

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3088/Del./2017
(ASSESSMENT YEAR : 2012-13)**

Shri Rajeev Rastogi,
D – 18, Samrat Palace,
Garh Road, Meerut.

vs. ACIT, Circle 2,
Meerut.

(PAN : AAMPR8281L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ravindra Aggarwal, FCA
Shri Rohit Aggarwal, FCA

REVENUE BY : Shri S.S. Rana, CIT DR
Shri Yogesh Sharma, Senior DR

Date of Hearing : 08.01.2019

Date of Order : 16.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Shri Rajeev Rastogi (hereinafter referred to as 'the Assessee') by filing the present appeal, sought to set aside the impugned order dated 22.03.2017 passed by Ld. CIT (Appeals), Meerut qua the Assessment Year 2012-13 on the grounds inter alia that :-

“1. That the learned Commissioner of Income Tax (Appeals) (hereinafter referred to as 'ld. CIT 9AA)' has erred in law as well as on the facts by confirming the addition of Rs.23,70,000/- as

made by the ACIT, Circle 2, Meerut (hereinafter referred to as 'ld. AO) and the observations made and conclusions drawn by the ld. CIT (A) are based on incorrect appreciation of facts on records and the submissions of the appellant have not been considered in the right perspective thereof.

2. That the ld. CIT (A) has erred in law and in facts of the case by upholding the action of the ld. AO by observing that the appellant did not have available cash with him to explain the introduction of cash to the extent of Rs.23,70,000/- as his capital. The observations so made by the CIT(A) are devoid of merits, factually incorrect and are based on assumptions and estimations.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee is into the business of wholesale trading of pharmaceuticals under the name and style of M/s. R.K. Associates. The assessee has surrendered an amount of Rs.40,00,000/- on account of cash deposit in the bank not disclosed in the income-tax return. The assessee has made addition in his capital account of Rs.40,00,000/- on account of surrender u/s 143 of the Income-tax Act, 1961 (for short 'the Act') for AY 2009-10. AO made an addition of Rs.23,70,000/- on account of unexplained cash in the books of assessee u/s 68 of the Act.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee has surrendered an amount of Rs.40,00,000/- on 08.12.2011 as is evident from the assessment order dated 16.12.2011 for AY 2009-10. It is also not in dispute that netting of Rs.40,00,000/- has already been given to the assessee in the loan account and set off has already been given which cannot be claimed twice.

6. When the AO has already given benefit of Rs.16,30,000/- to the assessee and surrender pertains to earlier years, as is evident from the statement of bank account maintained by the assessee with ICICI Bank and the amount added by the AO was not cash-in-hand, the question of having availability of cash in assessee's hand does not arise. It is apparent from the bank statement that the AO has rightly held that total cash withdrawn from the account by the assessee was Rs.16,30,000/- and the assessee has made the deposit in the bank account as and when required.

7. So, when from the assessment order for AY 2009-10 it is proved that surrender of Rs.40,00,000/- was made by the assessee pertaining to bank deposits of Rs.72,98,627/-, in which account the

amounts were frequently deposited, withdrawn and re-deposited, the amount of Rs.40,00,000/- so surrendered was considered sufficient to cover these unexplained deposits in the bank accounts. When assessment order pertaining to AY 2009-10 has attained finality, the AO/CIT (A) have rightly made addition of Rs.23,70,000/- on account of cash remained unexplained in the books of assessee u/s 68 of the Act. So, finding no illegality or perversity in the impugned order, present appeal filed by the assessee is hereby dismissed.

Order pronounced in open court on this 16th day of January, 2019.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 16th day of January, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**