

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं / ITA No.849/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Adwitiya Projects India Pvt. Ltd.,
301, Supreme Icon, Baner Road,
Near Sakal Nagar, Aundh,
Pune – 411 007.

..... अपीलार्थी /
Appellant

PAN : AAJCA4323N.

बनाम v/s

The Income Tax Officer,
Ward – 1(3), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Suhas Bora.

Revenue by : Shri Houshang Boman Irani.

सुनवाई की तारीख / Date of Hearing : 19.12.2019	घोषणा की तारीख / Date of Pronouncement: 19.12.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A), Pune – 1 dated 30.01.2017 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the business of Civil Contractor and provides service to mostly industrial and private

clients. Assessee filed its return of income for A.Y. 2013-14 on 28.09.2013 declaring total income of Rs.2,97,31,804/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vice order dated 29.03.2016 and the total income was determined at Rs.5,31,46,451/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 30.01.2017 (in appeal No.CIT(A), Pune-1/10278/2016-17) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. The ld CIT (A) has erred in confirming the addition of Rs.15,57,000/- u/s 68 of the Act made by the AO only on the ground that the depositor has not properly explained the source of amount deposited in the Bank, and the same was unexplained for the reason that there was no reasonable explanation of the source of cash deposit without appreciating the facts and disregarding the submissions made by the appellant.

2. The ld CIT (A) while confirming the addition u/s 68 of the Act had failed to appreciate the following important factors:

- a. That the lender of the amount is duly assessed to tax.*
- b. The lender has substantial assets.*
- c. That the appellant had complied with all the conditions of Sec. 68 of the Act.*
- d. That the addition made by the AO on the ground the lender had deposited the cash in his saving account is not justified in law.”*

3. All the grounds being inter-connected are considered together.

4. During the course of assessment proceedings, AO on perusing the Balance-Sheet noticed that there was an addition on account of receipt of share application money of Rs.1 crore and unsecured loans of Rs.2,40,45,274/- from Mr. Uttam Chordiya, Director of the assessee company. The assessee was asked to furnish the details of

introduction of share application money, unsecured loans and creditworthiness of the investor. On perusing the ledger account furnished by the assessee, it was noticed that all the unsecured loans received by the assessee from Mr. Uttam Chordiya out of which Rs.2 lakh was received in cash on 15.09.2012. He also noticed that there were various cash deposits in the bank account of lender Mr. Uttam Chordiya before the issue of cheque of share application money and unsecured loans (the details of which are tabulated by the AO in page 9 of the order). The assessee was therefore asked to furnish the source of cash deposits and the availability of the cash. Assessee inter-alia submitted that the cash was deposited from the cash balance available in his banks. The submissions of the assessee were not found acceptable to the AO. AO noted that no details as to whether the books of accounts were maintained by Mr. Uttam Chordiya, though he was a salaried employee was not clarified by the assessee. The submission of the assessee of having cash deposits out of the cash withdrawals were also not found acceptable to the AO in view of the fact that assessee has stated to withdrawn the cash of Rs.2,90,000/- for household and personal expenses. AO also noticed that Mr. Uttam Chordiya, has shown income from salary only at Rs.7,97,540/- which was offered to tax in A.Y. 2013-14. He therefore did not accept the submission of the assessee of having cash deposits made out of the cash withdrawals. He accordingly held that assessee has failed to explain the creditworthiness of the transaction of share application money and unsecured loans and therefore made an addition of Rs.15,57,000/- u/s 68 of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

“13. I have carefully considered the facts of the case as well as reply of the appellant. In this case, it is clear that the appellant has taken loan of Rs.15,57,000/- from Mr. Uttam Chordiya, one of the Directors of the company. Out of the above Rs. 2 Lacs were received in cash on 15/9/2002. Regarding balance amount of Rs.13,57,000/- the AO found that equal amount was deposited in cash in the Bank account of Mr. Uttam Chordiya. The appellant could not explain the source of cash deposit in the bank account satisfactorily before the AO. In its reply, it claims that the appellant is not required to prove the source of source i.e. source of cash deposit in the bank account of Mr. Uttam Chordiya. This is nothing but trying to shift the onus. It must be appreciated that Mr. Uttam Chordiya though a different entity is not a third party in real sense. In a private limited company the role of Director is no different than partner of a firm and therefore, the source of cash deposit in the bank account of Mr. Uttam Chordiya could have been easily explained had the appellant wanted to. This has not been explained for the obvious reason that there was no plausible explanation regarding the source of cash deposit. Accordingly, I do not find any merit in the submission of the appellant and the action of the AO in making addition of Rs.15,57,000/- is upheld. Thus, the ground is dismissed.”

Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that assessee is not required to prove the source of source of cash deposits. He further submitted that if at all any addition was required it was to be made in the hands of Mr. Uttam Chordiya and not the assessee. He therefore submitted that the addition made by the AO be deleted. Ld. D.R. on the other took us through the order of AO and supported the order of Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to the addition of Rs.15,57,000/- u/s 68 of the Act. We find that AO had concluded that assessee has not explained the source of cash deposits in the books of accounts satisfactorily as there was equal amount of cash deposits before the giving of loan by Mr. Uttam Chordiya to assessee. Before us, assessee has not controverted the submissions made by Ld. D.R. but has simply stated that assessee had furnished the

confirmation and his PAN No. and thus assessee has complied with the requirements of Sec.68 of the Act. Before us also no satisfactory explanation about the source of cash deposits in the bank account of Mr. Uttam Chordiya has been provided by the assessee. In such a situation, considering the totality of the facts, we find no reason to interfere with the order of Ld.CIT(A). Thus, the grounds of the assessee are dismissed.

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

Order pronounced on 19th day of December, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 19th December, 2019.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – 1, Pune. .
4. Pr.CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” / DR,
ITAT, “B” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,स

// TRUE COPY //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.