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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 05.11.2024

+ **ITA 2/2023**

SHRI PAWAN KUMAR JAGGIAppellant
Through: Mr Ruchesh Sinha and Ms Monalisa
Maity, Advocates.

versus

ACIT CENTRAL CIRCLE-25 NEW DELHIRespondent
Through: Mr Abhishek Maratha, SSC, Mr
Apoorv Agarwal, Mr Parth Samwal,
JSCs, Ms Nupur Sharma, Mr Gaurav
Singh, Ms Muskaan Goel, Mr
Himanshu Gaur and Ms Paridhi
Kohli, Advocates for the Revenue

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. The appellant (hereafter *the Assessee*) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 13.06.2022 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in IT (SS) A No.02/Del/2014 and IT (SS) A No.03/Del/2014 in respect of the block period from 01.04.1990 to 17.10.2000.



2. A search was conducted on the premises of the Assessee on 17.10.2000 and a debit card of the overseas bank – Barclays Bank, PLC St.40, Birmingham, London, United Kingdom was found in the joint name of the Assessee and his wife (Smt. Jyoti Jaggi).

3. In the given circumstances, the assessing officer (hereafter *the AO*) raised a demand of ₹50,00,000/- on account of unexplained credit in respect of the Assessee. A protective assessment was also made in the case of Assessee's spouse (Smt Jyoti Jaggi). The Assessee appealed the said decision before the Commissioner of Income Tax (Appeal) [hereafter *the CIT(A)*] being appeal No.205/02-03, which was disposed of by an order dated 24.12.2004 confirming the abovesaid demand of ₹50,00,000/- made on account of the unexplained deposit. The learned CIT(A) reasoned that there was sufficient evidence that the Assessee was maintaining the bank account in Barclays Bank, PLC St.40, Birmingham, London, United Kingdom. The Assessee had also sent communication to the said bank to obtain the statement of bank account, but the same was not produced. Absent any such statement, the learned CIT(A) did not consider it apposite to fault the order passed by the AO.

4. The Assessee and his spouse appealed the said order dated 24.12.2004 before the learned ITAT being IT (SS) No.3/Del/2005 and ITA No.4/Del/2005. The said appeals were heard along with the appeals filed by the Revenue in the case of the Assessee's wife as well as the appeal filed by her. The learned ITAT found that the additions were made without making the necessary enquiries and faulted the AO for making such additions purely on the basis of the surmises and conjectures. The learned ITAT also noted



that similar issues have been dealt with in case of the Assessee's wife (wherein addition of ₹25,00,000/- was made by the AO on the presumptive basis as the bank account with Barclays Bank was in the joint name with the Assessee). Accordingly, the learned ITAT noted that the reasons for remanding the matter in the Assessee's wife's case was also applicable in the case of the Assessee.

5. The relevant extract of the order passed by the learned ITAT in respect of the Assessee's wife, which also supplied the reasons for remanding the matter to the AO in the Assessee's case is set out below: -

“12. The second ground of appeal is against confirmation of addition of Rs.25,00,000/- as undisclosed income of the assessee on account of unexplained deposit in foreign bank account.

13. During the course of search evidence of a joint bank account of the assessee and her husband was discovered, the assessee failed to give the details thereof and the Assessing Officer made an addition of Rs.25,00,000/- on account of undisclosed deposits in the foreign bank account. The assessee submitted that no evidence was found regarding the deposits and the addition was entirely on surmises. The Ld. CIT (A) observed that

(i) the foreign bank account No. 10216089 of the assessee in the joint name of the assessee and her husband at Barclays Bank along with debit card account was admitted by the assessee,

(ii) but the assessee did not file the statement of account and other relevant details of the Bank Account, despite opportunities given by the Assessing Officer and,



(iii) even after a lapse of considerable time, the relevant details were not filed before the Ld. CIT (A). She, therefore, confirmed the addition of Rs. 25,00,000/- made by the Assessing Officer.

14. The Ld. Counsel relied on the written submissions filed before the Ld. CIT (A) on 7th June, 2004. It is seen that the issue has been discussed at para 2 pages 10-11 of the written submissions placed in the paper book of the assessee. It was reiterated that

- (i) the assessee did not have a separate foreign bank account;
- (ii) the account in question was opened by her husband;
- (iii) the relevant details could have been obtained by the department from the bank directly;
- (iv) in any case, the relevant details were required to be filed by the husband of the assessee;
- (v) the account was opened only for the limited purpose by depositing \$4000;
- (vi) no other amount were deposited in the account and
- (vii) the undisclosed deposits were wrongly presumed to have been made during the relevant block period.

15. We have carefully considered the issue. In our considered opinion even if the foreign joint bank account was opened by the husband and the inquiries were also made by the Assessing Officer from the husband, the assessee should have given complete details, copy of statement of bank account for the block period and other relevant details which were filed neither by the assessee nor



by her husband. The Assessing Officer was, therefore, empowered to draw adverse inference. But since it has not been ascertained as to how much amount was deposited by the assessee in the aforesaid bank account out of her unexplained sources, there was no basis to consider the deposit of Rs.25 Lakh. It is, however, observed that the foreign bank account was accepted by the assessee but neither the assessee nor her husband has given any information regarding the bank account or deposits therein. In such a situation, it cannot also be accepted that only \$4000 were deposited. The issue is, therefore, set aside and restored to the file of the Assessing Officer with the direction that he should make necessary inquiries and ascertain as to how much amount was deposited in the foreign bank account during the relevant block period and whether any of the deposit, if made, is out of unexplained sources of the assessee. He is accordingly, required to decide the issue afresh in the light of the foregoing directions and after giving proper opportunity to the assessee. This ground of appeal is allowed for statistical purpose.”

6. In view of the above, on remand, the AO once again examined the question of the quantum of addition required to be made in the Assessee’s case. Since the Assessee did not produce any details, the AO once again summarily made the addition of ₹50,00,000/- solely on the ground that no details had been furnished by the Assessee.

7. The relevant reasons stated by the AO in the order dated 31.12.2008 regarding the addition of ₹50,00,000/- is set out below:-

“9. Addition on account of undisclosed foreign bank account Rs.50,00,000.00 - As no details



have been furnished, there is no option at the amount of Rs. 50 lacs.”

8. The Assessee appealed the said decision before the learned CIT(A), *inter alia*, on the ground that the addition was made on surmises and without any material to substantiate the same. The learned CIT(A) held that there was no basis for presuming that the deposit made in the foreign bank was equivalent to ₹50,00,000/-.

9. The learned CIT(A) also directed the AO to make reference to the authorities of Isle of Man through the FT&TR Division of CBDT to verify the details of the said account, which would reveal unexplained deposits made in the said bank account. However, at the said stage, the learned CIT(A) reduced the addition from ₹50,00,000/- to ₹25,00,000/-. In addition, the learned CIT(A) also considered it apposite to make an addition of ₹2,80,000/- being equivalent to an amount of GBP 4000, which was admittedly received by the Assessee.

10. The assessee had appealed the said order before the learned ITAT, which was disposed of by the impugned order.

11. The learned ITAT noted that the Assessee had not produced any material to controvert the factual findings of the learned CIT(A). In the circumstances, the learned ITAT found no ground to interfere with the orders passed by the learned CIT(A).

12. It is in the aforesaid context, the following question of law are projected by the assessee for the consideration of this Court:-



“(i) Whether the Income Tax Appellate Tribunal [in short “Tribunal”] misdirected itself on facts and in law, in sustaining the addition of Rs. 25 lakhs on the ground that it was the undisclosed income of the appellant.

(ii) Whether the Tribunal could have concluded that the appellant had earned undisclosed income only on the ground that he had been issued a debit card by a foreign bank?”

13. In our view, none of the aforesaid questions are substantial questions of law. As noted above, the addition of ₹25,00,000/- (plus ₹2,80,000/- as admitted by the Assessee) has been made solely on the basis that the Assessee had maintained an overseas bank account with Barclays Bank, and the deposits were made in the said bank account were not disclosed. The AO thus, in his best judgment estimated the quantum of deposit. However, it is also admitted that no enquiries were made, as directed by the learned ITAT in terms of the order dated 31.12.2007.

14. The learned counsel for the Assessee also concedes that in the absence of the Assessee producing the relevant material, the AO was well within his right to make an estimate bearing in mind the income profile of the Assessee.

15. We find it difficult to accept that any interference with the estimation of the deposit made in the bank account, are called for in the absence of Assessee producing his own bank account statement.

16. At this stage, the learned counsel appearing for the Assessee submits that the Assessee may be given one more opportunity to produce the



relevant bank statement for the block period to establish the quantum of deposits. The learned counsel appearing for the Revenue fairly states that he has no objection in this regard.

17. In view of the above, the AO is directed to re-examine the question of quantum of the addition on account of the deposits made in the foreign bank account maintained by the Assessee during the relevant period (Barclays Bank, PLC St.40, Birmingham, London, United Kingdom). This is subject to the Assessee producing the authenticated bank statement of the said bank account for the relevant period. In the event, the Assessee produces the same, the AO shall determine the addition based on the said account. And, the additions, as directed by the learned CIT(A) and as upheld by the learned ITAT in the impugned order, will shall stand modified to the said extent. However, if the Assessee fails to produce the bank account within the period of twelve weeks from date, no such exercise is required to be undertaken by the AO and the impugned order passed by the learned ITAT shall stand confirmed.

18. This order is passed in the peculiar circumstances of this case and with the concurrence of the learned counsels for the parties.

19. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 05, 2024

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[Click here to check corrigendum, if any](#)