) It has not been shown how Poonam Kanjani is close relative of assessee and covered within the definition of Family as per the Income Tax Act, 1961.*
- 2) The genuineness of the transaction is not proved as first the assessee claims that the gift has been received from NRI Aunt Smt. Poonam Kanjani and when the transfer entry is found to be from Shri Raj Kumar then A story is made that a sum was lying to the credit of Smt. Poonam Kanjani with Shri Rajkumar and hence the same had been transferred to Shri Vicky Jethani.*
- 3) The nexus of sum being transferred from account of Shri Raj Kumar with Smt. Poonam Kanjani has not been proved.*
- 4) The letter written to Shri Raj Kumar returned unserved, hence the reason for transfer of Rs. 8 lacs into account of Shri Vicky Jethani could not be enquired independently.*
- 5) The creditworthiness of Shri Rajkumar and Smt. PoonamKanjani has not been proved, it is the responsibility to prove the identity, genuineness and creditworthiness of the transacting parties.*

6) Further in absence of link to prove the gift of Poonam Kanjani via Rajkumar, even if it is considered that it is gift then also it is gift from person other than relative hence it is taxable in the hands of the assessee.

Hence in view of above discussion the addition in capital on account of NRI Gift is considered to be undisclosed income of assessee and therefore added u/s 68 of the Income Tax Act, 1961. Penalty u/s 271(1)(c) of the Income Tax Act 1961 for furnishing of inaccurate particulars of Income and concealment of income is initiated separately."

We find that the AO has raised the pertinent objection regarding the claim of gift received from Smt. Poonam Kanjani and assessee has failed to satisfy the requirement as per the provisions of section 68 of the Act. Accordingly, we do not find any error or illegality in the impugned orders of the authorities below.

9. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 14/09/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 14 /09/2018.

Das/

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

1. The Appellant- Shri Vicky Jethani, Ajmer.
2. The Respondent – The ITO Ward 2(1), Ajmer.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 426/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

