

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 4769/Mum/2018 (Assessment Year 2013-14)

Mr. Mahendra Dholakia G-6, Ses Plaza, Marve Road Near S.V. Road, Next to Kapol Bank, Malad West Mumbai-400 064. PAN : AEIPD3223Q (Appellant)	Vs.	ITO 33(2)(2) Room No. C-12 Bandra Kurla Complex, Bandra Mumbai-400 051. (Respondent)
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Assessee by	Shri Ankush Agarwal
Department by	Shri Chaitanya Anjaria
Date of Hearing	22.08.2019
Date of Pronouncement	18.11.2019

ORDER

This appeal by the assessee is directed against the order dated 9.5.2018 and pertains to A.Y. 2013-14.

2. The issue raised in ground No. 1 is :-

"On the facts and circumstances of the case and in law, the learned CIT (A) erred in dismissing appeal without considering the facts of the case and explanation offered relating to cash deposit made for credit card payment of Rs. 7,47,000/- which was already accounted in our books of accounts."

3. In this case the assessee is an individual and proprietor of M/s. Dhanesh Construction engaged in the business of civil labour contractor. During the course of assessment the Assessing Officer inter alia made addition of Rs. 7,47,000/- being payment towards cash by use of credit card of HDFC bank held by the assessee as unexplained expenditure. The assessee has explained source of payment as under :-

- (1) Opening cash balance of 78,681
- (2) Cash loans returned by friends Rs.1,00,000
- (3) Cash withdrawn from the HDFC credit card itself and
- (4) Withdrawals from his proprietary concern Dhanesh Constructions.

The Assessing Officer has dismissed the above explanation and learned CIT(A) confirmed the same.

4. Against this order the assessee is in appeal before the ITAT.

5. Upon careful consideration, I note that the assessee's explanation of availability of cash withdrawal has been dismissed by learned CIT(A) on the basis of preponderance and probability. He has found that cash of different amount at different places would not be available to make payment in cash through credit card. What is the reason of learned CIT(A) to disbelieve is not specified. Similarly cash loans taken have also been rejected on the ground of preponderance of probability and this has been rejected as self serving statement without any examination. In my considered opinion without any examination rejection of explanation by simply relying upon the decision of Hon'ble Apex Court in the case of Durga Prasad More (82 ITR 540) is not at all justified. The said Hon'ble Apex Court decision never laid down that addition can be made on surmises and conjecture without inquiry. In my considered opinion explanation of the assessee in this case has been cogent.

6. The same has been rejected on conjecture. Hence, I set aside the orders of the authorities below and delete the disallowance.

7. In the result, appeal of the assessee is allowed.

Order has been pronounced in the Court on 18.11.2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/11/2019

Copy of the Order forwarded to :

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

6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai