

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 223/Mum/2017 (Assessment Year 2009-10)

Sadruddin Bhikhabhai Lalani HB 15, AGA Khan Baug Yari Road, Versova Andheri (West) Mumbai-400 061. PAN : ADHPL0170C (Appellant)	Vs.	ITO 20(3)(4) Room No. 511 5 th Floor Piramal Chambers Parel Mumbai-400 012. (Respondent)
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Assessee by	Shri S.V. Navalkar
Department by	Ms. Pooja Swaroop
Date of Hearing	26.02.2018
Date of Pronouncement	28.02.2018

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 20-10-2016 passed by Ld CIT(A)-37, Madurai and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.20,61,500/- made by the AO u/s 68 of the Act.

2. The AO received information that the assessee has deposited cash in two bank accounts aggregating to Rs.26,42,500/- during the year under consideration. Since the assessee has not filed his return of income, the AO issued notice u/s 148 of the Act. In response thereto, the assessee submitted that he does not have any taxable income and accordingly did not file return of income. However subsequently the assessee filed his return of income declaring a total income of Rs.1,04,160/-. With regard to cash deposits, the assessee explained that the funds withdrawn funds on an earlier occasion were used to make deposits on a subsequent date. He also submitted that the funds withdrawn from the bank account of his son aggregating to Rs.6.00 lakhs were also used to make deposits into the bank accounts of the assessee.

3. The AO noticed the sequence of deposits made into the bank accounts. The assessee had deposited in aggregate a sum of Rs.6,69,000/- in the account maintained with Bank of India and aggregate sum of Rs.13,92,500/- in the account maintained with DC Bank. The aggregate amounts so deposited in both the accounts was Rs.20,61,500/-. The AO noticed that the assessee did not explain the purpose of withdrawing cash from bank account, keeping the same for some time and re-depositing the cash. Further there was big gap between the date of withdrawal and subsequent deposit. So the AO did not accept the explanations of the assessee. He first assessed the amount of Rs.6.00 lakhs claimed to have been received from the son of the assessee. Then he assessed the balance amount of Rs.14,61,500/- (Rs.2061500/- less Rs.600000/-) also u/s 68 of the Act. In aggregate the AO assessed Rs.20,61,500/-. The Ld CIT(A) also confirmed the same.

4. The main contention of the assessee is that the assessee has prepared a cash flow statement sequentially showing withdrawals and deposits, from which it can be seen that each of the deposit was made from earlier withdrawals. The Ld A.R submitted that the AO did not comment on the said statement. He further submitted that the AO, after having accepted that a sum of Rs.6.00 lakhs was withdrawn from the account of assessee's son, should not have assessed the same u/s 68 of the Act. Accordingly the Ld A.R submitted that the matter may be restored to the file of the AO for examining this issue afresh.

5. On the contrary, the Ld D.R submitted that the assessee could not properly explain the sources for deposits made by him and hence the Ld CIT(A) has rightly confirmed the addition.

6. We have heard rival submissions and perused the record. We notice that the AO has not commented on the cash flow statement furnished by the assessee. Further the AO has added the amount of Rs.6.00 lakhs, being the amount withdrawn from the account of son of the assessee separately. If it is

accepted as cash available with the assessee, then the sources to the extent of Rs.6.00 lakhs would stand explained. However, there is no clarity in the assessment order on this aspect. Hence we are of the view that, in the interest of natural justice, this matter may be restored to the file of the AO for examining it afresh. Accordingly we set aside the order passed by Ld CIT(A) and direct the AO to examine it afresh after affording adequate opportunity of being heard to the assessee.

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

Order has been pronounced in the Court on 28.02.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 28/02/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

Senior Private Secretary
ITAT, Mumbai