

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]**

ITA No. 3388/Ahd/2016  
Assessment Year: 2007-08

**Altaf Masumali Nathani**

*Jafri Flat No. 7, Jamnakund,  
Shishuvihar, Bhavnagar  
[PAN : ADIPN 3444 Q]*

.....Appellant

**Vs.**

**Income Tax Officer**

*Ward 1(1), Bhavnagar*

.....Respondent

**Appearances by:**

***Tushar Hemani, for the Appellant***

***BL Meena, for the Respondent***

Date of concluding the hearing : 30.11.2018

Date of pronouncing the order : 28.02.2019

**O R D E R**

**Per Pramod Kumar, Vice President :**

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s order dated 22<sup>nd</sup> September 2016, in the matter of assessment under section 143(3) of the Income-tax Act, 1961, for the assessment year 2007-08.

2. Grievance of the assessee, in substance, is that "*learned CIT(A) has erred both in law and on the facts of the case, in confirming the action of the AO in treating the peak credit of Rs.8,65,000/- as unexplained cash credit under section 69 of the Act*".

3. The issue in appeal lies in a very narrow compass of material facts. The assessee derives income from retail trading of ship machinery parts, and from brokerage. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that there are cash deposits, aggregating to Rs.16,75,000/-, in a bank account with Axis Bank. When the matter was probed further, the Assessing Officer added deposits of Rs.3,000/- on 21.06.2006, of Rs.12,000/- on 08.02.2007, of Rs.6,00,000/- on 30.03.2007 and of Rs.2,50,000/- on 30.03.2007 as unexplained and added the same to the income. Aggrieved, assessee carried the matter in appeal before the CIT(A). It was explained by the assessee that the assessee had received cash of Rs.8,50,000/- as advance from purchase of goods from M/s. Rajvi Enterprises. Since the deal was eventually cancelled, the said amount was returned by cheque. All the supporting evidences were filed before the CIT(A). Learned CIT(A), however, rejected the plea on the ground that all these details were not before the Assessing Officer and seemed to be an afterthought. He also referred to the observation of the Assessing Officer, in the remand proceedings, which showed

that the assessee had not produced purchase orders, stock records, and that details of generator were not on record, and that *"the assessee has clearly concocted the story to escape from tax liabilities"*. The stand of the Assessing Officer was thus confirmed. The assessee is not satisfied and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We have taken note of the plea of the assessee that cash of Rs.6,00,000/- and Rs.2,50,000/- was given on 25.03.2007 and 27.03.2007 for purchase of diesel generator. As the generator was not found to be upto mark, this money was finally returned by cheque and that is not in dispute. The confirmations, ledger account and bank statements are also on record. We have also noted that ship breaking industry is not a very well organized industry which must essentially have purchase order system in place and in any case it works primarily through middleman. Keeping all these factors in mind, in our considered view, the explanation of the assessee deserves to be accepted – particularly as bonafides of refund are not even doubted and all the confirmations and ledger account copies are on record. We, therefore, treat the deposits to the extent of Rs.8,50,000/- as explained and delete the impugned addition to that extent.

6. There were no specific arguments with respect to deposits of Rs.15,000/- and we treat assessee's grievance, to that extent, as not pressed because of smallness of amount.

7. In the result, the appeal is partly allowed in the terms indicated above. Pronounced in the open court today on the 28<sup>th</sup> February, 2019.

Sd/-

**Ms. Madhumita Roy**  
(Judicial Member)

**Ahmedabad, the 28<sup>th</sup> day of February, 2019**

*\*/t*

Copies to: (1) The appellant  
(2) The respondent  
(3) Commissioner  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

Sd/-

**Pramod Kumar**  
(Vice President)

By order

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Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad