

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 245/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2011-12)

Shri Kirti R. Ajmera, Gopaldas Developers, 76 Kika Street, Gulal Wadi, Mumbai- 400004.	बनाम/ v.	ITO - 19(2)(2), Aayakar Bhavan, M.K. Road, Mumbai 400 020.
स्थायी लेखा सं./PAN : AABPA7904L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :	Shri Reepal Tralshawala
Revenue by :	Shri G.M. Makwana, DR

सुनवाई की तारीख / **Date of Hearing** : 19-04-2017

घोषणा की तारीख / **Date of Pronouncement** : 21-04-2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 245/Mum/2016, is directed against the appellate order dated 26th November, 2015 passed by learned Commissioner of Income Tax (Appeals)- 32, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2011-12, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 24th March, 2014 passed by the A.O. u/s 143(3) of the Income-tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"Addition of Rs.28,15,500/- on account of cash deposited in bank account:

1. The learned CIT(A) erred in confirming the addition made of Rs.28,15,500/- towards cash deposited in bank account without appreciating that the appellant had duly discharged the onus by proving the source of cash deposit in the bank accounts by filing confirmation letters of the parties, which is not disputed and hence, the addition confirmed of Rs.28,15,500/- is without any justification and liable to be deleted.

2. The Ld. CIT(A) failed to appreciate that the transaction is to be looked from businessmen point of view and also that no further documents were called for either by the AO or the CIT(A) and hence, having accepted the confirmation letters as genuine, the source of cash deposited in the bank account gets explained and thus, the addition confirmed of Rs.28,15,500/- is unjustified and liable to be deleted.

3. Without prejudice to the above grounds and without accepting, the learned CIT(A) failed to appreciate that 50% of cash deposited in joint bank account amounting to Rs.9,04,000/- (50% of total cash deposited in joint bank account) pertained to Shri Ramesh Panchal and he had also filed his confirmation before the AO as well as CIT(A), which is accepted as genuine and hence, addition made to this extent i.e. cash deposit amount of Rs.9,04,000/- in the hands of the appellant is unjustified and liable to be deleted.

3. Brief facts of the case are that the assessee is an individual and partner in Ajmera Investment Co. along with other family members. The A.O. during the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of 1961 Act based on AIR information observed that the assessee had deposited cash in bank accounts with New India Co-operative Bank Limited amounting to Rs. 28,15,500/- during previous year relevant to the impugned assessment year. The assessee was asked by the AO to submit cash flow statement and on verification of the same, the A.O. observed that the assessee had deposited cash in two savings bank account with New India Co-operative Bank Ltd. (

saving bank account no. 19259 and 21227) to the tune of Rs. 28,15,500/- and the assessee has stated that the cash was deposited as their share of investment. The assessee was asked by the AO to explain the source of the said cash deposits in bank account for which no explanations were submitted by the assessee. The A.O. accordingly issued notice u/s 133(6) of the Act to the bank and obtained the bank statements of the two bank accounts directly. On verification of the said bank statements, the A.O. doubted the genuineness of the cash deposits of Rs. 28,15,500/- which could not be verified and hence the AO added the same to the total income of the assessee as unexplained cash credit u/s 68 of the Act, vide assessment order dated 24-03-2014 passed by the AO u/s 143(3) of 1961 Act.

4. Aggrieved by the assessment order dated 24-03-2014 passed by the A.O. u/s 143(3) of 1961 Act, the assessee filed first appeal before the ld. CIT(A), wherein the assessee made the following submissions before learned CIT(A):-

“The appellant submits that in the assessment order, the A.O. has observed that as per AIR information received, the appellant had made cash deposits in 2 bank accounts with New India Co-operative Bank Ltd., i.e. Saving bank A/c No. 19259(cash deposited Rs. 10,07,500/-) and A/c No. 21227 {cash deposited of Rs.18,08,000/-] and thus, the aggregate amount of cash deposited amounted to Rs.28,15,500/-. It is pertinent to note here that the bank account no. 19259 is in the individual name of appellant whereas bank account no.21227 is joint account of appellant and his partner Shri Ramesh Panchal.

The appellant submits that in the course of assessment proceedings, explanation was called for in respect of the cash deposit made in the bank account and in response to the same, the appellant filed detailed explanation vide letter dated 21.03.2014 along with confirmation letters of parties with supporting documents and thereby explained the source of cash deposit. However, in contrast to the said factual position, the AO has observed in the assessment order that no explanation about the source of cash deposit is submitted and on this incorrect

assumption, the AO made addition of the entire amount of cash deposited in both the bank accounts aggregating to Rs.28,15,500/-. Thus, the addition is made without taking any cognizance of the details submitted and explanation given about the source of cash deposits.

The appellant submits that in the letter filed dated 21.03.2014, it was brought to the notice of the AO that during the impugned assessment year, the appellant has entered into transaction for sale of agricultural land situated at Thane to following parties and from whom advance was received in cash as under:-

Sr No.	Name of party	Advance recd.	PAN
1	Shri Salim Ahmed Mansuri	7,00,000/-	AFOPM2738L
2	Shri Habib Ahmed Mansuri	6,20,000/-	ASFPM2127B
3	Smt. Gulabben Ahmed Mansuri	7,00,000/-	
4	Shri Mulchandas Ranchhoddas Patel	6,25,000/-	BPPPP5222J

The appellant submits that alongwith the letter dated 21.03.2014, the confirmation letters from the above 4 parties along with their 7/12 abstracts were submitted in order to prove the transaction and receipt of cash. The appellant submits that out of the cash received from above parties, cash was deposited in the bank accounts.

The appellant further submitted to the AO that the saving bank account No. 21227 with New India Co-operative Bank Ltd, Girguam branch was in joint names of the appellant and his partner Shri Ramesh Panchal having equal share. In this bank account, the total cash deposited aggregated to Rs. Rs.18,08,000/- and being equal partners, cash of Rs.9,04,000/- was deposited by Shri Ramesh Panchal out of his own sources and cash of Rs.9,04,000/- was deposited by the appellant from the source of cash received from the aforesaid 4 parties. In this connection, the appellant filed confirmation letter from Shri Ramesh Panchal confirming that the cash deposited in bank account no.21227 of aggregate amount of Rs.18,08,000/- was

jointly deposited and he deposited cash of Rs.9,04,000/- out of his own sources. The appellant submits that since his name appears as first name in the bank account no.21227, the AIR information show entire cash deposited in this account in the name of the appellant only. However as submitted, the cash of Rs.9,04,000/- was contributed and deposited by partner of appellant Shri Ramesh Panchal.

The appellant thus submits that before the AO entire explanation and details were furnished in respect of cash deposited in bank accounts, however, the AO has completely failed to take cognizance of the explanation and details submitted before him (perhaps due to time barring pressure). The appellant submits that since the explanation is duly furnished in respect of the entire cash deposits in bank accounts, the addition made by the AO is without any justification and liable to be deleted.

Without prejudice to the above and without admitting, the appellant submits that in any eventuality, the cash deposited of Rs.9,04,000/- by partner Shri Ramesh Panchal in the bank account no.21227 with New India Co-operative Bank Ltd., Girguam Br., ought to be accepted as the account is in the joint name of the appellant and Shri Ramesh Panchal and that the same is duly confirmed by Shri Ramesh Panchal that he had contributed and deposited cash of Rs.9,04,000/- i.e. 50%. Hence, the appellant submits that the entire cash deposited added in hands of the appellant is not justified and liable to be deleted.”

The ld. CIT(A) observed that cash of Rs 10,07,500/- was deposited in SB A/c No 19259 which is operated as a single holder by the assessee himself, and cash of Rs 18,08,000/- is deposited in SB A/c No 21227 operated jointly by the assessee along with one Mr. Ramesh Panchal who is claimed by the assessee to be his partner. The assessee produced confirmation from said Mr. Ramesh Panchal before learned CIT(A). The assessee also claimed that he had sold agricultural land to 4 parties viz. Shri Salim Ahmed Mansuri, Sh. Habib Ahmed Mansuri, Sh. Gulabben Ahmed Mansuri & Sh. Mulchanddas Ranchoddas Patel and received cash of 7,00,000/-, Rs. 6,20,000/-, Rs. 7,00,000/- and Rs. 6,25,000/- respectively for which the confirmations were

furnished by the assessee. The ld. CIT(A) observed that the cash deposited in joint account in the month of April, 2010 amounting to Rs. 1,82,000/-. For which no source of cash deposit was produced by the assessee. The source of cash deposit into the joint bank account bearing number SB A/c No 21227 in April 2010 remains unexplained by the assessee, was the observation of learned CIT(A). The learned CIT(A) observed that no evidence towards purchase of agricultural land and sale of the said land to four parties had been filed by the assessee. The receipt of alleged sale consideration pre dates the date of payment of purchase consideration which is not normal, was the observation of learned CIT(A). It was also observed by learned CIT(A) that it is unusual that sale of land is made in cash while purchase of the same land is made by cheque. The ld. CIT(A) accordingly held that the assessee could not explain the source of cash deposited in two bank accounts in his and as such the ld. CIT(A) upheld the additions made by the A.O. to the tune of Rs. 28,15,500/-, vide appellate orders dated 26-11-2015 passed by learned CIT(A).

5. Aggrieved by the appellate order dated 26-11-2015 passed by the ld. CIT(A), the assessee is in appeal before the tribunal.

6. The ld. counsel for the assessee submitted that the assessee has explained the source of cash deposited in the two bank accounts before the ld. CIT(A) for which evidences were duly submitted but the same were not properly appreciated by learned CIT(A). It is submitted by learned counsel for the assessee that paper book has been filed by the assessee before the tribunal containing the relevant evidences in connection and in context of cash deposits in bank accounts. He invited our attention to paper book / page 19 whereby the confirmation from Shri Ramesh Panchal has been placed w.r.t. deposit of his share of cash of Rs. 9,04,000/- in bank account which was operated jointly by the assessee with Mr Ramesh Panchal bearing

number SB A/c No 21227 . In the confirmation letter Shri Ramesh Panchal stated that he has a joint account with Mr. Kirti Rasiklal Ajmera (assessee) in New India Co.op. Bank Limited, Girgaum branch, Mumbai and jointly deposited cash amount of Rs. 18,08,000/-, out of which his share was Rs. 9,04,000/-. Thus, it was submitted that out of total cash deposited of Rs. 28,15,500/- in the two bank accounts, the said Mr Ramesh Panchal owned up Rs. 9,04,000/- and no addition is warranted of this amount in the hands of the assessee. It was submitted that the assessee had sold agricultural land to four parties against which advances had been received in cash against which confirmations were filed from the parties to whom the said agricultural land were sold vide paper book page 4 to 17 filed before the tribunal. The learned counsel for the assessee submitted that the assessee had sold agricultural land to 4 parties viz. Shri Salim Ahmed Mansuri, Sh. Habib Ahmed Mansuri, Sh. Gulabben Ahmed Mansuri & Sh. Mulchanddas Ranchoddas Patel and received cash of 7,00,000/-, Rs. 6,20,000/-, Rs. 7,00,000/- and Rs. 6,25,000/- respectively for which the confirmations were furnished by the assessee. It was submitted that thus the entire cash deposit in bank stood explained and no addition is warranted in the hands of the assessee. The ld. counsel contended that these information can be examined and verified by the A.O. as these documents were not produced before the A.O. but were filed before the learned CIT(A) during the course of appellate proceedings and the learned CIT(A) has not properly appreciated these evidences . Thus, in nutshell, the ld. counsel requested the matter may be set aside to the file of the A.O. wherein the AO can make necessary enquiries, examination and verifications of these evidences before arriving at the decision.

7. The ld. D.R., on the other hand, supported the orders of authorities below.

8. We have considered rival submissions and perused the material available on record. We have observed that the assessee is an individual and is partner in a partnership firm namely Ajmera Investment Co. along with other family members. There was a cash deposit of Rs. 28,15,500/- in the two saving bank accounts of the assessee in New India Co.op. Bank , wherein one bank account is jointly held by assessee with one Shri Ramesh Panchal(sb 21227). The cash deposit of Rs. 10,07,500/- was made in the individual saving bank account(sb 19259) and cash deposit of Rs. 18,08,000/- was made in the joint saving bank account (sb 21227)which was held jointly with Mr Ramesh Panchal. The said Mr Ramesh Panchal owned up 50% of cash deposited in saving bank account no 21227 operated jointly by said Mr Ramesh Panchal and the assessee. The said Mr Ramesh Panchal has issued confirmation wherein he confirmed to have deposited Rs. 9,04,000/- in the said saving bank account. These evidences and contentions need verification and examination by the AO which may entail enquiry by the AO. The assessee had also claimed to have received advance consideration against the sale of agricultural land for which confirmations have been filed from the purchasing parties. The assessee had claimed to have sold agricultural land to 4 parties viz. Shri Salim Ahmed Mansuri, Sh. Habib Ahmed Mansuri, Sh. Gulabben Ahmed Mansuri & Sh. Mulchanddas Ranchoddas Patel and received cash of 7,00,000/-, Rs. 6,20,000/-, Rs. 7,00,000/- and Rs. 6,25,000/- respectively for which the confirmations were furnished by the assessee. These evidences were filed before learned CIT(A) who doubted the same on the grounds that purchase of agriculture land was made in cheque while sale is made in cash. The learned CIT(A) also expressed reservation on the sale being made earlier than purchase of the said land. The sale and purchase deed for the said agriculture land was not filed before the learned CIT(A) , which assessee now claims to be available for necessary verifications and examination as may be required by the AO. These explanations and documents submitted by the assessee needs verification by the A.O. and as such, in our considered view

keeping in view facts and circumstances of the case and in the interest of justice, we are inclined to set aside and restore this matter back to the file of the A.O. for de-novo determination of the issues on merits in accordance with law by the AO after conducting such examination, enquiry and verifications as the AO may deem fit in accordance with law in set aside remand proceedings . The assessee is directed to produce all necessary and relevant evidences before the A.O. to substantiate his claim, which evidences and explanation of the assessee will be admitted by the AO in the interest of justice. Needless to say that proper and adequate opportunity of being heard shall be provided by the A.O. to the assessee in accordance with the principles of natural justice in accordance with law. We order accordingly.

9. In the result, appeal of the assessee in ITA No. 245/Mum/2016 for assessment year 2011-12 is allowed for statistical purpose.

Order pronounced in the open court on 21st April, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 21-04-2017 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 21-04-2017

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आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "C" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai