

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.48/Bang/2019
Assessment Year : 2015-16

Shri Ashok Desing Naik, CTS Naik Petroleums, NH-13, Solapur Road, Tidagundi, Vijayapur – 586 101. PAN: AGHPN6964B	vs.	The Income Tax Officer, Ward – 1, TPS Vijayapur.
APPELLANT		RESPONDENT
Appellant by	:	Shri Rajeev C Nulvi, Advocate
Respondent by	:	Shri Balakrishnan .N, Addl. CIT (DR)
Date of hearing	:	21.02.2019
Date of Pronouncement	:	27.02.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A), Belagavi dated 29.10.2018 for Assessment Year 2015-16.

2. The grounds raised by the assessee are as under.

“1. The order of the authorities below is against the fact and circumstances of the case.

2. On the facts and circumstances of the case, the Assessing Officer erred in making the addition on account of unexplained cash deposits in the bank account amounting to Rs.31,79,134/-, as the appellant was having sufficient source of income to deposit the same in the bank account .

3. Without prejudice to the above Ground no.2, On the facts and circumstances of the case, the Assessing Officer erred in making the addition of Rs.31,79,134/- u/s 69A, instead of making the addition of G.P at the rate of 2.89% on unaccounted cash deposits amounting to Rs.18,70,883/- (Rs.4,09,92,430/- minus Rs.3,91,21,547/-), which is the actual unexplained cash deposits. The G.P on the same works out to Rs.54,068/-.

4. On the facts and circumstances of the case, the Hon'ble CIT(A) erred in sustaining the addition made by the Assessing Officer without appreciating the fact that unaccounted cash deposits emanates from the business should have been taxed at a G.P rate of 2.89%.

5. For these and other reasons which may be adduced at the time of hearing, this Hon'ble Bench is requested to delete the addition made by the Assessing Officer on account of cash deposit in the bank or pass such other order as this Hon'ble Bench may deem fit.

6. The appellant craves leaves, to add, to alter, to amend and to delete any other grounds at the time of hearing.”

3. It was submitted by Id. AR of assessee that as per the assessment order, the AO says that there were cash deposit in bank to the extent of Rs. 4,23,00,681/- including cash deposit in IDBI Bank, Vijayapur of Rs. 1,94,56,681/- and State Bank of India, Kannur of Rs. 2,28,44,000/-. Thereafter he submitted that the AO has allowed benefit to the assessee to the extent of sales disclosed by the assessee as per VAT returns to the extent of Rs. 3,91,21,547/- and made addition in respect of excess of cash deposit over sales. He submitted that there are two mistakes in the order of the AO. He submitted that the first mistake is this that the actual cash deposit by the assessee in the bank account with IDBI Bank noted by the AO at Rs. 1,94,56,681/- is incorrect. He submitted that assessee has deposited only Rs. 1,81,48,430/- with IDBI as against the amount noted by the AO of Rs. 1,94,56,681/-. In this regard, he submitted the copy of bank statement of IDBI Bank and date wise chart of cash deposit in IDBI Bank total of Rs. 1,81,48,430/-.
4. Regarding the second mistake he submitted that in addition to granting benefit of sales reported by the assessee in the present year, the AO should also have considered the opening cash balance. He submitted that the balance sheet of the assessee for the preceding year i.e. year ending as on 31.03.2014 is available on page no. 3 of the paper book and as per the same, there is closing cash balance as on 31.03.2014 of Rs. 38,58,600/-. At this juncture, the bench wanted to know regarding the closing cash balance as on 31.03.2015. He submitted a copy of balance sheet as on 31.03.2015 and pointed out that as per the same, the assessee has closing cash in hand of Rs. 13,00,087/- as on 31.03.2015. He submitted that the excess of opening cash in hand as on 01.04.2014 Rs. 38,58,600/- over closing cash in hand as on 31.03.2015 Rs. 13,00,087/- comes to Rs.

25,58,513/- and it should also be considered as cash available for deposit in bank account. He submitted that if both these mistakes are taken into account then no addition is called for on this account.

5. As against this the Id. DR of revenue supported the orders of authorities below. He also submitted that as per para 9 of the assessment order, there is cash deposit of Rs. 1,94,56,681/- with IDBI Bank and therefore, assessee's claim that deposit in IDBI bank is only Rs. 1,81,48,430/- as against amount of such cash deposit noted by the AO in para 9 of the assessment order of Rs. 1,94,56,681/- should not be accepted.
6. I have considered the rival submissions. I find that the date wise deposit chart in this bank is available on pages 5 to 11 of paper book. When the same is compared with the bank statement submitted by Id. AR of assessee, it is found that on following 18 dates there is deposit in bank account but these deposits are not cash deposit but transfer or clearing.

	Date	Amount
1	02.04.2014	14,983
2	06.04.2014	37,000
3	24.05.2014	8,000
4	16.06.2014	6,000
5	26.06.2014	7,000
6	19.07.2014	12,564
7	09.09.2014	12,686
8	15.09.2014	12,686
9	29.09.2014	10,00,000
10	26.11.2014	3,500
11	06.12.2014	2,500
12	19.12.2014	8,785
13	26.12.2014	1,51,000
14	27.12.2014	4,500
15	16.01.2015	6,700
16	28.01.2015	10,057
17	12.02.2015	4,500
18	05.03.2015	5,790
		13,08,251
	Assessee	1,81,48,430

	AO	1,94,56,681
	SBI	2,28,44,000
	Total cash Deposit	4,09,92,430
	Sales	3,91,21,547
	Excess Cash Deposit	18,70,883
	Excess of opening cash	25,58,513

7. The total amount of these cash deposit is Rs. 13,08,251/-. When this amount is added to the total cash deposit as per assessee of Rs. 1,81,48,430/- then the same tally with total cash deposit as per AO recorded by him in para 9 of the assessment order of Rs. 1,94,56,681/-. In view of this, I feel that the total cash deposit in IDBI bank should be considered at Rs. 1,81,48,430/- and not at Rs. 1,94,56,681/- as stated by the AO in para 9 of the assessment order. If we add the total amount of cash deposit in SBI of Rs. 2,28,44,000/-, then the total cash deposit comes to Rs. 4,09,92,430/- as worked out by the assessee on page no. 7 of the paper book being written statement. Out of this cash deposit, the AO has accepted that an amount of cash deposit of Rs. 3,91,21,547/- stands explained being the amount of sale shown by the assessee in VAT returns. If we reduce this amount of accepted cash deposit from total cash deposit, balance comes to Rs. 18,70,883/- being excess of cash deposit over cash sales. Now, we consider excess of Cash in hand as on 31.03.2014 of Rs. 38,58,600/- over closing cash in hand as on 31.03.2015 of Rs. 13,00,087/-, it is seen that the said amount comes to Rs. 25,58,513/- as against excess cash deposit of Rs. 18,70,883/- in excess of sales as per VAT returns. Therefore no amount of cash deposit can be added as unexplained cash deposit. I therefore, delete the entire addition made by the AO on this account.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 27th February, 2019.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.