

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "A", NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.2223/Del/2015
Assessment Year: 2011-12

Shri Surjit Singh Kohli, 46, Saharanpur Road, Dehradun	Vs.	DCIT, Central Circle, Dehradun
PAN :AKCPK2548P		
(Appellant)		(Respondent)

Appellant by	Dr. Rakesh Gupta, Adv. & Shri Saurabh Goyal, CA
Respondent by	Shri Manoj Kumar Mahar, Sr.DR

Date of hearing	10.01.2019
Date of pronouncement	21.01.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 06.02.2015 passed by the Ld. Commissioner of Income-tax, Dehradun [in short 'the CIT(A)'], raising following grounds:

1. *That in facts and circumstance of the case, the Learned CIT has erred wrongly in sustaining the addition of Rs.7,00,000/- as unexplained deposit.*
2. *That in facts and circumstances of the case, authorities below had accepted the cash flow statement, capital account and balance sheet filed by the appellant but still the addition has been made on transfer of fund to AOP the same is arbitrary and unjustified.*
3. *That in facts and circumstances of the case, the Assessing Officer has incorrectly invoked the provision of section 68 which has been sustained by the CIT (A) in the absence of*

any incriminatory document found during the course of search.

4. *That the addition to the returned income as sustained by the Id. CIT (A) may please be deleted.'*
5. *That in fact and circumstance of the case, appellant be permitted to add or delete any grounds of appeal.*

2. Briefly stated facts of the case are that the assessee an individual, is deriving income from business and other sources. A search and seizure action under Section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out at business and residential premises of the assessee and consequent to which, notice under Section 153A(1)(a) of the Act was issued on 14.02.2012 asking the assessee to file return of income for the year under consideration. In response, the assessee filed return of income on 12.03.2013, declaring income of Rs.11,44,347/-. Notice under Section 143(2) of the Act was issued and assessment was completed at assessed income of Rs.40,05,700/-. On further appeal, the learned CIT(A) partly allowed the appeal. Aggrieved with the additions sustained of Rs.7 Lakh, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. The sole issue in dispute in the grounds raised by the assessee is regarding addition of unexplained investment of Rs. 7 lakhs sustained by the Ld. CIT(A). During the assessment proceedings, the Assessing Officer observed from the bank accounts and cash flow chart submitted by the assessee that he has deposited Rs.11 lakhs in the Association of Persons(AOP). The Assessing Officer also noticed that there was opening cash in hand on 01.04.2010 was of Rs.5185/- only and no withdrawals were made till the date of deposit of Rs.11 lakhs, i.e., 15.04.2010

in the account of AOP. Due to failure on the part of the assessee to explain the source of said deposit with AOP amounting Rs. 11 lakhs, the Assessing Officer made addition holding the same as unexplained. Before the Ld. CIT(A), the assessee submitted summary of the cash flow statement of the entire year under consideration and attempted to explain the availability of the cash in hand. However, the learned CIT(A) rejected the contention of the assessee and observed that the cash should be available on the date of investment, for the investment to be explained. Thereafter, observing availability of Rs.4 lakhs disclosed by the assessee on 01.04.2010, the Ld.CIT(A) sustained the addition for the balance amount of Rs.7 lakhs.

4. Before us, the learned counsel for the assessee filed a copy of the cash flow statement for the year under consideration and reiterated the submissions which were made before the learned CIT(A).

5. On the contrary, the learned DR relied on the order of the learned CIT(A) and submitted that for explaining the investment, the assessee was required to submit day-to-day availability of the cash in his hands. Availability of cash on any subsequent date cannot explain the investment of cash on earlier date.

6. We have heard the rival submissions and perused the relevant material on record. The cash flow statement submitted by the learned counsel is reproduced as under:

Surjit Singh Kohli Details of Cash Deposit & Withdrawn Assessment Year 2011-12

Particulars	Amount
Add: Opening Balance of cash as on 01.04.2010	5,185.10
Income from Other Sources	4,00,000.00
Received from M.L Juyal & Co.	51,75,000.00
Contract	54,00,000.00
Received from Kohli Filling Station	9,75,000.00

Withdrawn from SBI Bank during the year	4,05,000.00
Withdrawn from HDFC Bank during the year	16,00,000.00
Tanker A/c	45,000.00
Less: Drawings during the year	57,900.00
Deposited in SBI Bank during the year	90,000.00
Paid to Kohli Filling Station	2,00,000.00
Deposited in Punjab & Sind Bank 5798 during the year	2,79,000.00
Paid to Kohli Filling Station (Tanker A/c)	1,067.00
Paid to M.L Juyal & Co.	64,90,000.00
Deposited in HDFC Bank	19,00,000.00
Contract & Transport Expenses	45,82,946.62
Balance as on 31.03.2011	4,04,271.48

7. In the instant case, the assessee made investment of Rs.11 lakhs in the AOP in cash on 15.04.2010. There is no dispute on the amount of opening cash balance of Rs.5,185/- on 01.04.2010 as evident from the cash flow statement. The assessee was required to explain availability of the cash balance of Rs. 11.00 lakhs as on 15.04.2010. The assessee has not submitted any withdrawals etc. to justify the availability of the cash of Rs.11 lakhs on 15.04.2010. The learned CIT(A) after taking the submissions of the assessee decided the issue in dispute as under:

“8. As regards the cash of Rs 5,62,000/- and that of Rs.8,94,000/-, as the first amount has been owned up by the partnership firm, Kohli filling Station which is opposite the road and the second by Smt Harbans Kaur, from whose locker it was found, addition if at all on account of this cash can only be made in their hands and not in the hands of the assessee unless some material is found to indicate that the cash actually belonged to the assessee. No such evidence has been brought on record. On the other hand Deshpal Singh Kohli has clearly stated that the sum of Rs 562,000/- belongs to Kohli filling Station. Further the statement of Harbans Kaur that the cash belongs to her is seen to be corroborated from her cash in hand position as on 31.03.2010 and the fact that the locker was not operated from that date till the date of search. Accordingly, the addition of both these amounts in the hands of the assessee amounting in total to Rs 13,56,000/- are deleted.”

7. In our opinion, the learned CIT(A) is justified in allowing the relief of Rs.4 lakhs on the basis of availability of cash as on 15.04.2010 and sustaining the balance addition of Rs.7 lakhs in absence of availability of cash to that extent. We do not find any infirmity in the order of the learned CIT(A) on the issue in dispute and accordingly, uphold the same. The grounds of appeal raised by the assessee are dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 21st January, 2019.

Sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER

Dated: 21st January, 2019.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

[O.P. KANT]
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi