

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 1251/JP/2019
निर्धारण वर्ष / Assessment Year :2014-15

Shri Gun Nidhan Singh, 3, Telephone Colony, Tonk Road, Jaipur.	बनाम Vs.	I.T.O., Ward-2(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABGPS 9249 E		
Appellant		Respondent

निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya &
Shri Dewang Gargieya (Advts)
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 24/05/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is the appeal filed by the assessee against the order of the Id.
CIT(A)-I, Jaipur dated 05/08/2019 for the A.Y. 2014-15. The grounds
taken by the assessee are as under:

1. *The impugned addition made in the order U/s 143(3) dated 30/11/2016 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.*
2. *The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs. 18,45,060/- made by the AO as unexplained income u/s 69A of the Act on account of the cash deposit in bank a/c. The addition so made and confirmed, being*



contrary to the provisions of law and facts on the record and hence, the same kindly be deleted in full.

3. *The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C and 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.*
4. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."*

2. The hearing of the appeal and C.O. were concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the during the year under consideration, the assessee filed his return of income declaring total income at Rs. 1,68,000/- and agricultural income of Rs. 25,17,195/- on 10/07/2015. However, the assessment was completed at Rs. 27,30,260/- U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) dated 30/11/2016 by making addition of Rs. 7,17,195/- on account of undisclosed income in the shape of agricultural income and Rs. 18,45,060/- on account of cash deposits in the bank accounts.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the case of both the parties, deleted the additions on account of agricultural income which was



treated by the A.O. as "income from other sources". However, the Id. CIT(A) has confirmed the addition of Rs. 18,45,060/- made on account of unexplained income. Against the said order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

5. At the time of hearing, the Id. AR does not want to press ground No. 1 of the appeal and prayed for dismissal of the same as not pressed. The Id DR has raised no objection if this ground of appeal is dismissed as not pressed. Therefore, ground No. 1 of the appeal is dismissed being not pressed.

6. The solitary effective ground raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 18,45,060/- made by the A.O. on account of unexplained income. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions filed before the Bench and the same is reproduced below:

"Source of cash deposits fully established beyond all doubts: 1: A bare reading of the Id. CIT(A) order (Pr-iv Pg 14-15) makes it evidently clear that he proceeded mere on suspicion than to make a fair estimation of undisclosed income (if any) based on the relevant material on record. His findings are highly perverse as and being demonstrated.



1.1 His first contention that AO has already given credit of agriculture income of Rs. 25,17,195/-, meaning thereby no further relief is required, is highly unjustified and perverse. The AO did not do any charity to the assessee while accepting huge agriculture income as also rental income which was established on record and accepted by the AO himself. Merely on this basis the assessee could not be denied, the benefit of availability of cash.

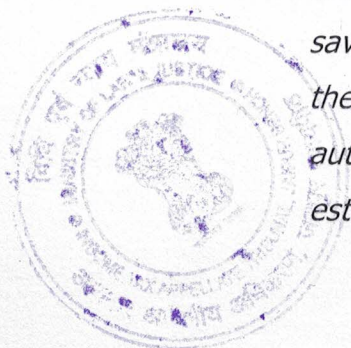
1.2 Availability of cash fully Established: On the contrary, this huge income declared this year by itself, implies that in the past also the assessee was in receipt of substantial amount of agriculture and rental income as well and the assessee really did so in as much as a chart (PB 28) starting from A.Y. 2011-12 onward, was submitted before the Id. CIT(A) (compiling the information based on the bank statement and other details already available on record.) and also reproduced by him at Pg-14 in Pr-III. The chart was prepared in a systematic and scientific method fairly taking into considerations all the receipts and outgoings on a reasonable basis. The assessee considered the agriculture income along with other income of each year and after reducing the utilization thereof in the cash deposits and also household expenses, left substantial amount of cash in hand in each year and in any case in the subjected year, the total availability of cash, this way, was Rs.50.49 Lakhs out of which the subjected cash deposits of Rs. 43,62,255/- (Rs.43,12,255/- + Rs.50,000/-) were made or could have been made and after further utilization of household withdrawals of Rs.4,52,265/-. The assessee was still left with cash in hand of Rs.2.34 Lakhs (PB 28, CIT(A) Pg-14).

However, the authorities is below completely failed to rebut or disprove the facts narrated in the chart. Even the Id. CIT(A) did not make any adverse comment on the contents of the chart (except making a doubt that such a huge cash-in-hand could not be kept at residence).



1.3 Mere Suspicion: The Id. CIT(A) as also the Id. AO though could not deny fact of the earning of the substantial huge agriculture income but merely proceeded on suspicion by saying that keeping of cash was against the human probability. The law is well settled that a suspicion cannot take place of the reality as held in the case of Dhakeshwari Cotton Mills (1954) 26 ITR 775 (SC). Hence, the onus was upon the person who alleged so. The Id. CIT(A) though doubted keeping of cash but has not established and also did not provide any answer as to where such cash generated from the admitted income, though was available has gone. Such a finding, firstly, was against the settled law that where the availability of cash is established and admitted, its claimed utilization cannot be denied unless the authorities below have established the utilization thereof for the other purpose than the claimed one. Reliance is placed on the case laws cited in para 5 of this w/s.

2. Cash in Hand kept was only Rs.17 Lakhs and not 43.62 Lakhs: A perusal of the chart reveal that the assessee has been making of substantial deposits in the past ranging between Rs.11 to 13 Lakhs, meaning thereby, it is not that he is keeping the entire amount of agriculture and other income in cash only. The entire matter must be understood and appreciated with the assessee`s point of view. A person who is having an object / target to make some investment / outgoings in the future, shall be accumulating whole a part of his earnings and such a practice is not against human probabilities, more particularly, looking to his past cash deposits. It is not that the entire 43.62 Lakhs were kept in cash but it is only Rs.17 Lakhs the balance (because upto Rs.25.17 Lakhs was sourced from the current year income itself). Hence, keeping cash savings upto Rs.17 Lakhs in the light of the huge agriculture income and the above submissions was nothing abnormal. Again to repeat, the authorities below have not even whispered a single word what to talk of establishing the utilization of such cash savings of Rs. 17 Lakhs to have



been utilized elsewhere then utilizing the same in the subjected cash deposits.

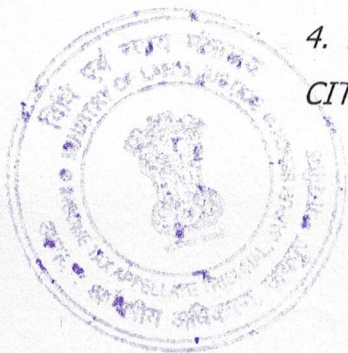
3.1 Bank Account: As regards the non-disclosure of the fact of bank account with Axis Bank, Firstly, entire proceeding were initiated only by making a reference to the cash deposits made in the Bank Account No. a/c no. 913010019544021 with Axis Bank, Tonk Road Branch, Jaipur (PB 13-16), perhaps based on AIR information selected for CASS (Refer AO Pg-1 3^d Line). Therefore, when asked, the assessee disclosed with regard to the other two bank accounts also for complete information. Kindly refer Pr-2 Pg-4 of the assessment order.

3.2 Secondly, otherwise also there was no specific requirement made in the applicable ITR Form i.e. ITR-2 applicable to the assessee in A.Y. 2014-15 to disclose the details of all the bank accounts being maintained & operated by the assessee. It was only for and from A.Y. 2015-16 when the CBDT vide Notification No. 41/2015, Dated-15th day of April, 2015 notified several changes in ITR-1 ITR-2 ITR-4S ITR-V for A.Y. 2015-16. The CBDT has for the first time required an assessee to compulsorily provide details of all Bank Accounts held in India (including in joint names) at any time during financial year 2014-15 (A.Y. 2015-16) including details of those which were closed during the year as mentioned below:

"Number of bank accounts held by you at any time (including opened/closed) during the previous year"

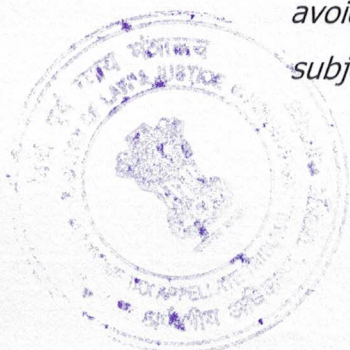
Therefore, the repeated allegation of non-disclosure of bank account does not help the revenue in any manner.

4. Lastly, we strongly, rely our written submission filed before the Id. CIT(A). The same is reproduced hereunder for the sake of convenience:



"1. Source full explained and established: At the outset the facts are not denied that the assessee was in receipts of a huge amounts of income from agriculture, basically being very old farmer. In this very year, the assessee has declared a huge agriculture income at Rs.25.17 Lakhs and in the preceding year also, huge amounts were declared. Kindly refer our submissions towards the earlier grounds of appeals No. 2. Notably, the AO himself has admitted the availability of the cash accumulated out of the agriculture income though to the extent of Rs.18,00,000/- only and not the entire Rs.25.17 Lakhs (which is already under dispute vide GOA-2). Thus, in principle having accepting the generation and availability of cash in hand because of the agriculture income this year, there appears no reason why he should have completely ignored the agriculture income earned and the availability thereof in the preceding years. Surprisingly he has not whispered a single word on this aspect. Therefore, based on availability of cash, a cash flow statement was prepared (PB-28) which shows sufficient availability of cash in hand in this year of Rs. 50,48,966/- out of which, the subjected amount of cash deposits of Rs. 43,62,255/- were made. In view of these facts, there was no scope for the AO to have made any addition on account of the cash deposit in the bank.

2. Utilization of Income earned not established by the AO: It is very pertinent to note that the AO, on one hand has not only admitted that there was agricultural income in the current year as also in the past but even assessed the same and also admitted that the assessee was in receipt of funds therefrom and also from the rental income in the current year as also in the past. However surprisingly, he ignored and rather avoided giving credit of availability of cash therefrom towards the subjected bank deposits.



It is not the case of the AO that the assessee earned the agriculture income long time back which might not have been available. Nor he has alleged that the cash so generated from the income of the earlier years, stood utilized elsewhere and was not available with the assessee in the current year for onward deposit in the bank.

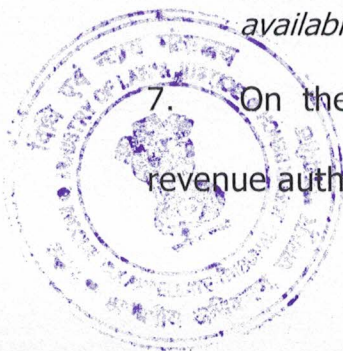
The law is well settled that unless the AO has established the utilization of the cash generated from the income admitted and assessed, the availability of the same cannot be denied unless the AO has fully establish the utilization of the same elsewhere. On the contrary, in this case the AO himself has admitted the availability of the income in the current year but wrongly ignored the availability of the income though admitted and assessed of the preceding years."

5. Supporting Case Laws:

- (i) CIT v/s P.V. Bhoopathy (2006) 205 CTR 495 (Mad) held*
- (ii) CIT vs Kulwant Rai (2007) 210 CTR 380 (Delhi) para 16-17*
- (iii) Anand Prakash Soni v/s DCIT (2006) 101 TTJ 97 (Jd) para 5-6*
- (iv) Shivcharan Dass vs. CIT (1980) 126 ITR 0263 (P&H)*

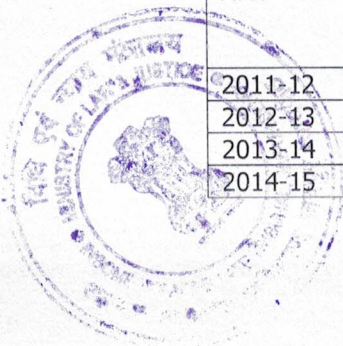
6. The various case laws cited before the Id. CIT(A) strongly and directly supporting the case of the appellant, were completely ignored by the Id. CIT(A) in as much as he is not whispered a single word thereon. The cited decisions were mostly of Hon'ble High Court and the Id. CIT(A) was supposed to have applied his mind on the principle propounded therein and the application thereof on the facts of the present case and not being so, he acted utter disregard of the doctrine of judicial rule of precedence and also acted perversely while denying the benefit of cash availability and in accepting a justified explanation furnished before him."

7. On the other hand, the Id DR has relied on the orders of the revenue authorities.



8. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. During the course of assessment proceedings, it was noticed by the A.O. that the assessee made cash deposits of Rs. 43,12,255/- in the bank account No. 913010019544021 maintained with Axix bank, Tonk Road Branch, Jaipur on different dates and Rs. 50,000/- was deposited in UCO bank on 30/09/2013 totalling to Rs. 43,62,255/-. In reply thereof, the assessee categorically stated that the same was sourced out of the agriculture and other income of the current year as also the accumulation/past savings of the preceding year. However, the A.O. after considering the current's year income being Rs. 25,17,195/- restricted the addition to Rs. 18,45,060/- (Rs. 43,62,255 - 25,17,195). From the record, we also noticed that the assessee was continuously holding a huge chunk of land for last many years and the assessee had also filed the chart of agriculture income disclosing the same in the return of income for last few years as under:

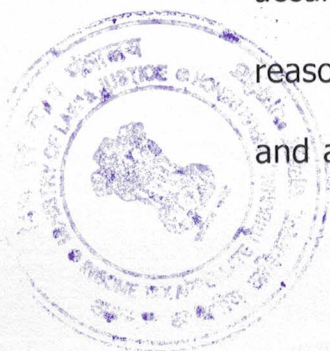
A.Y.	Agriculture Land holding (Area)	Gross Agriculture Income	Less: Expenses	Net Agriculture Income	ITR filed & assessed
2011-12	128.44 Bigha	41,77,522/-	2,32,369/-	29,45,153/-	Yes
2012-13	128.44 Bigha	7,92,508/-	2,34,582/-	5,57,926/-	Yes
2013-14	128.44 Bigha	24,33,462/-	7,30,038/-	17,03,424/-	Yes
2014-15	128.44 Bigha	35,95,993/-	10,78,798/-	25,17,195/-	Yes



Apart from this, during the appellate proceedings before the Id. CIT(A), the assessee has also contended that the cash was deposited out of current year agriculture income as well as past savings from agriculture income and in order to support this contention, the assessee also filed cash flow statement which is reproduced below:

Financial Year	Opening Cash Balance	Agriculture Income	Rent	Total Cash Generation	Cash Deposited Utilized	Total cash utilized	Closing cash balance
2010-11	3,14,548	29,45,153	12,0000	3,379,701	1,248,450	12,48,450	21,31,251
2011-12	2,131,251	5,57,926	18,0000	28,69,177	11,52,680	11,52,680	17,16,497
2012-13	17,16,497	17,03,424	18,0000	35,99,921	13,08,150	13,08,150	22,91,771
2013-14	22,91,771	25,17,195	24,0000	50,48,966	48,14,520	48,14,520	2,34,446

From the cumulative consideration of both the charts i.e. chart containing agriculture income disclosing the return of income and also the chart containing cash flow statement, we noticed that the department had given benefit of the current year's agricultural income to the tune of Rs. 25,17,195/-. However, from the cash flow statement, it was reflected that during the year under consideration, total cash generation was Rs. 50,48,966/- and the opening cash balance for the year under consideration was Rs. 22,91,771/-, therefore, under such circumstances, the explanation put forth by the assessee that the cash deposited by the assessee was from the agricultural and other income as well as from the accumulative past savings of the preceding years appears to be reasonable. Moreover, the department had also accepted the generation and availability of cash because of agricultural income for the year under



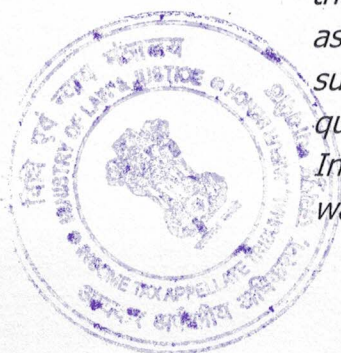
consideration, therefore, there was no reason for ignoring the availability of cash with the assessee due to accumulative/past savings of the preceding years. On this proposition, we draw strength from the decision of Hon'ble Madras High Court in the case of **CIT v/s P.V. Bhoopathy (2006) 205 CTR 495 (Mad)** wherein it was held as under:

*"Appeal (High Court)—Substantial question of law—Income from undisclosed sources—AO did not accept various sources of income explained by the assessee and made additions under ss. 68 and 69 in respect of difference between the investments and the sources accepted by him—Tribunal accepted the explanation of the assessee vis-a-vis **availability of funds with the assessee from the sale proceeds of jewellery belonging to his mother-in-law, receipt from a party and also the amount of opening balance and savings from earlier years** and deleted all the additions—Findings recorded by the Tribunal are purely findings of fact—There is no reason to interfere with the same—No substantial question of law arises—CIT vs. Pradeep Shantaram Padgaonkar (1983) 143 ITR 785 (MP) relied on"*

In the case of **CIT vs Kulwant Rai (2007) 210 CTR 380 (Delhi)**, the Hon'ble Delhi High Court has held as under:

*Read held "Search and seizure—Block assessment—Computation of undisclosed income—Cash found during search—Assessee had **withdrawn Rs. 2 lakh from bank some time back and there is no material with the Department to show that this money had been spent** and was not available with the assessee—Tribunal has found that the withdrawals shown by the assessee are far in excess of cash found during the course of search—In the absence of any material to support the view that the entire cash withdrawals must have been spent by the assessee, Tribunal was justified in holding that the addition was not sustainable—Order of the Tribunal does not give rise to a substantial question of law"*

In this case, cash was found on search carried out on 04.02.2001 and was explained to be out of the cash withdrawal in Dec-2000.



The Coordinate Bench of Jodhpur ITAT in the case of **Anand Prakash Soni v/s DCIT (2006) 101 TTJ 97 (Jd)** has held as under:

*"Search and seizure—Block assessment—Computation of undisclosed income—Cash found during search—Assessee is entitled to furnish cash flow statement to explain the transactions when no books of account are maintained—In such circumstances it becomes the duty of the AO to verify the balance sheet and cash flow statement with the necessary material including the details already filed along with the returns in the past—Assessee explained that the **cash found at the time of search was withdrawn from the bank** some time back which was partly used for purchasing gold and part of the amount was given by the assessee to his wife—There is **nothing to suggest the utilization of the withdrawal amount elsewhere**—Said withdrawal is duly reflected in the cash flow statement and closing cash balance is more than the amount found at the time of search—Thus, addition cannot be sustained"*

The Hon'ble Punjab & Haryana High Court in the case of **Shivcharan Dass vs. CIT (1980) 126 ITR 0263 (P&H)** has held as under:

"Income from undisclosed sources—Unexplained investment—Amount disclosed by HUF under Voluntary Disclosure Scheme—Thereafter kept lying in assessee's house with his wife till her death—ITO questioning its source after the same had subsequently been deposited with a bank in the names of assessee's then major daughters—In the absence of any evidence to the effect that the said sum was utilized by the assessee in any other manner, the Department was not justified in unreasonably rejecting a good explanation and adding the amount as income from undisclosed sources—Further, the addition, if at all possible, could have been made only in the daughters' hands—There was no provision in 1922 Act analogous to s. 69 of 1961 Act"

Considering the above facts and circumstances, judicial pronouncements referred above as well as discussions made above, we direct to delete the addition sustained by the Id. CIT(A) qua this issue.



9. Ground No. 3 raised by the assessee relates to charging of interest U/s 234A, 234B, 234C and 234D of the Act. Since, we delete the addition made and sustained on account of unexplained income, therefore, this ground of appeal needs no adjudication.

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

Order pronounced in the open court on 24th May, 2021.

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

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 24/05/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Gun Nidhan Singh, Jaipur.
2. प्रत्यर्थी / The Respondent- I.T.O., Ward-2(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1251/JP/2019)



आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

सहायक पंजीकार
Assistant Registrar

आयकर अपीलीय अधिकरण
Income Tax Appellate Tribunal
जयपुर / Jaipur