

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No.9206/Mum./2010
(Assessment Year : 2006-07)

KETAN B. MEHTA,
C/o. Kapoor & Parekh Associates,
157, Zaveri Building,
Princess Street,
Mumbai – 400 002

..... Appellant

v/s

INCOME TAX OFFICER 11(2)(4),
4th Floor, Aayakar Bhavan,
Mumbai – 400 020

..... Respondent

Assessee by : Shri Vijay Mehta &
Govind Jhaveri, A.R.
Revenue by : Shri S.P.Walimbe, D.R.

Date of Hearing – 27.07.2015

Date of Order – 28.10.2015

ORDER

Per Sanjay Garg, Judicial Member

This appeal preferred by the assessee is against the order dated 17.08.2010 passed by the Learned Commissioner of Income Tax (Appeals) [hereafter referred to as CIT(A)], Mumbai for the assessment year 2006-07.

2. The grounds of appeal taken by the assessee are as under:

- “1. The Assessee prays that the delay of 47 days in filing this appeal may please be condoned and appeal be heard.
2. Assessment Order passed by L.D. CIT (A) - III is arbitrary, erroneous, and bad in law.

3. On the facts and circumstances of the facts the learned ITO as well as CIT (A) - III erred in treating cash deposits of Rs.12,55,000/- in the bank as unexplained cash credit u/s 68 of the Income Tax Act, 1961 and adding the same to the total income of the Appellant.”

3. At the time of hearing it was noted that the appeal is barred by limitation by 47 days. After hearing the rival parties and perusing the material available on record including the affidavit dated 27.12.2010 of the assessee wherein, it has been stated that due to the pursuance of audit work, the order of the CIT(A) was misplaced along with the bunch of papers and after getting another copy of the order of the CIT(A), the appeal was filed immediately, therefore, the delay may be condoned, the delay in the absence of any contrary material placed on record by the Ld. DR, is condoned and appeal is admitted.

4. Briefly stated the facts of the case are that the assessee is a C.A. by profession. During the assessment year under consideration, the assessee declared income from profession and other sources. On perusal of the record it was found by the Assessing Officer (hereinafter referred to as the AO) that the assessee had deposited cash of Rs.12,55,000/- in his saving bank account with Indian overseas bank A/c. No. 8177, Juhu, Mumbai on 31.03.2006. In reply to the show cause notice as to why the same should not be treated as unexplained cash credit and why the same should not be assessed back to the total income of the assessee; The assessee submitted as under:

“As regards to your show cause notice that the assessee has deposited cash aggregating to Rs.12,55,000/- in his savings account with Indian Overseas Bank bearing account no.8177 during the year and why the same should not be treated as unexplained investment we on behalf of the assessee submit that the said amount deposited is out of cash withdrawn by him from his bank in earlier years. He was holding sufficient cash balances on the date from which he has deposited cash of Rs.12,55,000/- in Indian Overseas Bank. We are enclosing copy of his Balance sheet as on 31.03.2004 and 31.03.2005 for your perusal wherein as on 31.03.2005 cash on hand is Rs.18,58,818/-. We are enclosing copy of his bank

statement along with bank summary from which it is evident that the case has been withdrawn in these years and out of which cash has been deposited. Therefore in lieu of the above explanation the cash deposited of Rs.12,55,000/- in savings account of Indian Overseas Banks stands duly explained.

Considering the above we request you not to treat cash deposit of Rs.12,55,000/- as unexplained investment and not to make any addition on this account”.

5. However, the A.O on examination of the assessee’s balance sheet found that during the year the assessee had total cash/bank balance Rs.16,45,983/- only out of which assessee had withdrawn Rs.14,47,000/- for payments/investments etc., therefore, according to the A.O., the bank balance available with the assessee was Rs.1,98,983/- only and thus the assessee was not in a position to deposit cash Rs. 12,55,000/-. Therefore he treated the cash deposit of Rs.12,55,000/- in the bank account as unexplained cash credit and accordingly added the same to the total income of the assessee.

6. On appeal, the Ld. CIT(A) upheld the addition so made by the A.O.

7. Before us, the Ld. AR of the assessee, while retreating the same submissions as submitted before the A.O. and CIT(A) has further invited our attention to his application for furnishing of additional evidence moved under rule 29 of the ITAT rules to contend that the assessee had filed the summary of cash deposits and cash withdrawals before the AO as well as before the CIT(A). The assessee was under bonafide belief that the same would be duly considered by the lower authorities. To substantiate his claim, the assessee seeks to tender cash book and reconciliation statement, which documents are very much necessary to be looked into to arrive at proper conclusion of the case. The ld. AR has further submitted that the A.O. while calculating the bank balance Rs.1,98,983/- has not considered the profit of Rs.95,187/- and has wrongly debited the earlier year withdrawal i.e. for

A.Y.2005-06 amounting to Rs.14,47,000/-. The ld. AR in this respect has relied upon the reconciliation statement, sought to be produced as additional evidence. It has been contended that as per balance sheet as on 31.03.2005, cash and bank balance Rs.19,61,339/- was available out of which cash in hand was shown at Rs.18,58,818/- as on 31.03.2005 and the same cash in hand was brought forward as on 01.04.2005, out of which the assessee had deposited Rs.12,55,000/- in the bank account. It has therefore been contended that the cash was deposited out of cash in hand available with the assessee. The reliance has also been placed on decision of the Tribunal in ITO13(1)(2) Vs. M/s. Cellplus Telecomes, Mumbai in ITA 957/M/2009 for A.Y. 2005-06 dated 18.06.2010 wherein it has been observed as under:

“It is also not the case of the revenue that the relevant entries recorded in the case book are found to be false or untrue. Merely because there is a time gap of few months does not mean that the deposits made by the partners of the firm are not genuine or the partners have no capacity to deposit Rs.12,05,000/- in the bank account of the firm. In fact, there was no further need on the part of the assessee to prove the deposits. The onus was on the revenue to disprove the same which has not been discharged. In this view of the matter we are of the view that the assessee not only discharged the onus placed upon him u/s.68 of the Act in order to prove the source of money of Rs.12,05,000/- introduced in the bank account but also adduced positive evidence/nexus required for the purpose. This view also finds support from the decision in Additional CIT Vs. Mohan Engineering Co. (1985)151 ITR 571(Pat.)”.

On the other hand the Ld. D.R. supported the case of the authorities below.

8. We find that the above contentions raised by the ld. AR have not been looked into by the lower authorities. The stand of the assessee that the deposits were made out of the cash in hand as per books of accounts has not been examined. The documents sought to be produced as additional evidence are very much necessary for the just and proper decision of the case. We

therefore set aside the impugned order of the CIT(A) and restore the matter to the file of the AO with a direction to admit the additional evidences as may be produced by the assessee in justification of his claim including the reconciliation statement, balance sheet and the cash book etc. sought to be produced before us and decide the issue a fresh after giving proper opportunity to the assessee to represent his case and also considering the relevant case laws relied upon by the Ld. AR. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 28.10.2015

Sd/-
(G.S.Pannu)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 30.10.2015.

* M.P..

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.