

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.1576/M/2011 & 4181/M/2013
Assessment Years: 2007-08**

Mr. Dwarkanath Krishnan Nair, 602/603, Green Acres CHS Ltd., Lokhandwala Complex, Mumbai – 400 053 PAN: AAPPN 1807R	Vs.	DCIT-9(2), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vipul Shah, A.R.
Revenue by : Shri K. Krishna Murthy, D.R.

Date of Hearing : 17.10.2016
Date of Pronouncement : 21.10.2016

ORDER

Per Sanjay Garg, Judicial Member:

The above captioned appeals, one in relation to the quantum additions and the other against the levy of penalty under section 271(1)(c) of the Act, have been preferred by the assessee against the orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 12.01.2011 & 12.03.2013 respectively. First we take up the assessee's appeal bearing No.1576/M/2011 relating to quantum additions.

ITA No.1576/M/2011

2. A search action was carried out in the premises of the assessee under section 132 of the Act on 06.02.07. During the course of search action, cash of Rs.10 lakhs was seized from the residence of the assessee. On being asked to explain, the assessee submitted that the cash was accumulated by drawing the same from his company for meeting various expenses including the marriage

ceremony of his son which was to take place in August, 2007. The assessee further submitted that he was the Chairman and Director of the M/s. Lakozy Motors Pvt. Ltd. during the financial year 2006-07 and his wife Mrs. Shanta Nair and his son Mr. Rohit Nair were also the Directors of the company. That his another son Mr. Rahul Nair was Director of Aquest Auto Pvt. Ltd. during the said financial year. That the assessee had imprest account with the company and he used to regularly withdraw money from that account which was debited to the imprest account maintained in his name by the company; That not only he, but also, his other family members namely Mrs. Shanta Nair (wife), Rohit Nair (son) and Rahul Nair (son) who were also Directors of M/s. Lakozy Motors Pvt. Ltd. had withdrawn cash from their respective imprest accounts maintained with the company and that the seized cash was part of the said amount withdrawn by the Directors from the company. The Assessing Officer (hereinafter referred to as the AO), however, rejected the contentions of the assessee observing that the assessee had been changing his stand.

3. In appeal, the Ld. CIT(A) also rejected the contentions of the assessee observing that the assessee could not prove with cogent material about the source of the cash found at his premises during search action.

4. Before us, the Ld. A.R. of the assessee has moved an application seeking admission of additional evidence under rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963. To substantiate his submissions, the assessee had submitted the copy of his and his family members personal statement of affair/ Balance Sheet upto the date of search and also of earlier years. It has been further submitted that the assessment of the assessee for the entire Block period was completed as per the original return of income filed by him without making any addition in any of the years, except in the year under appeal. The company was advancing imprest cash to all the three directors and other employees for incurring expenses on behalf of the company and as on the date of Search following amount was lying as an advance for expenses;

Sr. No.	Name	Amount
1.	Dwarkanath Nair	2,49,073
7	Rob it Nair	1,47,601
3.	Shanta Nair	3,10,565
4.	Rahul Nair	2,80,276

However, the AO and the Ld. CIT(A) did not accept the earlier year Returns, Balance Sheets and Assessment Orders as a sufficient documentary evidence. It has been submitted that the assessee and his family members were jointly holding Cash in hand, however, the AO treated the said amount of Rs.10,00,000/- as undisclosed income of the assessee without appreciating the fact that all the four persons are regular tax payers and residing jointly in the same premises. That now the assessee has obtained a confirmation from M/s. Lakozy Motors Pvt. Ltd. confirming that as per their record, as on the date of search, the cash advance lying with the assessee and his family members was at Rs.6,33,148.02/-.

5. Along with the application a duly sworn in affidavit has also been filed wherein it has been pleaded that the assessee was under bonafide belief that the evidences earlier submitted by him were enough to prove his contentions. However, since the lower authorities have observed that the said evidences were not enough, hence the assessee now wants to submit the confirmation letter from M/s. Lakozy Motors Pvt. Ltd. to confirm and prove that the assessee and his family members were holding cash on behalf of the company. We find that the assessee has taken this plea of holding cash drawn from the company since very beginning. The case of the assessee has been rejected by the lower authorities because they do not find the evidences furnished by the assessee as sufficient to prove his contentions. The evidence now sought to be furnished by the assessee goes to the root of the case and in our view is very much necessary to be looked into and considered for the just decision of the case. We accordingly allow the application of the assessee for additional evidence and remand the case to the file of the AO with a direction to admit

the additional evidences sought to be produced by the assessee and then verifying the authenticity of the same and take a fresh decision on the issue in accordance with law.

6. In the result, this appeal of the assessee is treated as allowed for statistical purposes.

ITA No.4181/M/2013

7. This appeal has been filed by the assessee agitating the confirmation of the levy of penalty under section 271(1)(c) of the Act on account of the confirmation of the above stated impugned additions. Since we have restored the matter in relation to quantum additions to the file of the AO, therefore at this stage the very basis for the levy of penalty under section 271(1)(c) of the Act has ceased to exist. The penalty levied in this case in relation to the impugned additions therefore, at this stage, is ordered to be deleted. However, it is made clear that the AO will be at liberty to initiate fresh penalty proceedings, if he deems it so fit while making the fresh assessment proceedings as ordered above. This appeal of the assessee therefore is also treated as allowed for statistical purposes.

8. In the result, both the appeals of the assessee are hereby treated as allowed.

Order pronounced in the open court on 21.10.2016.

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 24.10.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.