

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SH. R. C. SHARMA, AM &
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 6658/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2011-12)

Udaykumar B. Narayana 506, MangalBaug, GokulDham Complex, S. V. Road, Borivali (west), Mumbai-400092	बनाम/ Vs.	ITO 11(3)(4) Aayakarbhavan, Churchgate, Mumbai-400020.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AALPN4030E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Anil Thakrar,AR
प्रत्यर्थीकीओरसे/Respondentby	:	Ms. N. Hemlatha, DR

सुनवाईकीतारीख/ Date of Hearing	:	06.02.18
घोषणाकीतारीख / Date of Pronouncement	:	19.03.18

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-7, Mumbai, dated 16.08.17 for A.Y. 2011-12 on the grounds mentioned herein below:-

- 1) The Ld. AO erred in adding a sum of Rs. 10,15,00/- as income from undisclosed sources.*
- 2) The Ld. CIT(A) is erred in confirming addition of Rs. 9,15,000/- as income from undisclosed sources.*
- 3) The appellant request to delete the addition confirmed by the CIT(A).*
- 4) The Appellants craves to add, alter or omind any or all of the above grounds of appeal before or at the time of hearing of the appeal*

2. The brief facts of the case are that the assessee is a chartered accountant and working with New Consolidated Construction Co. Ltd. The return of income for the AY 2011-12 was filed on 29.07.2010 declaring total income at Rs. 11,89,039/-. Later on the case was selected for scrutiny and after serving statutory notice and seeking reply of the assessee, order of assessment u/s 143(3) was passed on 28.03.14 by Ld. AO thereby assessing total income of the assessee at Rs. 20,84,040 after making addition of Rs. 10,15,000/-.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee by restricting the addition to the extent of Rs. 9,15,000/-.

Now before us, the assessee has preferred the present appeal by raising the above grounds.

Ground No. 1 & 2.

3. These grounds raised by the assessee are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in confirming the additions on account of income from undisclosed sources, therefore we thought it fit to dispose of the same by this common order.

4. At the very outset, Ld. AR appearing on behalf of the assessee reiterated the same arguments which were raised before Ld. CIT(A) which are contained in para no. 4 of the order of Ld. CIT(A).

5. On the other hand Ld. DR relied upon the orders passed by revenue authorities.

6. We have heard the counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. As per the facts of the facts of the present case, the assessee is an individual and a chartered accountant working with M/s. New Consolidated Construction Co. Ltd. The return of income for the AY 2011-12 was filed by the assessee on 29.07.2010 declaring total income at Rs. 11,89,039/-. Later on the case was selected for scrutiny and after serving statutory notice and during the course of assessment proceeding, the AO noticed that the assessee had deposited a total of Rs. 10,15,000/- in cash in his bank account with Mogaveera Co. Bank Ltd. In this respect, Ld. AO required the assessee to explain the details and sources of cash of the said amount. In this context, assessee submitted that the gross total Income for the last 3 A.Ys i.e from A.Y.2009-10 to A.Y. 2011-12 was Rs. 9,93,503/-, Rs. 10,12,222/- and Rs. 11,89,039 respectively and source of impugned cash deposits was nothing

but his cash withdrawals from banks from time to time. Cash withdrawals summary was also submitted by the assessee before the AO and it was contended by the assessee that it could be seen from the cash summary of last 3 years that the cash available as on 31.3.2009 was Rs. 5,04,500, as on 31.3.2010 it was Rs. 7,79,000/- and net cash generation for the FY 2010-11 i.e. corresponding to AY 2011-12 was Rs. 3,82,500/-, hence, the total cash available as on 18.2.2013 before such total deposits of cash was Rs. 11,61,500 out of which the sum of Rs. 10,15,000 had been deposited in the bank account with the Mogaveera Bank. The assessee also submitted that wherever cash had been deposited, the same was out of the cash withdrawn from the bank account out of the income offered for tax and such cash deposit was not from any undisclosed sources. While explaining, the purpose of withdrawal from time to time, the AR of the assessee submitted before the AO as follows:

"Our client has made withdrawals because he was in need of funds on account of ill health of his parents and other emergency purposes. His parents health was as such that at any point of time there could have been medical emergency and he could have been rushed to

hospital. So he had kept these funds on a safer side, so that he could not face issues for availability of funds. In due course of time as his parents started reacting well to medicines he felt that there was no further need to keep funds at his disposal. So he started depositing the said amounts."

Thereafter, the AO did not accept the assessee's contention and made addition of Rs. 10,15,000/- by holding that the cash has been deposited by the assessee over a very small period of time less than two months in altogether different /new bank account indicates the intention of the assessee to keep the said deposits away from the notice of the tax authorities. It was also clarified by the AO that the assessee has not placed any proof of accumulation of cash or plausible reason for withdrawals. On appeal, Ld. CIT(A) while holding the submissions made by the assessee as devoid of any logic and credibility, had restricted the additions of Rs. 9,15,000/- by allowing relief to the assessee to the extent of Rs. 1 lakhs.

After having gone through the submission and the orders passed by revenue authorities and considering the submissions made by both the parties, we find that it is an undisputed fact that assessee is a chartered accountant and was working with M/s New Consolidated Construction Co. Ltd. and was having source of income from bank interest and salary, therefore the assessee was not required to maintain any books of accounts for the aforesaid sources of income. It is evident from the documents that the assessee had withdrawn the cash from his bank accounts and in order to explain the source of cash deposits of Rs. 10,15,000/-, it was submitted by the assessee that the same is from the cash withdrawn from his bank accounts.

The only reason of the revenue authorities to treat the deposits of Rs. 10,15,000 as income from 'undisclosed sources' is on the ground that assessee was not believed to have kept the cash for longer period of time at his home.

Ld. DR could not show any provision of law which debarred the assessee from keeping the cash at house. Even no

provision of I.T. Act was shown which supports the cash of the revenue.

After analyzing the entire facts, arguments raised by both the parties and the orders passed by revenue authorities, we find that the AO has not been able to bring on record any cogent, convincing any documentary evidence to falsify the explanation and the documentary evidences filed by the assessee.

The addition in the present case were made solely on the basis of assumption and surmises. It is a settled law that the suspicion however strong may be, cannot partake the character of the evidence. The above proposition of law has been upheld by the Hon'ble Supreme Court in the case of **Umacharan Shaw & Bros Vrs. CIT (1959) 37 ITR 271(SC)**.

In the present case, the nature and source of acquisition of such deposits have already been explained by the assessee to the AO during the course of hearing. There is no dispute as to the ownership of the cash of Rs. 10,15,000 deposited in the bank by the assessee and in this respect, the assessee has taken a consistent stand that the said amount was withdrawn by him from his own bank account.

We noticed that the AO has not disputed the withdrawals of cash and bank summary placed by the assessee. Apart from this, the AO has not been able to bring any cogent material on record to show that the cash withdrawn from the bank by the assessee, was utilized or used for any other purposes. On the contrary, the sole basis for making the additions of cash deposits to the total income, according to the AO is the **time gap** between the withdrawals and re-depositing the same to the bank.

In this respect, we reiterate that there are no restrictions under the law to keep the cash at home. In the present case, the assessee has taken a specific ground that the said cash had been kept at his home to deal with unexpected emergency situation and the said fact has also been mentioned by the AO in the order of assessment. Therefore, merely because there was a **time gap** between the withdrawal of cash and its further deposit to the bank account, the said amount cannot be treated as income from 'undisclosed sources'. Therefore, in view of our above findings, the addition made by AO and upheld by Ld. CIT(A) of Rs.9,15,000/- as 'undisclosed sources' is hereby deleted. It is

ordered accordingly. Resultantly, these grounds raised by the assessee are **allowed**.

Ground No. 3 & 4

7. These grounds are general in nature, thus requires no specific adjudication.

8. In the net result, the appeal filed by the assessee stands **allowed**.

Order pronounced in the open court on 19th March 2018

Sd/-

(R. C. Sharma)

Sd/-

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.03.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai