

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.3200/Mum/2016
(Assessment Year: 2006-07)**

Moh. Javed Mohd Rafique Shaikh Roo.No.403, 4 th Floor Vivek Apt. CHS, CST Road, Kalina, Santacruz(E) Mumbai-400 098	Vs.	ITO,Ward-22(2)(3) Piramal Chambers Mumbai
PAN/GIR No.BCGPS8244B		
Appellant)	..	Respondent)

Revenue by	Akhtar H. Ansari
Assessee by	Vishnu Aggarwal & Ankush Aggarwal
Date of Hearing	15/10/2019
Date of Pronouncement	15/10/2019

आदेश / ORDER

PER BENCH:

This appeal filed by the assessee is directed against, the order of the Commissioner of Income Tax (Appeals)-35, Mumbai, dated 18/02/2013 and it pertains to Assessment Year 2006-07.

2. The assessee has raised the following grounds of appeal:-

1. *On facts and circumstances of the case and in law, the learned CIT (A) erred in confirming addition of cash deposits of Rs. 21,62,800/- towards Unexplained cash credit u/s. 68 of the Income Tax Act, 1961 without considering the facts of the case.*

2. *On facts and circumstances of the case and in law, the learned CIT (A) erred in confirming addition of cheque deposits of Rs 3,22,000/- towards Unexplained cash credit u/s. 68 of Income Tax Act, 1961 without considering the facts of the case.*

3. *On facts and circumstances of the case and in law, the learned CIT (A) erred in confirming, addition of Rs. 40,000/- on account of low withdrawal for household expenses without considering the facts of the case.*

4. *The appellant craves leave to add, alter, amend or modify any or all grounds till the appeal.*

3. The brief facts of the case are that the assessee is an individual filed his return of income for AY 2006-07 on 13/03/2008, declaring total income of Rs. 1,45,671/-. The case was selected for scrutiny and the assessment has been completed u/s 144 of the I.T.Act, 1961 and determined total income of Rs.26,70,490/-, by making additions towards cash deposits found in ICICI Bank, Saving Bank account and Bharat Co-op Bank Mumbai Ltd saving bank account amount Rs. 21,62,800/- and also, cheque deposits amounting to Rs. 3,22,000/- u/s 68 of the I.T.Act 1961. The Ld. AO has also made additions towards low withdrawal for household expenses amounting to Rs. 40,000/-. The assessee has carried the matter in appeal before the first appellate authority. Before the Id. CIT(A), the assessee has filed additional evidences in form of certain evidences, including details of source for cash deposits and argued that cash deposits found in saving bank account is out of business receipts. The Ld.CIT(A) forwarded additional evidences filed by the assessee to the AO for his comments. The Ld. AO vide his remand report, dated 10/03/2011 commented upon additional evidences filed by the assessee and after considering relevant submissions of the assessee, has reiterated his finding, in respect of additions made towards cash deposits to savings bank account maintained at two banks, on the ground that the explanation offered by the assessee during the course of remand proceedings do not match with explanation offered during the assessment proceedings and also, the assessee has failed to explain source of cash deposits in bank

account. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of remand report of the AO confirmed additions made by the AO towards cash deposits into the saving bank account maintained two banks u/s 68 of the I.T.Act 1961. The Ld.CIT(A) had also confirmed additions made towards low withdrawal for household expenses, on the ground that the estimate made by the AO for household expenses is reasonable. The relevant findings of the Ld.CIT(a) are as under:-

9.6 By his office letter dated 10-11-2008, the appellant was requested to furnish the personal Capital A/c Balance Sheet ant to substantiate low drawings of Rs. 60,000/- for house hold expenses. The appellant was also requested to explain the sources of cash deposited of Rs. 1762,800/- with the S.B.A/c.with Bharat Cop.Bank (Mumbai) Ltd. Kalin Branch. The case was fixed for hearing on 17-11-2008. The said letter was served on the appellant on 11-11-2008. But appellant did not comply and therefore, added then.

9.7 Since the appellant could not substantiate its claim in respect cash deposit of Rs. 4 lacs in ICICI Bank, Bandra Kurla Complex S B A/c NO. 00401144871 and amount of Rs. 17,62,800/- deposited in cash with S B A/c 104/8497 in the Bharat Co-op Bank (Mumbai) Ltd. Kalain Branch the same is upheld to the total income of the appellant as unexplained cash credit u/s 68 of the I.T.Act. under the head of Income. From Other Sources. Thus, the total addition u/s 68 in respect of cash deposits which comes to Rs. 21,62,800/-. I upheld

9.8 It is further seen that the appellant had deposited Rs. 25,000 in ICICI Bank by transfer from A/c. 40112012 and an amount of f- by cheque In S B A/c. No, 101/8497 in Bharat Cop. Op. (Mumbai) Ltd. Kalina Branch, On perusal of the P & L A/c. It was by the AO that the appellant had disclosed the gross receipt at .1,92,287/- and as such receipt of Rs.23,22,000/- cannot be said to be Business Receipt. Since the appellant has not explained the source of deposit by cheque of Rs.3,22,000/- in his bank accounts, the same is [fable to assessed to tax as unexplained cash credit u/s.68 of the IT Act under the head of Income from Other Sources, Therefore the additions made by the AO is upheld

9.9. The appellant had disclosed the withdrawal for house-hold expenses at Rs.60,000/- the appellant was requested by AO to substantiate the low withdrawal for house hold expense vide this office letter dt. 10-11-2008. Since the appellant did not comply with the same, it was concluded by the AO that the appellant had no-explanation to offer. Taking Into consideration that the appellant is only 24 years and also flow of cash into his bank accounts, house-hold expenses was been estimated at

Rs.1,00,000/-, Accordingly, an amount of Rs.40,000/- was added to the total income of the appellant to cover up the low withdrawal made by the appellant . During the current proceedings before me, the appellant has not been able to rebut the conclusion of AO by supporting evidence. Hence, the addition made by the AO is upheld.

4. The Ld. AR for the assessee submitted that the Ld.CIT(A) has failed to appreciate the evidences filed by the assessee to justify source for cash deposits found in saving bank accounts maintained with ICICI Bank and Bharat co-op Bank (Mumbai) Ltd, even though, the assessee has demonstrated with evidences that the source for said cash deposits is out of business receipts. Therefore, no additions could be made u/s 68 of the I.T.Act, 1961. The Ld.AR, further submitted that the assessee has shown drawings of Rs. 60,000/- for the year under consideration, but the Ld.AO had made additions of Rs. 40,000/- without appreciating the fact that the assessee is single and no need of such a huge amount for his personal expenses.

5. The Ld. DR, on the other hand, strongly supported order of the Ld.CIT(A).

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The Ld. AO has made additions towards cash deposits found in saving banks account maintained with two banks, on the ground that the assessee does not have sufficient source of income to explain cash deposits. It is the claim of the assessee that source for cash deposits found in Bharath co.op bank (Mumbai) Ltd and ICICI Bank Ltd is out of business receipts for the year under consideration and also, he has taken cash loan from Ms. Kusum J Pawar. The assessee, further

contended that it has filed revised profit and loss account and cash summary to explain source of cash deposits to bank account and also, offered additional income of Rs. 1,02,257/-. Having considered arguments of both sides, we find that the Ld. AO claims that cash deposits found in saving bank account do not relate to business activity of the assessee, whereas the assessee claims that cash deposits found with saving bank account at two banks is out of business receipts and therefore, only profit element embedded in those cash deposits needs to be taxed, but not for total cash deposits. Facts are contradicting each other. Although, the Ld. AO stated that the assessee does not have sources of income to explain cash deposits, but failed to adduce any reason, what is the source of income for cash deposits. At the same time, although, the assessee claims that cash deposits are out of business receipts, but, fact remains that said bank account is out of regular books of accounts maintained by the assessee for the relevant financial year. No doubt, if bank account is completely out of regular books of accounts of the assessee, but relates to business activity, then cash deposits found in bank account cannot be considered as unexplained cash credit u/s 68 of the I.T.Act, 1961. But, to reach said conclusion, the assessee shall prove beyond doubt that the source of cash deposits is out of business receipts. In this case, the facts with regard to the source of cash deposits are in doubtful. Therefore, we are of the considered view that the issue needs further verification from the AO to ascertain source of income for cash deposits found in bank account. Therefore, we set aside, the issue to the file of the AO and direct him to re-examine the issue in light of various evidences filed by the assessee.

6. Coming to additions made towards low withdrawal for household expenses. The assessee claims drawings for his personal purpose amounting to Rs. 60, 000/- per annum is reasonable when compared to his family and living style, whereas the Ld. AO has estimated a sum of Rs. 1 Lac for household expenses and made additions of Rs. 40,000/-. We find that the Ld. AO has made additions toward low household withdrawals without adducing any reasons, as to how drawings claimed by the assessee for the year is low, when compared to his family size and leaving style. Unless, the Ld. AO has brought on record some evidences to prove that drawings claimed by the assessee is on low side, no additions could be made on estimation basis. Therefore, we are of the considered view that the Ld. AO was incorrect in making additions towards low withdrawal for household expenses. Hence, we direct the AO to delete additions made towards low withdrawal for household expenses.

7. In the result, appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on this 15 /10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 15/10/2019

Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

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