

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA NO. 1242/MUM/2018 : **A.Y : 2010-11**

Akshdeep Agarwal
Prop. Ashthvinayak Hospital
Plot No. 10, Sector 6, Khanda Colony,
New Panvel – 410 206
PAN : AHJPA5099D (Appellant)

Vs. ITO – 22(2)(1), Mumbai
(Respondent)

Appellant by : **Ms. Ritika Agarwal**
Respondent by : **Shri Chaitanya Anjaria**

Date of Hearing : **26/08/2019**

Date of Pronouncement : **25/11/2019**

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 15.12.2017 and pertains to assessment year 2010-11.

2. The grounds of appeal read as under :-

"1. Because, the Id. CIT(A) has erred in law and on facts in upholding the addition of Rs.99,000/- as discrepancy in opening cash balance although the same is corroborated by closing balance in the previous balance sheet.

2. Because, the Id. CIT(A) has erred in law and on facts in upholding the addition of Rs.58,979/- on account of alleged non genuine purchases although the payments were made through cheques and the confirmation of the party along with details were available on record.

3. *Because, the Id. CIT(A) has erred in law and on facts in upholding the addition of Rs.2,64,000/- received as loan by the appellant from his wife although the source of this loan in the form of salary received and loan repayment from the appellant was already on record."*

3. This appeal was earlier disposed of by this Tribunal by *ex parte* order dated 28.11.2018. Subsequently, in a Miscellaneous Application order the same was recalled. Pursuant to the recall, this appeal has been heard. The assessee in this case is running a hospital and nursing home and is also deriving rental income. A survey under Section 133A of the Income Tax Act, 1961 (in short 'the Act') was conducted at the hospital on 18.02.2010. In the course of assessment pursuant to search action, the Assessing Officer made various additions. One of the additions related to discrepancy in cash balance. The Assessing Officer observed that during the course of survey action, computerised cash book was impounded from 01.04.2009 to 18.02.2010. He noted that on verification of cash book submitted during the course of assessment proceedings and comparing the same with the impounded cash book, following discrepancy was found.

"14. During the course of survey action u/s. 133-A computerised cash book was impounded from 01.04.2009 to 18.02.2010. However on verification of cash book submitted during the course of assessment proceedings and comparing the same with the impounded cash book the following discrepancies were found :-

<i>Sr. No</i>	<i>Particulars</i>	<i>As per impounded Cash Book</i>	<i>As per Cash book submitted during assessment proceedings</i>	<i>Difference</i>
<i>1</i>	<i>Cash balance as</i>	<i>Rs.1,36,495.95/- (31.03.2009)</i>	<i>Rs.2,35,496.15/- (01.04.2009)</i>	<i>Rs.99,000.20/-</i>

	<i>on 31.03.2009 & 01.04.2009</i>			
2	<i>Cash balance as on 18.02.2010</i>	<i>Rs.4,23,829.63/-</i>	<i>Rs.1,78,037.73/-</i>	<i>Rs.2,45,791.90/-</i>
				<i>Rs.3,44,792.10/-"</i>

4. The Assessing Officer proceeded to add the difference of Rs.3,44,792/- to the total income of the assessee.

5. Before the learned CIT(A), assessee submitted that the Assessing Officer never raised any query in this regard. It was submitted that the Assessing Officer cannot rely upon the impounded cash book since same was not updated as on the date of survey action. The learned CIT(A) accepted this contention partly by holding that this can be accepted for the difference in the cash balance of Rs.2,45,792/-, however, he held that this explanation cannot be applied to the discrepancy in the cash balance of Rs.99,000/- as on 01.04.2009. Hence, he sustained the addition of Rs.99,000/-. Against this order, assessee is in appeal before the Tribunal.

6. Upon hearing both the counsels and pursuing the records, I find that when the learned CIT(A) has accepted that the impounded cash book cannot be a basis for addition inasmuch as various entries were not made and has also granted relief for the difference that arose for during the year transactions, there is no reason why the discrepancy in opening balance should be treated as sacrosanct. I find that it is settled law that approbate and reprobate is not

permissible. The learned CIT(A) cannot accept and reject the same explanation. Hence, this addition of Rs.99,000/- is directed to be deleted.

7. Another addition made by the Assessing Officer was for bogus purchases. In this regard, the Assessing Officer has issued notice under Section 133(6) of the Act to M/s. Abhiraj Enterprises for purchases of Rs.58,979/-. The notice returned with the remarks "*not found*". The Assessing Officer proceeded to add the entire amount as bogus purchases. Before the learned CIT(A), assessee submitted that he has duly obtained ledger account from the said party and submitted the same before the Assessing Officer. The learned CIT(A) noted that no details such as purchase invoices, delivery challans, lorry receipts, confirmation from the party, etc. was furnished and he also noted that the said ledger account was not even signed by the party. Hence, learned CIT(A) upheld the addition.

8. Upon hearing both the counsels and pursuing the records on this issue, I find that no discrepancy has been found in the working of the assessee, payments have been made through banking channel and confirmation from the party is on record. Hence, in my considered opinion, a 12.5% disallowance on the purchase of Rs. 58,979/- would meet the needs of justice. I direct accordingly.

9. Another addition made by the Assessing Officer was loan received by the assessee from his wife. On this, the Assessing Officer noted that assessee has shown a loan of Rs.2,64,000/- from Smt. Ruchi Bansal. In the absence of any detail given by the assessee, the Assessing Officer added the same under Section 68 of the Act. Before the learned CIT(A), assessee submitted the

necessary detail. The learned CIT(A) proceeded to examine and analyse the bank statement. He noted that Smt. Ruchi Bansal has made payment to assessee out of cash deposits of Rs.1,84,000/- and salary of Rs.87,508/- from the same hospital where assessee, her husband, is the proprietor. He doubted her creditworthiness and proceeded to confirm the addition. Against this order, assessee is in appeal before the Tribunal.

10. Upon careful consideration, I find that all the necessary details regarding the loan have been submitted. The learned CIT(A) has upheld the addition only on account of preponderance of probability. It is not the case that her salary has been doubted. There is also no law that persons having lesser income cannot make ***small savings***. In these circumstances, in my considered opinion, the addition is based on surmise and conjecture and is liable to be deleted. Accordingly, I set-aside the orders of the authorities below and delete the addition.

11. In the result, appeal of the assessee stands partly allowed.

Order pronounced in the open court on 25th November, 2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 25th November, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai