

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.977/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Sarika Chandrakant Jain,
Legal heir of Chandrakant
Parasmal Jain,
Ahilyabai Chowk, Nandurbar,
Dist. Nandurban – 425 412
PAN : AEVPP7985Q

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-3(4),
Dhule

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sunil Ganoo
प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 17.05.2018	घोषणा की तारीख / Date of Pronouncement: 23.05.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-1, Nashik, dated 12-01-2017 for the Assessment Year 2011-12.

2. The solitary ground raised by the assessee reads as under :

"1. In the fact, circumstances and position of law, Ld.CIT(A)-1, Nashik erred in confirming 50% of the cash deposit of Rs.12,56,000/- as unexplained and in directing the AO to restrict the addition to Rs.6,28,000/-."

3. Briefly stated relevant facts are that assessee is an individual and is engaged in the business of Grocery & provision as a wholesaler under the name and style "M/s. Ramdev Trading Company". Assessee filed the return of income

on 31-03-2012 declaring total income of Rs.1,82,266/-. Assessee maintained 3 bank accounts, the details of which are as under :

<i>Name of the Bank</i>	<i>Branch</i>	<i>A/c. No.</i>	<i>Name of the account</i>	<i>Balance at the end of the year</i>
<i>Hasti Co-op. Bank</i>	<i>Nandurbar</i>	<i>4880</i>	<i>Saving</i>	<i>3126</i>
<i>State Bank of India</i>	<i>Nandurbar</i>	<i>11386095980</i>	<i>Saving</i>	<i>3385</i>
<i>Hasti Cooperative Bank Ltd.</i>	<i>Nandurbar</i>	<i>552</i>	<i>Current A/c.</i>	<i>6321</i>

AO noticed that assessee deposited the cash amounting to Rs.12,56,000/- in the current account bearing No. 004001100000724 maintained with Hasti Cooperative Bank Ltd., Nandurbar. On finding that the said bank accounts were not reflected in the balance sheet, the assessee was asked to explain the debit/credit entries in the said accounts, source of deposits, nature of the deposits and use of withdrawals appearing in the bank accounts of the assessee. In the absence of satisfactory explanation by the assessee on the issue of sources of cash deposits and the reasons for non-disclosure, the AO eventually made addition of Rs.12,56,000/- u/s.68 of the Act. CIT(A) confirmed the addition in the first round.

4. Before me, it was stated, in the first round that, this issue was the subject matter for adjudication before the Pune Bench of the Tribunal vide ITA No.1712/PUN/2015 and the Tribunal in its order dated 15-06-2016 has restored the issue to the file of CIT(A) for considering the additional evidences and deciding the issue as per the law. Accordingly, after admitting the additional evidences, the same were forwarded to the AO for his comments. The AO submitted the remand report on 21-11-2016 to the CIT(A). Subsequently, the assessee in reply to the copy of the remand report dated 21-11-2016 submitted counter comments on the remand report of the AO on 06-12-2016. Contents of

Para No.3 of the order of CIT(A) are relevant. Eventually, in the second round, the First Appellate authority granted relief partly to the assessee.

5. The CIT(A) confirmed the addition to the extent of 50% of the cash deposit of Rs.12,56,000/- on adhoc basis. Thus, the First appellate authority granted relief of Rs.6,28,000/- to the assessee and the same is accepted by the Revenue. However, aggrieved with the order of CIT(A), the assessee filed the present appeal raising the aforesaid solitary ground.

6. Before me, Ld. Counsel for the assessee vehemently submitted that there is no case for confirming any amount of addition on account of the cash deposits. According to the Ld. Counsel, the profit from the business in the name and style of M/s. Vimalnath Udyog works to only few thousands on the turnover of Rs.5,29,290/-. Total purchases of this business is Rs.5,14,090/-. The net profit out of this business is only Rs.2,766/- (item No 5 on page 3 of the paper book). On this issue, Ld. Counsel submitted out of the said cash of Rs.12,56,000/-, sum of Rs.7,91,483/- constitutes an opening balance of cash. The same need to be added in the relevant year and not in the year under consideration. Ld. Counsel for the assessee submitted that the day-to-day cash book of M/s. Vimalnath Udyog is filed for the first time vide Page Nos. 19 to 23 of the paper book. Referring to these papers, he submitted that the cash deposits of Rs.12,56,000/- constitute only the business receipts or the sale proceeds. Thus, in view of the above submissions, Ld. Counsel prayed for deleting the addition of Rs.12,56,000/-.

7. After hearing both the parties, I find the assessee admittedly did not disclose the income received from M/s. Vimalnath Udyog. The transactions recorded in the impugned bank account are outside the books of account. The

cash deposited in the said bank accounts are said to be out of business transactions. However, there is no evidence from the assessee's side to demonstrate the same. Therefore, the AO made the entire such cash deposits amounting to Rs.12,56,000/-. After hearing the assessee and his arguments, the CIT(A) restricted the disallowance to 50% of said cash deposit on estimation basis.

I have considered the arguments of the Ld. Counsel for the assessee and also perused the financial statements prepared by the assessee and find the relevant profit and loss account (page 36 of the paper book) reflects the meager income of around Rs.2,000/- on the total turnover of around Rs.5 lakhs. It is not clear from the records as to how the turnover from this line of business is only around Rs.5 lakhs when the cash remittances are much more. According to the CIT(A), Rs.6,28,000/- is the amount which needs to be confirmed. No conclusive evidences are available in support of the opening balance centric explanation of the assessee.

On considering the submissions and the evidences placed before me, I am of the view that making addition of 50% of cash deposits, since on the higher side, is not fair considering the fact that these amounts have linked to the business activities of the assessee. In that case, only the profit segments can be added. Alternatively, the peak cash credit can only be made and not the entire amount of cash deposits. Considering the overall facts of the case, i.e. the fact that assessee expired & the legal heir of the assessee is not having much knowledge of the business, I am of the view that restricting the disallowance to 25% of the cash deposits towards the slated irregularities as well as the profit earned in this line of unreported business activity, would meet the ends of justice. Accordingly, the AO is directed to restrict the disallowance

to Rs.3,14,000/- (Rs.12,56,000 X ¼) instead of Rs.6,28,000/- adopted by the CIT(A) on adhoc basis. Thus, the solitary ground raised by the assessee is partly allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced on this 23rd day of May, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 23rd May, 2018.
 Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik
4. आयकर आयुक्त / The CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
 आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune