

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “E”MUMBAI
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.439/Mum/2014

Assessment Year: 2011-12

Shri Shailesh R. Kothari, C-33, Maheshwari Mansion, Nepean Sea Road, Mumbai-400036. PAN: AGAPK7174K	Vs.	ITO 16(2)(4), Matru Mandir, Mumbai-400007.
(Appellant)		(Respondent)

Assessee by : Shri Hari S. Raheja (AR)

Revenue by : Shri Debabrata Baidya (DR)

Date of hearing : 09.05.2015

Date of Order : 29.07.2016

ORDER

PER PAWAN SINGH, JM:

1. The present appeal is filed by the assessee against the order of CIT(A)-27, Mumbai dated 19.11.2013 in respect of Assessment Year (AY) 2008-09. Though the assessee has raised as many as four grounds of appeal but as per our opinion ground no.1 is the only substantive ground for our consideration and rest of the grounds are argumentative or formal in nature.

1. On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the addition 11,19,500/- from out of the addition of Rs. 12,19,500/- made by the Assessing Officer.

2. On the facts and in the circumstances of the case and in law the learned CIT(A) has failed to appreciate the contribution made by the

appellant and the family members from out of their personal withdrawals as also the re-deposits made by the appellant in the bank account thus holding that the appellant was not able to justify the cash credits in the bank account.

3. On the facts and in the circumstances of the case and in law the learned CIT(A) has failed to appreciate that the cash account summary of the family members filed during the appellate stage fully support the claim of the appellant.

4. The appellant craves leave to, add to, alter, modify, delete and/or change all or any above grounds or before the hearing of the appeal.

2. The brief facts of the case are that the assessee filed return of income for relevant AY on 24.02.2008 declaring total income of Rs. 1,14,980/-. The return was selected for scrutiny. During the assessment, the Assessing Officer (AO) observed from the AIR information that there is a cash deposit of Rs. 12,19,500/- in assessee's bank account in HSBC. The assessee was asked to disclose the source of these deposits. The assessee submitted his reply that his family member contributed the money to meet the general expenses of the family. Along with his reply, the assessee enclosed the bank statement, capital account, balance sheet and relevant paper of family member to prove the contribution to the assessee. It was further contended that cash was given by the family member to spend through credit cards to get reward points which is benefit for family. The contention of assessee was not accepted by the AO and the whole of the amount of Rs. 12,19,500/- was added u/s. 68 of the Act in the income of assessee in assessment order dated 31.12.2010. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) after considering the contention of assessee granted partial relief of Rs. 1,00,000/- out of the total addition made of Rs. 12,19,500/- in its order dated 19.11.2013, against which the present appeal is filed by assessee before us.
3. We have heard Authorised Representative (AR) of the assessee Shri Hari S. Raheja and Shri Debabarata (DR) for revenue. Ld AR of the

assessee argued that all the deposits were made by the assessee in his bank account by the contribution of family members. The contribution was made by the family members to meet out the requirement of household expenses. No statement of account of income is maintained by any of the family member. Otherwise they were not required to maintain the books of account under the law to maintain the books of account. Ld AR of assessee further argued that similar contribution was made in previous year but no addition was made in assessment in respect of AY 2007-08. Ld DR for the revenue argued that the assessee failed to prove the creditworthiness of the family members who allegedly made contribution for deposit of the amount in assessee's bank. The confirmations filed by the assessee are fabricated one and does not bear even the date of confirmation. The document filed by assessee does not corroborate the contention of the assessee and argued that the orders of authorities below are based on the factual position and needs no interference.

4. We have considered the rival contention of the ld AR's for parties and gone through the material available on record. During the assessment proceedings, while considering the contention of the assessee the AO concluded that the statement of credit card and the expenses are not of the nature of general house-hold expenses but related to restaurant bills, entertainment and other personal expenses. The AO concluded that, no doubt that assessee has income from unexplained source which has been deposited in his account. The assessee's claim is not substantiated from the statement of bank account itself, as total credit card expenses of Rs. 2,07,382/- only. As such, the assessee's contention that deposits were made out of the contribution from the withdrawal of family members to meet out general expenses is not proved. And the whole of

the amount was added u/s. 68 of the Act in the income of assessee. The CIT(A) after considering the contentions of the assessee, elaborately dealt with each and every contention of the assessee. On the assessee's request for being allowed opportunity to substantiate his case, the Id. CIT(A) sought remand report from the AO twice. This, despite the assessee taking different and inconsistent stands at different times. During the appellate proceeding, the assessee furnished confirmation letter from the family members along with the computation of income, acknowledgement of income tax return in respect of Smt. Sushila Kothari, Anita Kothari, Rakesh Kothari, Prakash Kothari and Tripti Kothari. Miss. Neha and Tanya were not assessed to tax and were not filed return of income as explained by assessee on furnishing of such detail, CIT(A) seek to remand report wherein the AO furnished his report as under:

“a) Smt. Anita R. Kothari (PAN-AJLPK0583G) – The assessee has contended that Smt. Anita R. Kothari has given of Rs. 1,07,000/- to the assessee withdrawing cash from Den a Bank. In this regards, the assessee has filed confirmation of Rs. 1,07,000/-, the bank pass book of the said bank and return of income for A. Y. 2007-08 & 2008-09. On perusal of the return of income for A.Y. 2008-09, it is seen that under the head Income from House Property, Smt. Anita R. Kothari has received rent of Rs.2,10,000/- during the year, the copy of rent agreement for the period 05.11.2007 to 4.10.2008 has been submitted by the assessee. Further, Smt. Anita R. Kothari has received of Rs. 20, 000/- from tailoring work, and Rs. 10,000/- from Tuition fees. The assessee has also received Bank interest of Rs.38, Interest on PPF of Rs.2668/- & Dividend of Rs.9,301/-.

(b) Smt. Neha Kothari (PAN-AFRPJ2437C) – The assessee has contended that Smt. Neha Kothari has given of Rs. 50,000/- to the assessee. In this regards, the assessee has filed confirmation. However, the assessee has not filed any return of income for the relevant A. Y. and any bank pass book. Hence, it is not ascertained the source of income of the said family member.

c) Prakash Kothari- (PAN-AHUPK6108N)- The assessee has contended that Shri. Prakash Kothari has given of Rs.1,99,300/- to the assessee withdrawing cash from Dena Bank. In this regards, the assessee has filed confirmation of Rs. 1,99,300/-. The assessee has filed only acknowledge of return of income for A.Y.2008-09 declaring total income of Rs.2,16,390/- and bank pass book. Hence, it is not ascertained the source of income of the said family member.

d) Sushila R. Kothari (PAN-AEPPK8136A) - The assessee has contended that Smt. Sushila R. Kothari has given of Rs. 28,000/- to the assessee withdrawing cash from Oriental Bank of Commerce. In this regards, the assessee has filed confirmation of Rs.3,28, 000/-, the bank pass book of the said bank and return of income for A.Y. 2007-08 & 2008- 09. On perusal of the return of income for A.Y. 2008-09, it is seen that under the head Income from House Property, Smt. Sushila R. Kothari has shown gross rent of Rs.2,28,000/- out of which received of Rs.2,10,000/- and advance rent of Rs. 18,000/- during the year, the copy of rent agreement for 11 month commencing from 01.05.2007 has been submitted by the assessee. Further, Smt. Sushila R. Kothari has received Bank interest of Rs.34/- and Interest on PPF of Rs. 1,054/-.

e) Rakesh R. Kothari- (PAN- AADPK6323K)- The assessee has contended that Shri. Rakesh R. Kothari has given of Rs. 48,000/- to the assessee withdrawing cash from Dena Bank. In this regards, the assessee has submitted return of income for A. Y. 2007-08 & 2008-09. On perusal of the return of income for A. Y. 2008-09, it is seen that under the head Income from other sources, Shri Rakesh R. Kothari has received Commission & Brokerage of Rs.1,53,460/-, Bank Interest of Rs.46/- and Interest on PPF of Rs.1020/-. However, the assessee has not filed any confirmation of the cash of Rs. 48,000/- given to the assessee.

f) Tanya Kothari - The assessee has contended that Smt. Tanya Kothari has given of Rs. 1,53,000/- to the assessee. However, the assessee has not filed any confirmation of the cash of Rs. 1,53,000/- given to the assessee, return of income for the relevant A.Y. and any bank pass book. Hence, it is not ascertained the source of income of the said family member.

g) Tripti Kothari- The assessee has contended that Smt. Tripti Kothari has given of Rs.41,000/- to the assessee. In this regards, the assessee has submitted return of income for A.Y. 2008-09. On perusal of the return of income for A.Y.2008-09, it is seen that under the head Income from other sources, Smt. Tripti Kothari has received rent from computer of Rs.94,000/-, Rs.67,820/- from tailoring work, Rs.22, 630/- from Tuition fees and Bank Interest of Rs. 76/- respectively. However, the assessee has not filed any confirmation of the cash of Rs.41,000/- given to the assessee.

h) With respect to the assessee's income from brokerage and commission, it is submitted by the assessee that no one is willing to give the confirmation. However some confirmations has been obtained and submitted herewith. On verifications of the said confirmations, it is observed that the commission of Rs. 14,800/- and Rs. 19,500/- has been received by the assessee from M/s A Narandas Jewellers. However, no other supporting confirmations have been produced by the assessee as declared commission/brokerage income in the return of income.”

5. In remand proceedings, the assessee was given opportunity to file his reply/rejoinder. Accordingly, the same was filed by the assessee and after considering the remand report and the reply of assessee, the Id.

CIT(A) summarized/tabulated the alleged payments which were stated as advanced by the family members on the basis of the withdrawal as per capital account and the cash withdrawal, as under:-

Sr. No.	Name of the family member	Amount alleged to have been advanced (Rs.)	Withdrawal as per capital account (Rs.)	Cash withdrawal as per bank account (Rs.)
1	Anita Kothari	1,07,000	95,000	3,64,000
2	Prakash Kothari	1,99,300	Details not filed	2,22,320
3	Sushila Kothari	3,28,000	28,000	4,53,000
4	Rakesh Kothari	48,000	85,000	Details not filed
5	Tripti Kothari	41,000	80,000	Details not filed
6	Neha Kothari	50,000	No return filed	Details not filed
7	Tanya Kothari	1,53,000	No return filed	Details not filed

6. After perusal of the capital account of the family members of assessee, the Id. CIT(A) concluded that nowhere advances to the assessee had been reflected in the said statement as well as in the balance-sheets. However, the loans and advances given to other members of the family were duly reflected. The CIT(A) further noticed that in case of Anita Kothari, the balance-sheet as on 31.03.2008 reflected loans and advances of Rs. 2,13,000/- to Shri Prakash Kothari ,whereas nothing has been shown in respect of the assessee in the balance-sheet of Sushila Kothari as on 31.03.2008. Loan (or advance) of Rs. 10,000/- has been noted in respect of one person, namely, Subhash, and no mention is made of the assessee. The balance-sheet of Rakesh Kothari on 31.03.2008 reflects a loan and advance of Rs. 1,80,000/- to Shri Prakash Kothari, but again there was no mention therein in respect of the assessee. The Id CIT(A) further noticed that from the conduct of family members while preparing balance-sheet and capital given, no advances have been shown to have been made to the assessee. And it was only when the assessee failed to prove the source of the cash deposits in his bank account, that such an explanation stands advanced.

In other words, the assessee's explanation is an afterthought and, further, completely un-evidenced; rather, disproved. In arriving at such a conclusion, the Id CIT(A) also examined the cash withdrawal made by different family members (of the assessee) as well as its utilization, including by way of cash deposits (in their bank accounts). To find no substance in the assessee's explanations, which were thus considered by him as mere bald statements. No material toward establishing the creditworthiness of the alleged depositors, or even a nexus between the impugned deposits and the stated source thereof, has been brought on record at any stage, i.e. including before us. In fact, considering the cash withdrawals by the family members, we observe that the Ld. CIT(A) has already allowed relief of Rs. 1,00,000/- to the assessee.

7. In view of the foregoing, we find no infirmity in the order by the Ld. CIT(A) nor has any been brought to our notice. We, accordingly uphold his order, and the appeal of the assessee is dismissed.
8. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on this 29th July, 2016.

Sd/-

(SANJAY ARORA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 29/07/2016

S.K.PS

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY
ORDER,

उप/सहायकपंजीकार
(Asst.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai