

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. 515/JP/2018
निर्धारण वर्ष/Assessment Year : 2011-12.

Smt. Pinki Devi Agarwal Plot No. B-1, Jamnapuri, Near Murlipura Scheme, Sikar Road, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 4(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AEJPA 5730 N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 16.01.2019.
घोषणा की तारीख / Date of Pronouncement : 16/01/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 15th March, 2018 of Id. CIT (A)-2, Jaipur for the assessment year 2011-12. The assessee has raised the following grounds :-

1. Under the facts and circumstances of the case the learned CIT (A) has erred in confirming the addition of Rs. 13,82,626/- on account of cash deposited in bank.
2. Under the facts and circumstances of the case the learned CIT (A) has erred in confirming the addition of Rs. 2,14,050/- on account of disallowance of plot registration expenses incurred out of opening cash balance.
3. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

Ground No. 1 is regarding addition made on account of cash deposited in the bank account.

2. The assessee is an individual and earning income from business and other sources. The assessee filed her return of income on 12th January, 2012 declaring total income of Rs. 2,54,887/-. In the scrutiny assessment, the AO noted that there is a cash deposit of Rs. 16,81,000/- in the two bank accounts of the assessee, the details of which are as under :-

1. AXIS bank account no. 910010013887284.

Date	Amount of cash deposit
23.04.2010	6000/-
30.04.2010	3,97,000/-
11.05.2010	2,000/-
21.07.2010	5,00,000/-
21.07.2010	1,000/-
4.09.2010	1,80,000/-
13.09.2010	15,000/-
09.11.2010	50,000/-
TOTAL	11,51,000/-

2. HDFC bank account no. 03482000005378.

Date	Amount of cash deposit
06.04.2010	95,000/-
12.04.2010	60,000/-
03.05.2010	2,00,000/-
10.05.2010	1,00,000/-
11.05.2010	75,000/-
TOTAL	5,30,000/-

The AO asked the assessee to explain the source of cash deposit in the bank accounts. In response, the assessee produced the cash book showing opening cash balance of Rs. 11,32,626/- and gifts received during the year of Rs. 2,50,000/-. The

AO did not accept the explanation of the assessee and after allowing the benefit of cash withdrawal from the bank account of Rs. 1,50,000/-, the AO made the addition of Rs. 13,82,626/- to the total income of the assessee as unexplained cash deposit in the bank accounts of the assessee. The assessee challenged the action of the AO before the Id. CIT (A) and contended that when the assessee has shown the source of the cash deposit in the bank account as opening balance as well as gifts received from the family members, then the addition made by the AO is not justified. The assessee has explained that the assessee deposited the cash in bank account for the purpose of purchasing a house property which was purchased by utilizing the said amount from the bank account. The Id. CIT (A) was not impressed with the explanation of the assessee and confirmed the disallowance/addition made by the AO on this account.

3. Before us, the Id. A/R of the assessee has submitted that once the assessee is regularly assessed to tax and filing the return of income and opening cash balance is duly reflected in the books of account as on 01.04.2010, then the source of cash deposit in the bank account cannot be rejected by the AO without rejecting the books of accounts of the assessee. The Id. A/R has further contended that once the books of account of the assessee are not rejected by the AO, then the cash which is shown in the books of accounts is an explained source for deposit made in the bank account. He has referred to the return of income filed for the assessment years 2009-10 and 10-11 along with the computation of income, balance sheet and submitted that as per the balance sheets of assessment years 2009-10 and 10-11, the assessee was having the cash balance as on 31st March, 2010 of Rs. 11,32,626/-

which was shown as opening balance as on 01.04.2010. Therefore, the said amount of cash which is part of the books of account cannot be rejected. As regards the gift of Rs. 2,50,000/-, the Id. A/R has submitted that the said amount was received by the assessee as gifts from her mother Smt. Santosh Devi Agarwal (Rs. 1,50,000/-) and father Shri Mali Ram Agarwal (Rs. 1,00,000/-) vide gift deeds dated 10.05.2010 and 12.08.2010 respectively. The Id. A/R has also referred to the gift deed dated 10.05.2010 and submitted that the mother has also mentioned the PAN as well as she was also assessed to income tax. Therefore, when the mother of the assessee is donor of Rs. 1,50,000/- and regularly assessed to tax, then the amount of Rs. 1,50,000/- given as gift to the assessee cannot be denied. The Id. A/R has also referred to the Gift deed dated 12.08.2010 whereby the father of the assessee Shri Mali Ram Agarwal also stated to have gifted Rs. 1,00,000/- to the assessee. Hence, the Id. A/R has submitted that the assessee had duly explained the source of deposit made in the bank account of the assessee being opening cash balance of Rs. 11,32,626/- as on 01.04.2010 and gift of Rs. 2,50,000/- out of which Rs. 1,50,000/- from mother and Rs. 1,00,000/- from father of the assessee. All these documents were filed before the AO, however, the Id. CIT (A) has misunderstood the fact and referred that the gift deeds were not filed before the AO while rejecting the claim of the assessee. He has also referred to the reply filed by the assessee before the AO as well as Id. CIT (A) and submitted that the assessee has discharged her onus by producing the supporting evidence of source of the cash deposit in the bank account. Since the assessee had to purchase the house property, therefore, the assessee has deposited this amount in the bank account during the year under

consideration. In support of his contention, he has relied upon the decision of Coordinate Bench of this Tribunal in the case of Smt. Manju Devi Nawal vs. ACIT, 34 Tax World 253 (JP) as well as the decision of Jodhpur Bench of the Tribunal in the case of ITO vs. Smt. Vimla Devi, 34 Tax World 151 (JD). Thus the Id. A/R has submitted that without pointing out any defect or mistake in the books of accounts as well as the evidence filed by the assessee, the addition made by the AO is not sustainable and the same may be deleted.

4. On the other hand, the Id. D/R has submitted that the AO as well as the Id. CIT (A) has analyzed all the facts as well as the evidence produced by the assessee and found that all these evidences produced by the assessee cannot be verified from the independent source and these are self-serving documents. All the sources of deposits have been shown in cash. Even the gifts are also claimed to have been received in cash. Hence none of the transactions of source of cash deposit made in the bank accounts is through banking channel but all are claimed to have been in cash. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. For explaining the cash deposit in the bank account of Rs. 13,82,626/-, the assessee has filed the cash book showing the opening cash balance of Rs. 11,32,626/- and gift of Rs. 2,50,000/- received during the year, out of which Rs. 1,50,000/- received from mother Smt. Santosh Devi Agarwal and Rs. 1,00,000/- from father Shri Mali Ram Agarwal. The assessee produced the gift deeds whereby the mother and father of the assessee have confirmed the gifts given of Rs. 1,50,000/- and Rs. 1,00,000/- respectively to the assessee. It is pertinent to note

that the assessee has been filing her return of income regularly and also produced the return of income as well as balance sheets for the assessment years 2009-10 and 2010-11, and these facts and records are not in dispute. Since none of the returns of income in the preceding year were subjected to scrutiny assessment, therefore, the availability of cash with the assessee would not be proved by mere filing of return of income. However, the assessee has shown the availability of cash of Rs. 11,32,626/- in the books of account being opening cash balance as on 01.04.2010. The said cash was also closing cash balance as on 31st March, 2010 in the balance sheet as on 31st March, 2010. The returns of income though were not subjected to scrutiny, however, once the cash was reflected in the books of account and part of the balance sheet of the assessee, then in the absence of said cash introduced in the books of account by the assessee during the year under consideration, the issue of making addition by disallowing the availability of cash in the hands of the assessee can be considered only in the preceding year in which the cash was introduced by the assessee in the books of account. The AO during the assessment proceedings was very well aware of the fact that Rs. 11,32,626/- was stated to have been introduced in the books during the earlier assessment year and, therefore, if the said claim of the assessee was not acceptable then the proper course of action was to make the addition of this cash introduced in the books of account under section 68 in the relevant assessment year in which the said cash was introduced in the books and not in the year under consideration when it is shown as opening cash balance. The AO instead of taking up the assessment of the preceding year has made the addition of the said amount by rejecting the source of the

amount as shown as opening cash balance. Further, the AO has not rejected the books of accounts of the assessee and, therefore, once the assessee has established the availability of the cash in the books of account, then the proper course of action for rejecting the said claim and making the addition is to reopen the assessment of the earlier year. Hence, to the extent of availability of cash of Rs. 11,32,626/- being opening cash balance which was duly reflected in the books of account of the assessee for the year under consideration as well as in the earlier year, the same cannot be rejected and the consequential addition is not sustainable.

5.1. As regards the gift of Rs. 2,50,000/-, though the assessee has also shown the gifts from her mother and father in the earlier years, however, that is not an issue before us as the source of cash for the year under consideration is only to the extent of the gift received during the year under consideration. The AO has rejected the claim of gifts received from the mother and father of Rs. 1,50,000/- and Rs. 1,00,000/- respectively on the ground that the assessee has failed to produce her mother and father for examination. The Id. CIT (A) has confirmed the said rejection of the claim of gifts with the observation that gift deeds were not filed before the AO. However, we find that the AO has duly acknowledged the filing of the gift deeds in para 3 of the assessment order wherein the documents filed by the assessee comprising of the gift deeds of Smt. Santosh Devi Agarwal and Shri Mali Ram Agarwal. Hence the observation of the Id. CIT (A) is contrary to the facts when these documents were duly filed before the AO. However, the mother as well as the father of the assessee are regularly assessed to income tax and filing their income-tax returns. Therefore, such a meager amount of Rs. 1,50,000/- and Rs. 1,00,000/-

which is within the range of their income declared during the year under consideration cannot be denied. Once the assessee has produced the gift deeds and the donors are regularly assessed to tax, then the identity and creditworthiness of the donors cannot be doubted without proper verification of all sources of their income. The income declared during the year under consideration by the mother and father of the assessee are Rs. 1,77,250/- and Rs. 1,50,460/- respectively. Hence in the facts and circumstances when both the donors are assessed to tax and filing their returns of income, then the assessee has discharged her onus of proving the identity, creditworthiness and genuineness of the transaction. In case the AO was not satisfied with the evidence produced by the assessee, the AO was very well empowered to summon the donors for their examination. Though there may be an issue of creditworthiness of the donors for giving the gifts for the earlier year as well as for the year under consideration, however, the issue of gifts given in the earlier year cannot be examined for the year under consideration as it was part of the cash introduced by the assessee in the earlier year. Further, there is no dispute that the reason and occasion of the deposit made in the bank account is to purchase a house which was purchased by the assessee. Therefore, in the facts and circumstances of the case, the addition made by the AO of Rs. 13,82,626/- is deleted.

Ground No. 2 is regarding an addition of Rs. 2,14,050/- on account of unexplained expenditure for registration of plot of land.

6. This issue is consequential as the assessee has explained the source of this expenditure by opening cash balance as well as the gift of Rs. 2,50,000/-. Since we

have decided the issue of availability of opening cash balance as well as genuineness of the gift in favour of the assessee, the said addition made by the AO is liable to be deleted.

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

Order is pronounced in the open court on 16/01/2019.

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

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

Jaipur

Dated:- 16/01/2019.

Das/

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

1. The Appellant- Smt. Pinki Devi Agarwal, Jaipur.
2. The Respondent – The ITO Ward 4(3), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 515/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

