



IN THE INCOME TAX APPELLATE TRIBUNAL “H”, BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

ITA No.5132/Mum/2014

(Assessment Year :2010-11)

Khojem M Jawadwala B/530, Steel Chambers Tower Plot No.514, Kalamboli Navi Mumbai – 410 218	Vs.	ITO 14(2)(1) Earnest House, Nariman Point Mumbai – 400 021
PAN/GIR No.AACPJ3109K		
Appellant)	..	Respondent)

Assessee by	Shri Shailesh N Joshi
Revenue by	Shri M.C. Omi Ningshen
Date of Hearing	16/04/2018
Date of Pronouncement	19/04/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-25, Mumbai dated 12/05/2014 for A.Y.2010-11 in the matter of order passed u/s.143(3) of the IT Act.

2. In this appeal, assessee is aggrieved for addition of Rs.29,70,000/- being cash deposited in his bank account.

3. Rival contentions have been heard and record perused. In this case, it was found from I.T.S. details that during the year the assessee had deposited cash of Rs.29,70,000/- in his saving bank account. After enquiry from assessee, the order u/s 143(3) was passed on 04/03/2013

making addition of the unexplained cash deposits of Rs.29,70,000/-, thereby re-computing total income of assessee at Rs.31,31,040/-.

4. By the impugned order, CIT(A) confirmed the action of the AO after observing as under:-

I have perused the facts of the case and appellant's submissions very carefully. Along with his written submissions, the appellant has submitted (i) Bank Summary of Excellent Co-Op. Bank Ltd. (SB A/c No. 2786), reflecting therein cash deposits of Rs.29,70,000/-, and also payments to Asiad Steel Company of Rs.29,71,000/-; (ii) Cash Account in books of appellant for F.Y. 2009-10 showing date-wise receipts and payments of cash; (iii) Appellant's ledger account in books of Asiad Steel Company; (iv) Balance Sheet set of Asiad Steel Company for F.Y. 2009-10; (v) Assessment order for A.Y. 2010-11 of the firm. etc.. The perusal of cash account of appellant shows that the appellant has deposited cash into his saving bank account on various dates between April 2009. In most of the cases, the cash deposited have been paid to firm in 1-5 days time of the" date of such deposits. The question arises as to when the firm needed the funds soon after payment to the partner, why at all such payment was made to the partner in the form of return of capital, and why the firm itself did not deposit the amount realized from alleged cash sales in its current account. The Balance sheet of the firm shows Bank OD account at Rs.26.31 lakhs at the end of the Financial year. In the case where the firm was using OD from bank, it would have in fact also saved on interest by depositing the amount of cash in this account,

Further observe that the firm has Fixed Assets of just Rs.85,184/-. The Profit & Loss account of the firm shows a meager net profit of Rs. 1,726/- on sales of Rs. 346.99 lakhs. There is no proof submitted by the appellant to show the amount of cash sales included in the sales of Rs.346.99 lakhs. Prima facie, these figures do not give evidence to assume that the firm would be engaged in any genuine retail business, since the firm is having insignificant fixed assets, and have generated negligible profits which is a retail business should normally be quite high.

I also observe that the Partner's Capital Accounts in books of firm show that in addition to appellant having been paid large sums in cash, the other partner Shri Mohmedhussain A. Jariwala has also been paid in cash even a bigger amount of Rs. 59.65 lakhs. It appears that the partners of the firm are using the said firm as a

conduit to channelize their unaccounted cash. It cannot be ruled out that on receipt of Income Tax Notice, the partners of firm would have shown the source of cash in their hands by passing corresponding entries in books of the firm in back date, so as to explain the source of undisclosed cash in their hands. The appellant has not submitted the Cash Account of said firm to show that cash balances existed in books of said firm as on respective dates on which the cash is shown as paid to its partners.

5. In view of the above observation, the CIT(A) did not find any infirmity in the order of the AO in making addition of the amount of Rs.29,70,000/- as assessee's income from undisclosed sources.

6. Assessee is in further appeal before us

7. It was argued by learned AR that assessee has withdrawn cash from his partnership firm and deposited the same in his bank account. Out of this bank account, assessee has issued cheque in favour of the firm. Our attention was also invited to the bank account as well as ledger account of assessee in the firm of Asiad Steel Company which clearly indicates withdrawal of cash from the firm as well as deposit of the amount in the bank on the very same day.

8. On the other hand, learned DR relied on the order of the lower authorities and contended that assessee has not demonstrated availability of cash in the hands of the firm.

9. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that assessee has duly explained withdrawal of the cash from the firm and corresponding deposit in the bank account. However, assessee failed to produce cash account of the said firm to show that there was sufficient

availability of cash in the books of firm on the respective dates on which cash was withdrawn by the assessee partner.

10. Learned AR fairly conceded that matter may be restored back to the file of the AO. In the interest of justice, we restore the matter back to the file of the AO with a direction to the assessee to produce cash account of the said firm to show that there was sufficient available cash as on the respective date of the withdrawals by the assessee partner. AO is to decide the matter afresh after giving due opportunity to the assessee.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 19/04/2018

**Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER**

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 19/04/2018

Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai