

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. 660/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

Shri Sunil Mathur C-40, Triveni Awaas, Bajrang Nagar, Kota	बनाम Vs.	ITO, Ward-2(4), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJTPM2205K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 02/08/2021
उद्घोषणा की तारीख/Date of Pronouncement: 01/11/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 06.03.2019 wherein the assessee has taken the following grounds of appeal:-

"1.1 The impugned additions and disallowances made in the order u/s 143(3)/147 dated 31.08.2016 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

1.2 The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void-ab-initio, the same kindly be quashed. Consequently the impugned assessment framed u/s 143(3)/147 dated 31.08.2016 also kindly be quashed.

2. Rs. 13,50,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the impugned addition made by the AO on the account of the cash deposits of Rs. 13,50,000/- in the bank account under the head of. The addition so made and confirmed being contrary to the provisions of law and facts kindly be deleted in full."

2. During the course of hearing, the Id A/R submitted that the relevant facts in brief are that the assessee filled ROI on 05.07.2014 declaring total income of Rs. 2,05,080/-, consisting of income from Salary from Punjab Kesri, Rental Income from House Property, and Fee receipts and advertising commission and interest from S.B. A/c. During the assessment proceeding, the AO noticed that assessee has deposited cash of Rs.13,50,000/- in his saving account (i.e. Rs.10,00,000/- in SBI A/c and Rs.3,50,000/- in Punjab National Bank) as tabulated at Pg-2 of the impugned assessment order. When asked, the assessee submitted that the same was sourced out of the past savings of the preceding years` withdrawals from the same very accounts. In support, he submitted Bank Books i.e State Bank of India A/c No. 10927256219, State Bank of Bikaner & Jaipur A/c No. 6116128932 and Punjab National Bank A/c No. 07260000300264723. Similarly, the assessee submitted Cash Book / Cash Flow Statement ("CFS") for three years i.e. A.Y. 2012-13 to 2014-15. The AO however, rejected the contention stating that no cash were withdrawn from Bank account nor received from any person during the current year. The opening Bank Balance was low. He further observed that if the assessee was really having cash balance as shown in his hand, he would have deposited the same in the bank. Hence, the assessee failed to establish the amount as shown in the cash book and concluded that the amount so withdrawn in earlier might have been utilized for households or

in other expenses. Finally, he added the amount of Rs.13,50,000/- deposited in cash as income from other sources and on appeal, the same was confirmed by the Id CIT(A).

3. It was submitted by the Id A/R that the Id. AO is completely silent so far as the cash book for the A.Y. 2012-13, 2013-14 and 2014-15 (F.Y. 2011-12 to 2013-14), admittedly, submitted before the AO during the assessment proceedings however, there appears no judicious consideration of the same. Though he expressed some doubts as regard the cash availability based on the cash book that assessee might have utilized the cash but he did not at all rejected/doubted the correctness of the cash book and therefore, such an evidence produced before him was binding upon him. Since the assessee is a salaried class person hence was not required to prepare books of account but to support of its contention of availability of sufficient fund of Rs.12,60,650/- (as on 01.04.2013) prior to the deposits, he submitted cash book before the AO itself. It was submitted that in the non-business cases, submission and consideration of the cash book / cash flow statements to explain the source is not uncommon and even the Hon'ble Courts and Tribunals have taken cognizance and rather accepted such an evidence and explanation based thereon is valid. Therefore, the AO could not have blindly ignored such cash book unless he could reject the same based on the contrary material to support. The said cash book shows opening cash in hand of Rs. 5,43,750/- as on 01.04.2012. The assessee fully explained and established the source of this opening cash in Para-4 of his written submissions before the Id. CIT(A) reproduced at Pg-3 of his order and also reproduced hereunder:

"4. The Appellant had taken voluntary retirement from the Dainik Navjyoti Printing Press Pvt. Ltd', Ajmer on 31/ 01/ 2011 and had

received retirement benefits (1) Gratuity Rs. 2,60,377/- (2) PF Rs. 6,39,146/- (3) Pension Rs. 17,316/- Total Rs. 9,16,839/- and all these sums were deposited in Bank Accounts and the receipt had been shown in computation of Income for A/ Y 2011-12 and were duly withdrawn from the Bank."

4. After receiving total amount on retirement of Rs.9,16,839/- i.e. Gratuity Rs. 2,60,377/- was deposited in SBI A/c on 20.04.2011 and PF Rs. 6,39,146/- was deposited in PNB Bank on 24.12.2011 and there after cash withdrawal were made therefrom on various dates as per Cash Book. The amounts withdrawn in cash was partly utilized and partly available and the balance was shows opening cash in hand of Rs. 5,43,750/- as on 01.04.2012 and after recording further cash transactions of receipts / payments, the opening balance was of Rs.12,60,650/- as on 01.04.2013, relating to A.Y. 2014-15.

5. It was further submitted that both the lower authorities have completely ignored one important aspect and admitted fact that the assessee had sold a residential house no. 5-L-26, Mahaveer Nagar-III, Vistar Yojna, Kota on 23.10.2013 to Shri Pramod Kumar Dhakad for Rs.43.50 Lakhs and the entire consideration was received through cheque/RTGS in the bank account on different dates (i.e Rs.50,000/- on 06.07.2013, Rs.9,50,000/- on 11.07.2013, Rs.23,99,983/- and Rs.9,50,017/- on 22.10.2013). Though Rs.40 Lakhs were transferred yet 3.50 Lakh were still available. In addition, the assessee was also in cash receipts of Salary, Rental Income and Other income in the period of three years and were available till Jul-2013 and onwards. All bank transactions made in cash are fully reflected in the cash book together with the regular withdrawals on monthly basis towards household expenses. Thus, to the

extent of such income received in three years was fully available (because the household expenses were shown in cash book met with by cash withdrawals). Notably, deposit of Rs.13.50 was met from cash drawings from bank only (See chart at w/s Pg-6). Still cash income of Rs.5-6 lakh for three years was available in addition.

6. It was further submitted that the cash book has been prepared taking into account all the transactions of cash deposits and cash withdrawal done in two banks i.e. SBI and PNB as also after reducing household expenditure of Rs.75,000/- during the year (which is quite justified and reasonable looking to the size of the family and there standard and habits). Even the AO also did not dispute the claimed amount of the household expenditure. This way, the assessee had sufficient cash balance on all the subjected dates of cash deposits. This is evident from the following table based on the cash book:

Date of deposits in Bank	Amount Deposited	Closing Balance of Cash on Preceding Day
22.07.2013	1,00,000/-	12,49,650/-
09.10.2013	50,000/-	11,43,065/-
08.11.2013	5,00,000/-	10,82,065/-
27.11.2013	2,00,000/-	5,88,090/-
08.01.2014	5,00,000/-	6,52,090/-

7. Thus, the different cash deposits made between this period (i.e. 22.07.2013 to 08.01.2014), are fully explained with the help of the cash book / cash flow statement submitted for three years i.e. A.Y. 2012-13 to 2014-15 and all the deposits are fully explained therein. However, the AO

is completely silent on this aspect which has been fully established by the assessee but AO failed to rebut the same. It is further clarified that the receipt of advance cash of Rs.10 Lakh and payment of advance on purchase of plots all took place on 20.01.2014 or in any case 08.01.2014 therefore, these transactions are not relevant.

8. It was further submitted that the AO completely misdirected himself by considering the opening balance in the both bank accounts of Rs.1,56,000/- which is not at all relevant once the assessee prepared a cash book considering the cash deposits and cash withdrawal transactions from the banks and other cash withdrawal etc. Further, while cash book / cash flow statement filed and was not rejected, there is no scope for the AO to deem some utilization elsewhere because the settled law is something contrary to approach of the authorities below. The AO was bound to establish the utilization of the available cash elsewhere. In this way, the availability of the sufficient cash on the different dates of deposits could not be disputed.

9. It was submitted that the AO purportedly ignored these facts by recording a completely incorrect finding of facts that during F.Y. 2013-14 there was no cash withdrawal made by the assessee which was a blatant mistake committed by him in as much as a bare of cash summary of the cash book for F.Y. 2013-14 shows cash withdrawals of more than Rs.3,13,000/- till Dec-2013 itself and in the preceding years also similar cash withdrawals were there. Thus, once sufficient sources being the sale proceeds of Rs.43.50 Lakhs, Rs.9.36 Lakh on the retirement, income from Salary, Rent and Other Income were there and the same were available / withdrawn in cash, the availability of cash in hand could not be denied. All these facts and contentions are fully supported by the Cash Book as stated

above therefore, the authorities below have seriously erred in completely and purportedly ignoring the same.

10. Regarding various observations / objections of the Id. CIT(A), it was submitted that all the objections and observations of the Id. CIT(A) are nothing more than suspicion and rather aimed to reject the contention in one way or the other and submissions on each of the issues raised, are as under:

"(i) Ld. CIT(A): *"Appellant has not been able to establish any nexus between the cash withdrawn in earlier years being available with him for re-deposit in the current year under appeal."*

Our Submissions: Factually incorrect observation in as much as the cash book for three years directly establish the nexus between the various receipts, incomings and outgoings / deposits in the bank account and towards other expenditure etc.

(ii) Ld. CIT(A): *"The cash book is also found to be self-serving in the absence of independent evidences"*

Our Submissions: Mere allegation. Neither the AO nor the Id. CIT(A) has rejected the cash book / Cash Flow Statement in as much as they completely failed to point out any deficiency or defects therein. It is not there case that some outgoings / receipts were ignored. There apart the two bank accounts itself were the independent evidences because all bank transactions have been accounted for.

(iii) Ld. CIT(A): *"..... and has not been enclosed in the appellate proceedings."*

Our Submissions: Appears to be factually wrong. Kindly refer written submission to Id. CIT(A)

(iv) Ld. CIT(A): *"The agreement of sale involving advance against properties is also dated later than the deposits found made in the bank account."*

Our Submissions: The assessee did not took support from such transaction

(v) Ld. CIT(A): *"The amount of Rs.13,50,000/- deposited in cash is treated as without proper supporting evidence....."*

Our Submissions: Factually incorrect and result of preconceived notion and absence of judicious consideration of the submission."

11. With regard to the strength of family and household withdrawals kindly refer submissions dt.30.07.2020 to the AO, pursuant to specific query raised by the AO during assessment proceedings which read as under:

"In this regard it is submitted that my family consists of self, wife Smt. Seema Mathur age about 51 years, two sons namely Shivank Mathur age about 20 years studied in B. Tech from Jaipur, and Harsh Mathur age about 16 years studying in 10th Class in Springdales School, Borkhera Kota. My family is residing in our house C-40, Trivia Away, Bajrang Nagar Kota. It is submitted that drawings towards house hold expenses for A/Y 2014-15 had been (1) Sunil Mathur Rs. Total 171200/- (2) Seema Mathur(Wife) has also withdrawn of Rs. 92400/- from her earnings. She is working as a librarian in R.M. Memorial Girls B.E.D College Baran Road, Kota and receiving the salary in cash @7700 P.M. Copy of Salary Certificate is enclosed herewith. (3) Shivank Mathur (son) is 22 year

old and studying of Engineering in Jaipur. He is having PAN-BYUMP5427N (4) Harsh Mathur (son) aged about 16 years studying in Bakshi Springdales School Kota. During the year there is no social function was held by me. Looking to the size of family and facts of the case total withdrawals for household expenses of Rs. 263600/- is quite reasonable."

12. It was submitted that apart from the cash flow statement and consolidated fund flow statement, even if one broadly considers that the income from salary of 3 years including the current year around Rs. 5-6 lakhs; retirement benefit of Rs. 9.16 lakhs difference in the purchase and sales of house Rs.3,50,000/- (sold for Rs.43.50 lakh /less purchase for Rs. 40 lakh), total to Rs.18.50 lakh (app.) from which, reducing household expenses of Rs.2.70 lakh, the assessee is still left with around Rs. 15-16 lakh. In addition, the possibility of saving from the earlier years when assessee has been in service since 1981 of Rs 15-16 lakh cannot be denied. As against this, the deposits were only to the extent of Rs. 13.50 lakh.

13. It was accordingly submitted that from the findings recorded in the impugned order, it clearly appears that the AO proceeded merely on suspicion. A suspicion remains a suspicion unless the same is established and can never take the place of reality and for making addition/assessment of the alleged income, it is for the AO to have proved beyond all reasonable doubts which is completely missing as has been held in the case of Dhakeshwari Cotton Mills Ltd. (1975) 26 ITR 775 (SC). The AO completely ignored the settled law that u/s 68, 69 etc. only a discretion has been conferred upon the AO to be exercised judiciously but he is not always obliged to make the addition if the explanation is not found

satisfactory. Kindly refer CIT v/s P. K. Noorjahan (1999) 237 ITR 570 (SC). It was accordingly submitted that the addition so made and confirmed by the Id CIT(A) be deleted and necessary relief be provided to the assessee.

14. Per contra, the Id DR relied on the findings of the lower authorities and our reference was drawn to the findings of the Id CIT(A) which read as under:

"As regards Ground of appeal no 1 it is observed that the cash was deposited in the State Bank of India account on 08/11/2013 86 08/01/2014 in two installments of Rs. 5 lakhs each and in PNB account in three installments on 22/07/2013 Rs. 1 lakh, on 09.10.2013 Rs. 50,000/- and on 27.11.2013 of Rs. 2 lakhs.

Thus the total cash deposit of Rs. 13.50 lakhs was in the latter half of financial year 2013. 14.

The appellant on his part explained that he had received Rs. 5 lakhs advance for sale of property from Raghuveer Singh 8E, Bhom Singh on 20.01.2014 and he had withdrawals in earlier years and the cash in hand was Rs. 12,60,650/- on 31.03.2013.

The A.O. disputed the same by mentioning the low opening balances in the bank accounts totaling to Rs. 1.56 lakhs only as on 01.04.2013. He also mentioned that during the financial year, no amounts were withdrawn in cash. He has held that the amounts withdrawn in earlier year were deemed utilized in household expenses and held the amount of cash of Rs. 13,50,000/- as being income from other sources.

The appellant has not been able to establish any nexus between the cash withdrawn in earlier years being available with him for re-deposit in the current year under appeal. The cash book is also

found to be self-serving in the absence of independent evidences and has not been enclosed in the appellate proceedings. The agreement of sale involving advance against properties is also dated later than the deposits found made in the bank account. The assessee was thus found to have established no nexus with the withdrawals / receipts and the deposited cash in his bank account. THE ITAT DELHI BENCH 'E' in Manoj Kumar Jain v. Income-tax Officer 25 taxmann.com 440 (Delhi) held-

Section 69 of the Income-tax Act, 1961 - Unexplained investments - Assessment year 2006-07 - Where assessee could not explain source of amount deposited in bank, addition made under section 69 was justified

Accordingly, the A.O.'s findings are not being interfered with. The amount of Rs. 13,50,000/- deposited in cash is treated as without proper supporting evidence & correctly held to be income from other sources by the A.O. This ground of appeal is treated as dismissed. Ground Nos. 2 & 3: These grounds are general in nature and require no adjudication. In the result, the appeal of the assessee is dismissed."

15. We have heard the rival contentions and perused the material available on record. The issue under consideration relates to source of cash deposits during the year in the two bank accounts maintained by the assessee amounting to Rs 13.5 lacs. In this regard, firstly, it is noted that during the year under consideration, the assessee has sold a property and consideration thereof amounting to Rs 43.50 lacs has been received through banking channels and there is no allegation by the AO in terms of any on-money received by the assessee in cash over and above the

declared sale consideration. It has been explained by the assessee that the source of cash deposits during the year is out of earlier two years withdrawals and cash in hand at the beginning of the year. In support of his contention, the assessee has submitted cash book and cash flow statement for previous two financial years depicting the individual transactions of receipts and payments/withdrawals. We have gone through these cash flow statements and find that the assessee has sufficiently explained the source of deposits in form of salary and other retirement benefits which have been duly declared and withdrawals towards household expenses which are partly funded by him and partly by his wife and therefore, availability of cash in hand at the beginning of the year has been sufficiently explained. In the result, considering the entirety of facts and circumstances of the present case, we hereby direct the Assessing officer to delete the addition so made in the hands of the assessee towards unexplained cash deposits and ground no. 2 of assessee's appeal is allowed.

16. Ground no. 1.1 and 1.2 were not pressed by the Id A/R during the course of hearing and hence, the same are dismissed as not pressed.

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

Order pronounced in the open Court on 01/11/2021.

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

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

जयपुर/Jaipur
दिनांक/Dated:- 01/11/2021

***Ganesh Kr.**

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

1. अपीलार्थी / The Appellant- Shri Sunil Mathur, Kota
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(4), Kota
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. 660/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar