

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5480/Del/2016
Assessment Year: 2009-10

Devendra Kumar,
C/o S.K. Monga & Associates,
312-313, Govindpuri,
Haridwar.

Vs. ITO,
Baraut,
Baghpat.

PAN: AHYPG4103B

(Appellant)

(Respondent)

Assessee by : Shri S.K. Monga, Advocate
Revenue by : Shri S.L. Anuragi, Sr.DR

Date of Hearing : 07.08.2019
Date of Pronouncement : 30.09.2019

ORDER

This appeal by the assessee is directed against the order dated 10th August, 2016 of the CIT(A), Meerut, relating to Assessment Year 2009-10.

2. This appeal was earlier dismissed by the Tribunal, vide order in ITA No.5480/Del/2016, dated 23rd June, 2017. Subsequently, the Tribunal, vide MA No.454/Del/2017, order dated 14th May, 2019, recalled its earlier order on the ground that there are certain apparent mistakes that have crept in the order of the Tribunal. Therefore, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 15th March, 2010 declaring the total income at Rs.1,55,488/-. During the course of assessment proceedings, the Assessing Officer noted that there is a cash deposit of Rs.31,11,000/- and Rs.8,14,000/-, respectively, in the bank account and overdraft account maintained with Union Bank of India. On being asked by the Assessing Officer to explain the source of such cash deposit, it was submitted that these deposits pertained to his business of stamp vending. The Assessing Officer asked the assessee to explain the source of these deposits along with evidence like cash flow from stamp sale. The assessee could only produce monthwise sale purchase summary and stated that since he has deposited the stamp register with the DM office, he was unable to produce details of cash flow from stamp business. The maintenance of any cash book was denied. In view of the above, the Assessing Officer proceeded to determine the income of the assessee on the basis of the material available before him. He noted that even if the deposits are taken to be from the sale of stamp, there are discrepancies in cash balance available as deciphered from the monthwise summary of sales/purchase of stamp and balance as per the pass book. Since the assessee could not give the source of initial cash deposit of Rs.3 lacs on 22.08.2008 in UBI A/c which was kept in the bank account for more than one month, he held that this cannot be taken to be made out of his sales of stamps. He, therefore, added the same u/s 69 of the IT Act by following the decision of the Hon'ble Supreme Court in the case of *CIT vs. Smt. P.K. Noorjahan*. Similarly, he noted that in the month of October, 2008, the assessee deposited Rs.9 lacs in the bank account whereas the

withdrawals from the bank for the said month was only Rs.6 lacs. Thus, there was a net excess of Rs.3 lacs in this month. He noted that during October, 2008, the total stamp sale was Rs.9,64,660/- and purchase was Rs.9,78,000/-. He, therefore, held that the excess cash deposit of Rs.3 lacs during the month of October, 2008 is the income of the assessee from the undisclosed sources which he added. Similarly, in the month of March, 2009, he noted that there is a cash deposit of Rs.3,60,000/- and there is no withdrawal at all. He, therefore, held that this cannot be taken to be his receipt from stamp business as there is no corresponding withdrawal. Following the decision in the case of *Smt. P.K. Noorjahan (supra)* he added the above amount u/s 69 of the IT Act. The Assessing Officer further noticed that in the original balance sheet, the closing stock and cash balance was stated at Rs.7,60,345/- whereas in the revised balance sheet the same has been shown at Rs.6,97,476/-. In absence of any proper explanation given by the assessee, the Assessing Officer made addition of Rs.62,869/- to the income of the assessee. Accordingly, he determined the total income of the assessee at Rs.11,78,357/-. In appeal, the Id.CIT(A) confirmed the above additions.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. That the addition of Rs.10,22,869 as has been made U/s 69 of the Income Tax Act' 1961 is arbitrary, unjust, improper and against the provisions of law.

- (i) Addition of Rs.3,00,000 cash deposited in Union Bank of India
- (ii) Addition of Rs.3,0,0000 cash deposited in the month of Oct 2008
- (iii) Addition of Rs.3,60,000 cash deposited
- (iv) Addition of Rs. 62,809 cash deposited

That the difference in Original and Revised Balance Sheet of Stock and Cash is also unjustified and improper.

That the Assessee has not maintaining Books of Accounts and the Learned A.O. as has cited the Case of Supreme Court of India C.I.T., Ernakulam v/s Smt. P.K. Noorjahan on the basis of which the addition has been made is incorrect, improper as the citation of the case of CIT, Ernakulam v/s Smt. P.K. Noorjahan ITR 1999 Page No.570 Volume No.237 is not applicable in the present case.

That without prejudice to Ground No.1 to 4 above, the assessment as has been completed on the Income Rs.1178357/- is arbitrary, unjust, improper and against the doctrine of natural justice.”

5. The ld. counsel for the assessee, at the outset, submitted that the assessee has obtained the stamp register from the DM's office and has prepared the cash book. He accordingly submitted that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the Assessing Officer regarding all the deposits in the bank account.

6. The ld. DR, on the other hand, while supporting the order of the CIT(A) submitted that he has no objection if the matter is restored to the file of Assessing Officer to verify the same and decide the issue as per fact and law.

7. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the paper book filed on behalf of the assessee. I find since the assessee did not properly substantiate the source of various deposits in the bank account, the Assessing Officer, invoking the provisions of section 69, made addition of Rs.9,60,000/- and further made addition of Rs.62,809/- in absence of any proper explanation regarding the difference in the original balance

sheet and the revised balance sheet in respect of stock and cash balance. I find the ld.CIT(A) confirmed the addition so made by the Assessing Officer. It is the submission of the ld. counsel that he is a stamp vendor and had deposited the stamp register with the DM's office for which he was not in a position to prepare the cash flow statement to substantiate the various deposits made in the bank account. It is his submission that now he has obtained the stock register from the DM's office and has prepared the cash flow statement and, given an opportunity, he is in a position to substantiate the deposit of cash in the bank account out of his stamp business to the satisfaction of the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court on 30.09.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 30th September, 2019.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi