

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 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. 1100/JP/2019
निर्धारण वर्ष/Assessment Year :2011-12

Sh. Virender Kumar, Prop. Mohan Dairy, Near Saini Ice Factory, Alwar Road, Alwar	बनाम Vs.	ITO, Ward-1(1), Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. BTMPK7385L		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. O. P. Bhateja (ITP)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 15/12/2020
उदघोषणा की तारीख/Date of Pronouncement: /03/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-22, Alwar dated 24.06.2019 relevant for A.Y 2011-12 wherein he has confirmed the addition made by the Assessing Officer amounting to Rs. 11,38,000/- as unexplained deposits in the bank account maintained by the assessee.

2. Briefly stated, the facts of the case are that the assessee is proprietor of Mohan Dairy, Tijara, Alwar and is in diary business. As per ITS details available with the Department, it was found that the assessee had made cash deposit of Rs. 4,00,000/- during the F.Y 2010-11 relevant

to A.Y 2011-12. Given that the assessee has not filed his return of income, the Assessing Officer recorded the reasons for reopening stating that the assessee's income to the extent of Rs. 4,00,000/- has escaped assessment and notice u/s 148 was issued after seeking approval from the Competent authority. In response, the assessee filed his return of income declaring gross receipts of Rs. 14,56,230/- from his dairy business and declared 9.28% of gross receipt as income as per provisions of section 44AD of the Act. Besides interest from bank and other miscellaneous income amounting to Rs. 18,138/- was also declared and the assessee declared total income to the tune of Rs. 1,53,300/- which was accepted by the Assessing Officer. At the same time, the Assessing Officer made an addition of Rs. 4,98,000/- towards cash deposits and Rs. 6,40,000/- towards credits in the bank account maintained by the assessee which on appeal has been confirmed by the Id CIT(A) and hence, the present appeal.

3. During the course of hearing, the Id. AR submitted that source of cash and other deposits in the bank account is out of assessee's dairy business and the Assessing Officer has not brought on record any source of income other than the daily business which was carried on by the assessee. It was submitted that once the return of income disclosing gross receipts of Rs. 14,56,230/- from dairy business has been accepted as per provisions of section 44AD of the Act, no separate addition can be made on the basis of bank deposits especially where the credits made in the bank account is less than gross receipts declared in the return of income. In support, the reliance was placed on the decision of the Hon'ble Punjab and Haryana High Court in case of CIT v. Surinder Pal Anand (*in ITA No. 156 of 2010 dated 29th June, 2010*) and the decision of the Co-ordinate Benches in case of Nand Lal Popli v. DCIT (*ITA No. 1161,*

1162/CHD/2013 dated 14.06.2016) and Sh. Thomas Eapen v. ITO (ITA No. 451/Coch/2019 dated 15.11.2019).

4. Per contra, the Id. DR submitted that it is not disputed that the assessee has declared gross receipts of Rs. 14,56,230/- from his dairy business and return of income has been filed u/s 44AD of the Act. However, during the course of assessment proceedings, the assessee was required to file documentary evidence to substantiate his claim regarding dairy business and in absence of any such evidence furnished before the Assessing Officer, it was not possible to verify that the receipt so declared amounting to Rs. 14,56,230/- is from the business of dairy. The Id. DR further submitted that the amount of cash and other credits in the bank account remain unverified as the assessee has not filed any reply regarding the source of such deposits and the additions were accordingly made by the AO which were rightly confirmed by the Id CIT(A). She thus relied on the finding of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. It is noted that the assessee is in the dairy business in the name and style of M/s Mohan Diary, Tijara and in pursuant to notice u/s 148, he has filed his return of income u/s 44AD declaring gross receipts from his dairy business amounting to Rs 14,56,230/-. The return so filed u/s 44AD has been accepted by the Assessing officer which in effect means the declarations and disclosure so made by the assessee in terms of carrying on dairy business, non-maintenance of books of accounts and gross receipts from such business amounting to Rs 14,56,230/- has since been accepted by the Assessing officer. In such a scenario, where there are cash and other credits in the bank account maintained by the assessee amounting to Rs 11,38,000/- which are less

than the gross receipts from diary business so declared by the assessee, we find the explanation offered by the assessee that such deposits are from his diary business as a plausible explanation in absence of anything contrary on record in terms of any other source of income. Our view is fortified by the decision of the **Hon'ble Punjab and Haryana High Court** decision in case of **Surinder Pal Anand** (supra) where the Hon'ble High Court was pleased to held as under:

"5. Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax @ 8% of the gross receipt itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts. The stand of the assessee before Commissioner of Income-tax (Appeal) and the ITAT that the said amount of Rs. 14,95,300/- was on account of business receipts had been accepted. Learned counsel for the appellant with reference to any material on record, could not show that the cash deposits amounting to Rs. 14,95,300/- were unexplained or undisclosed income of the assessee."

6. We therefore find force in the contention so advanced by the Id AR that the source of cash and other deposits in the bank account is out of assessee's dairy business and gross receipts thereof have already been offered in the return of income. In light of the aforesaid discussion, the addition so made by the Assessing officer is hereby directed to be deleted.

7. In view of our decision on merits of the addition made by the Assessing Officer, the other legal grounds raised by the assessee have become infructuous and hence the same have not been adjudicated upon.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on /03/2021.

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

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

जयपुर / Jaipur

दिनांक / Dated:- /03/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Virender Kumar, Alwar
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1100/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar