

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.259/Jodh/2019
(निर्धारणवर्ष / Assessment Year: 2017-18)

Sh. Devendra Kumar Jhanwar C/o Kalani & Co.(CA) 5 th Floor, Milestone Building, Gandhinagar Turn, Tonk Road Jaipur, Rajasthan-302 015.	बनाम/ Vs.	ITO –Ward-2 Bhilwara Rajasthan.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AOUPJ-6136-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri P.C. Parwal (CA)- Ld. AR
Revenue by	:	Shri A.S. Yadav - Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	02/11/2020
घोषणा की तारीख / Date of Pronouncement	:	21/12/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2017-18 contest the order of Ld. Commissioner of Income-Tax(Appeals), Ajmer, [in short referred to as 'CIT(A)'], *Appeal No.481/2018-19 dated 10/06/2019* on following effective grounds:-

1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.8 lacs u/s 69A of the IT Act by treating the cash found and seized during action u/s 132A as unexplained income of the assessee.

1.1. The Ld. CIT(A) has further erred on facts and in law in confirming the above addition by not accepting the contention of assessee that the same belongs to her mother by incorrectly holding that assessee has not been able to substantiate his contention with any independent documentary evidence.

As evident, the assessee is aggrieved by confirmation of certain addition u/s 69A for Rs.8.00 Lacs.

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3.1 The impugned addition stem from the fact that an amount of Rs.8 Lacs in cash (in old currency notes of denomination of Rs.500 & Rs.1000 as demonetized by government on 08/11/2016) was found from the possession of the assessee on 18/11/2016 at arrival terminal of Maharana Pratap Airport, Udaipur, Rajasthan. Accordingly, warrant of authorization u/s 132A was issued by Pr. Director of Income Tax (Inv.), Jaipur, Rajasthan in the case of the assessee to requisition the said amount of Rs.8 Lacs. The appraisal report belonging to the assessee was forwarded to Ld. AO and accordingly an assessment was framed u/s 143(3) on 26/12/2018 wherein the said amount was added to the income of the assessee u/s 69A.

3.2 The assessee submitted that the cash carried by the assessee belonged to her mother Smt. Kamla Devi Jhanwar who was more than 80 years of age. The money was saved by her out of past savings and due to demonetization of currency, the said amount was given to her son for depositing the same at Shahpura in her bank account since Mumbai branch of the bank denied to deposit the same.

3.3 Accordingly, documentary evidences were called from the assessee vide notice u/s 142(1) which was responded to by the assessee vide submissions dated 18/12/2018 wherein the above stated facts were reiterated. It was submitted that the mother gave loans on interest against mortgage of jewelery which were returned from time to time. However, no books of accounts were stated to be maintained by the mother. The assessee also sought to justify the circumstances in which the cash was being carried out by drawing attention to the medical treatment being taken by her mother from time to time at Mumbai and other places. In support of the submissions, affidavit of the mother as well as three borrowers was placed on record. However, discrepancies were found in the affidavit and the medical treatment plea was termed as mere after-thought and cooked-up story. Various other flaws were noted in the arguments taken by the assessee which have already been enumerated in the assessment order. The bank account being maintained by the mother had nominal balance and the said bank was never used for deposit of surplus fund of money lending business. Therefore, rejecting the various pleas raised by the

assessee, the aforesaid amount was added to the income of the assessee.

4. Though the assessee contested the addition before Ld. CIT(A) vide impugned order dated 10/06/2019 by way of elaborate written submissions as extracted in the impugned order, however, Ld. CIT(A) chose to confirm the addition since the arguments were bereft of documentary evidences. Aggrieved, the assessee is in further appeal before us.

5. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, we find that complete onus to prove the source of cash of Rs.8 Lacs was on the assessee. The assessee attributed the same to past savings as well as interest on loan earned by her mother. In support, affidavit of the mother was also filed. However, as noted by Ld. AO, the assessee miserably failed to support the arguments with documentary evidences. No fresh material has been placed before us that would warrant us to take a different view in the matter. However, keeping in view the fact that the assessee is an individual earning meager income of Rs.3.09 Lacs, we deem it fit to afford another opportunity to the assessee to substantiate his case. Therefore, we are inclined to restore the matter back to the file of Ld.CIT(A) to re-adjudicate the issue after affording another opportunity of hearing to the assessee, who in turn, is directed to substantiate his case.

6. The appeal stand allowed for statistical purposes.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal)

Rules, 1963.

Sd/-
(Sandeep Gosain)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/12/2020

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जोधपुर / DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, जोधपुर / ITAT, Jodhpur.