

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.278/RPR/2017
Assessment Year : 2014-15**

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|---|------------|----------------------------------|
| Shri Ravi Kewaltani, Bombay Footwear, G.E. Road, Pachari Para, Durg (CG). | Vs. | ITO, Ward- 2(1), Bhilai (CG). |
| PAN : AULPK6656M | | |
| (Appellant) | | (Respondent) |

Assessee by : Shri R. B. Doshi, CA
Department by : Shri Rituparan Namdeo, DR
Date of hearing : 06-08-2018
Date of pronouncement : 12-10-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 05.09.2017 of the Id. CIT(A)-II, Raipur (CG) relating to assessment year 2014-15.

2. The only effective ground raised by the assessee reads as under :-

“The learned Commissioner of Income Tax (Appeals)- II erred in of holding the addition of Rs.53,40,510/- u/s 69A of the Income Tax Act, 1961, made by the A.O.”

3. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of wholesale trading of footwear under the style of M/s Ganapati Enterprises. He filed his return of income on 22.12.2014 declaring total income of Rs.6,66,620/-. During the course of assessment proceedings, the

Assessing Officer observed that the assessee has two separate savings accounts maintained with Oriental Bank of Commerce and Karnataka Bank. The Assessing Officer examined the entries in these savings bank accounts and asked the assessee to explain the deposits of cash made therein. It was explained by the assessee that the deposits are transfer of funds from one savings bank account to another savings bank account and also from funds received from sale of property duly shown in the income tax return. It was further explained that the assessee had cash in hand and, therefore, some of the deposits in cash are out of such cash in hand.

4. However, the Assessing Officer was not satisfied with the explanation given by the assessee and made addition of Rs.53,40,510/- to the total income of the assessee as unexplained money u/s 69A of the I.T. Act by observing as under :-

“Herein above, (O) & (K) suffixed to cash deposits and withdrawal are related to Oriental Bank of Commerce and Karnataka Bank. The above table is prepared from bank account statement of two saving banks and only cash deposits and cash withdrawal by the self cheques are accounted for. Hence, looking to the above table, it is clear that if opening cash in hand at Rs.1346852/- as claimed by the assessee which is already shown for ready reference in the para no.2, then as on 30.03.2014, cash in hand will be (-) Rs.2271138/- (Rs.1346852/- minus Rs.1573990/-). Minus cash balance of (-) Rs.227138/- is not possible at all. As per the assessee’s table, Rs.125000/- withdrawal from the business concern and deposited into the saving account does not have any effect being minus plus of the same amount creates zero. Thus, analysis of the assessee’s bank account along with the assessee’s submission to explain the credit in the bank account, does not appropriate, and so the total cash deposit of Rs.5340510/- is unexplained money u/s 69A of the Income Tax Act, 1961 and deserved to be added in the hands of the assessee. Also penalty proceedings is initiated u/s 271(1)(c).”

5. Before the Id. CIT(A), assessee made elaborate submissions. However, the Id. CIT(A) was also not satisfied with the explanation given by the assessee and sustained the addition made by the Assessing Officer by observing as under :-

“I have gone through the grounds of appeal, seen the order of the AO and perused the submissions of the appellant. During the appeal hearings the appellant submitted a statement which was furnished during the assessment proceedings in which the cash withdrawals and deposits are explained. It is seen from the statement that on 5.7.2013 cash of Rs. 24,00,000/- was withdrawn from Karnataka Bank and thereafter on 8.7.2013 and 10.7.2013 there were further withdrawals of Rs. 5,00,000/- and Rs.1,00,000/- respectively. Out of the above withdrawals cash has been deposited in Oriental Bank savings account and re-deposited in Karnataka Bank savings account over a period of two months. In the fund flow statement as on 31.3.2014 it was explained that Rs. 30,00,000/- was received on account of property sale and deposited in the Karnataka Bank. This amount was withdrawn on various dates and deposited in the Oriental Bank as well as in the Karnataka Bank on different dates. There are deposits of various amounts that are explained as received from Ganapati Enterprises and have been deposited in the Oriental Bank savings account from time to time. In this manner the appellant has sought to explain that the deposits are from funds transferred from one savings bank account to another savings bank account, from sale of property and from receipts of Ganapati Enterprises.

4. *On perusal of the submissions and statements of the appellant I notice that there is no link established by the appellant in the cash withdrawals made from Karnataka Bank and cash deposited in the Oriental Bank. I further observe that the cash withdrawal from Karnataka Bank on 5.7.2013 has been retained by the appellant and deposited in different amounts in the Oriental Bank savings account spread over a period of two months i.e. from 5.7.2013 to 4.9.2013. No conclusive explanation with documentary evidence has been brought on record regarding the withdrawals made from the Karnataka Bank being the same cash deposited in the Oriental Bank saving account over a period of two months. Coming to the explanation that Rs. 30,00,000/- was received on account of sale of property there is no material that the impugned amount received in cash and deposited in the savings bank account represents sale of property by the appellant. The appellant has not been able to explain the sources of the cash deposits in the savings accounts from either as funds transfer from one bank account to another or from the sale proceeds received from the sale of property. These issues have been adjudicated by the hon'ble Courts wherein the ratio of their decisions are applicable to the present case. In the case of Smt. Kavita Chandra vs. CIT(A) Panchkula reported in 81 taxmann.com 317 the hon'ble Punjab and Haryana High Court observed that there was no link in the cash withdrawn from the Bank to the cash deposits so made and hence affirmed the action of the AO in making the addition on account of unexplained cash deposits. The hon'ble Hyderabad Tribunal in the case of Mir Basheeruddin Ali Khan vs. ITO Ward 6(3), Hyderabad reported in 42 taxmann.com 69 observed that it remains unexplained as to why the assessee had withdrawn such huge cash and kept it with him when he*

had bank accounts. In the case of Manoj Kumar Jain vs. ITO reported in 25 taxmann.com 440 the hon'ble Delhi Tribunal confirmed the additions made on account of cash deposits by holding that there was no proof that it was the same cash withdrawn and deposited in the bank accounts. The hon'ble Punjab and Haryana High Court in the case of Chand Prakash Vij vs. CIT reported in 315 ITR 251 on the issue of cash deposits on account of sale of residential property held that the story of sale of residential property and cash deposited from it in the bank account remained unproved. The decisions of the hon'ble Apex Court in the case of Sudhir K Sharma (HUF) vs. CIT -III, Ludhiana reported in 69 taxmann.com 219 and of the hon'ble Calcutta High Court in the case of Sushil Modi vs. CIT Central-II reported in 59 taxmann.com 63 are also relied on.

5. In the light of the above observations the AO has rightly rejected the explanation of the appellant and brought the impugned deposits to tax u/s. 69 A of the Act. Accordingly the addition of Rs.53,40,510/- u/s. 69A of the Act is confirmed.”

6. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

7. The Id. counsel for the assessee strongly opposed the order of the Id. CIT(A) in sustaining the addition made by the Assessing Officer. Referring to page 7 and 8 of the Paper Book, he submitted that the assessee, during the course of assessment proceedings, has given details of the opening cash in hand of Rs.13,46,852/- which has been rejected by the Assessing Officer. He submitted that the charts prepared by the Assessing Officer in the body of the assessment order and the calculation by the assessee for balancing mistake are different and a perusal of the same shows that there is no negative cash balance in the hands of the assessee. There was a totaling mistake and rectification application filed by the assessee u/s 154 has not yet been disposed off. Referring to page 19 of the Paper Book, he submitted that since the opening cash balance is not disputed by the Assessing Officer and the sale proceeds of

the two properties have been accepted by the Assessing Officer and since the sale proceeds were deposited in the bank account, therefore, without considering the same, the Assessing Officer could not have made the addition. He accordingly submitted that the addition made by the Assessing Officer and sustained by the Id. CIT(A) should be deleted.

8. The Id. DR on the other hand referring to page 4 of the Paper Book submitted that the opening cash balance shown by the assessee was Rs.12,57,796/-. Therefore, the opening cash balance now given by the assessee shows that those accounts are manipulated. He accordingly submitted that since the order of the Id. CIT(A) is a reasoned one, therefore, the same should be upheld and the ground raised by the assessee should be dismissed.

9. We have considered the rival arguments made by both the sides and perused the material available on record. We find the assessee, during the course of assessment proceedings, has shown opening cash balance of Rs.13,48,852/- and the same has not been disputed by the Assessing Officer. We further find that the Assessing Officer has not considered the sale proceeds of the two properties which were deposited in the bank account as argued by the assessee. Further, the rectification application filed by the assessee u/s 154 is still pending. It is also an admitted fact that as per page 4 of the Paper Book, the assessee has given opening cash balance of Rs.12,57,796/- as against Rs.13,48,852/- given at the time of assessment proceedings. Considering the

totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate his case. While doing so, he shall consider the argument of the assessee that the sale proceeds of the two properties have been deposited in the bank account and consider the opening cash balance given by the assessee at the time of assessment proceedings and pass appropriate order. Needless to say, the Assessing Officer shall decided the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the assessee is accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on this 12th October, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 12-10-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., Raipur.

By Order

//True Copy//

Sr. Private Secretary
ITAT, Raipur