

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH: RAIPUR**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 78/RPR/2016 (A.Y 2009-10)**

Dhavala Sons (HUF) 1-Maitri Marg, Maitri Kunj, Risali, Bhilai Bhilai (CG) AACHD8291G <b>(APPELLANT)</b>	Vs	Income Tax Officer, Ward-2 Aayakar Bhawan, New Civic Centre, Bhilai Bhilai (CG) <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Vijay Dhavala Karta of Assessee</b>
<b>Respondent by</b>	<b>SH. Rituparan Namdeo, DR</b>

<b>Date of Hearing</b>	<b>17.08.2018</b>
<b>Date of Pronouncement</b>	<b>25.10.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

The present appeal is filed by the assessee against the order dated 18/1/2016 passed by CIT(A)-II, Raipur for Assessment Year 2009-10.

2. The grounds of appeal are as under:

*“1. The assessee /Appellant has submitted all required information & documents to substantiate the sources of amount deposited in the bank by the Assessing Officer was merely not satisfied and made additions u/s 69 of the Income Tax Act, 1961. Subsequently, the First Appellate Authority has not gone through the supporting information/documents thoroughly so as to understand our strong justification and simply relied on the assessment order*

*only. The assessment was made on “one sided approach” and not made on “best judged assessment principle.”*

3. The return of income was e-filed on 26.03.2010 showing income of Rs.1,26,000/-. Case was selected for scrutiny and accordingly notice u/s 143(2) was issued on 18.08.2010 which was served on 26.08.2010. Further notice u/s 143(2) with questionnaire was issued fixing the case of hearing. The consultant and CA attended the case and submitted the written reply. During the assessment proceedings the assessee could not explained the sources of cash deposit amounting to Rs. 17,00,000/- made on 19.01.2009 in the savings bank account in the State Bank of India belonging to assessee and hence in the absence of satisfactory explanation the amount of Rs. 17,00,000/- was deemed to be the income of the assessee u/s 69 of the Income Tax Act, 1961 by the Assessing Officer. The assessment was completed on 22.12.2011 determining total income of Rs. 18,26,000/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Assessee submitted written submission at the time of hearing. The same are reproduced hereinbelow:

*“1. Summary of major points of submissions made during regular assessment and appeal proceedings regarding the affairs of the assessee:*

*1) The HUF was created in the year 1988 and the sources of income of this HUF included interest on bank deposits, rent from house property, share of agriculture income from ancestral agriculture lands.*

*2) In the FY 2000-01, a sum of Rs.6,00,000/- (Rupees: Six lakh only) was contributed by the founder of this HUF, Shri V C Dhavala, out of the funds received by him on retirement from his service in State Bank of India. Further in the same financial year, a sum of Rs.3,84,900/- (Rupees: Three lakh eighty four thousand nine hundred only) received as family share on*

*sale of ancestral agricultural land.*

- 3) In the FY 2001-02, there was an understanding made among the members of the HUF that the liquid funds shall instead of being used in a common pool, shall proportionately be utilized by all the members for their personal purposes. Accordingly, the sums were transferred to the respective members.*
- 4) In the FY 2004-05, the HUF acquired a residential plot and subsequently constructed a building, by availing housing loan from State Bank of India. The rental income from this property was shown in the income tax returns of all respective years.*
- 5) In the FY 2007-08, one of the members of this HUF merged his personal residential property into the HUF as the family property. The total cost/value of the property is considered at Rs.5,00,000/- (Rupees: Five lakh only) and taken into the books of HUF as capital contribution from the member.*
- 6) In the FY 2008-09, a total sum of Rs. 17,00,000/- (Rupees: Seventeen lakh only), contributed by all the members of this HUF out of their share which was being used by them for personal purposes, was deposited in HUF's bank account in installments. Out of this deposit, a sum of Rs. 15,88,000/- (Rupees: Fifteen lakh eighty eight thousand) transferred to Dhavala Consultants (P) Limited, by account payee cheque, as unsecured loan. This is a family owned company and all the members of this HUF are also the shareholders of this company. This loan is being reflected in the audited balance sheet of the company.*
- 7) This total sum of Rs. 17,00,000/- (Rupees: Seventeen lakh only), deposited in the bank account of HUF by cash, was considered by the AO as the undisclosed income invoking the provision of section 69 of the Income Tax Act, 1961 and added to the total income of the relevant assessment year.*

*2. Submissions in support of our claim / appeal against the Order of the Assessing Officer:*

- 1) *“Deemed capital account working” by the AO (Para 9 & 10 of the Order): We have submitted a detailed capital account working of the HUF for all the financial years, from FY 1988-99 to FY 2008-09, with year wise working clearly explaining how the initial founding capital of Rs. 5,100/- grew to Rs. 22,54,800/- in these years. In spite of our clear annual capital working, the AO made a separate calculation with “deemed income & deemed withdrawal” figures and arrived at the estimated closing capital balance of Rs. 7,05,800/- for FY 2007-08.*

*Instead of seeking any clarification / justification for the capital account working, the AO preferred to make own “deemed calculation” and arrived at an imaginary figure of capital balance. Based on this notional working, it is presumed that the cash deposit made in the bank is obviously an undisclosed income.*

- 2) *Inappropriate conclusions in respect of members’ capital account etc. (Para 14 of the Order): During the course of assessment, we have furnished all the details required by the AO, except for the copies of capital account, balance sheets etc. of few members. This was mainly because of the fact that they were basically salaried employees of Govt. / Public Sector Undertakings with only salary income. They are not supposed to maintain any records which reflect their personal balance sheet or capital account. This fact was duly communicated to the AO and also mentioned that members’ confirmation can be furnished if required.*

*Instead of considering the underlying facts about non applicability of the above required documents, the AO presumed that these documents could not be furnished as these have no existence at all and concluded as unsatisfactory explanation.*

- 3) *Incorrect analysis of balance sheet (Para 5, 7 & 14 of the Order): As per these paras, any amount of investment and loans & advances given to any other persons out of the funds of HUF is not shown in any year. Whereas, the investments are clearly mentioned in the balance sheets of the HUF, in all the years after FY 1992-93. Further, in all the balance sheets after FY 2001-02, the investments clearly mentioned the amount given to the members and the same has also been underlined in our submissions at the outset itself.*

*Instead of relying on the facts of the balance sheets, the AO again*

*presumed that these facts & figures are not mentioned in the balance sheet hence this is an undisclosed income.*

- 4) *Incorrect Cash Flow working (Para 12 & 13 of the Order): As mentioned in submission no. 2(1) above, the AO's working is based on "deemed calculation of capital account" and accordingly the fund surplus arrived at in this para is incorrect. We have furnished a detailed cash flow statement with reconciliation of surplus for the respective financial year.*

*With incorrect assumption, the imaginary fund flow statement would obviously show incorrect surplus of funds; and hence the AO presumed that the "surplus sum", which is being deposited in the bank is not the genuine surplus of funds rather it is undisclosed income.*

#### **PRAYER**

*In view of the above facts and details, we humbly pray for the following:*

1. *Kindly consider & approve the capital account balance of the HUF as per the detailed workings and submissions made.*
  2. *Kindly allow the advances made by the HUF, in the form of unsecured loans to Dhavala Consultants (P) Limited, as a routine business transaction; so as to reverse the additions made by the Assessing Officer in the this connection."*
6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).
7. We have heard both the parties and perused the relevant material available on record. From the perusal of the written submissions and the paper books filed by the assessee, it can be seen that the assessee submitted a detailed capital account working of the HUF for all the financial years from FY 1988-89 to FY 2008-09, with year wise working clearly explaining how the initial capital of Rs. 5,100/- increased to Rs. 22,54,800/- in these years. But Assessing Officer made his own calculation with "deemed income & deemed withdrawal" figures and arrived at the estimated closing capital balance of Rs. 7,05,800/- for A.Y. 2007-08. The Assessing Officer totally ignored the submissions and details given in respect of the balance sheets of all the

relevant years which has a bearing on the present years balance sheet. The Assessment Order is based mainly on presumption of the Assessing Officer. The CIT(A) also ignored this facts. Certain documents relating to member's capital account and balance sheet as well as cash flow working made by the assessee with specifications were totally ignored by the Assessing Officer as well as by the CIT(A). Therefore, it will be appropriate to remand back the matter to the file of the Assessing Officer for taking cognizance of the documents produced by the assessee. The assessee be given the opportunity of hearing by following principles of natural justice.

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

**Order pronounced in the Open Court on 25<sup>th</sup> OCTOBER, 2018.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 25/10/2018

\*R.N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Private Secretary.....

Raipur Bench, Raipur.....

Date of dictation	22.10.2018
Date on which the typed draft is placed before the dictating Member	22.10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	.10.2018
Date on which the final order is uploaded on the website of ITAT	.10.2018
Date on which the file goes to the Bench Clerk	.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	