

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.873/PUN/2019

निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Deoyani Movies Pvt. Ltd., Chate House, N-2, CIDCO, Aurangabad PAN : AABCD2215Q	Vs.	ITO, Ward-1(1), Aurangabad
Appellant		Respondent

Assessee by None  
Revenue by Shri S.P. Walimbe

Date of hearing 29-07-2020  
Date of pronouncement 31-07-2020

आदेश / ORDER

**PER R.S.SYAL, VP :**

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Aurangabad on 19-03-2019 confirming penalty of Rs.1,38,772/- imposed by the Assessing Officer (AO) u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2009-10.

2. Briefly stated, the facts of the case are that the assessee made cash deposits in its bank account during the year to the tune of Rs.1,12,93,100/-. The AO found that the cash sales were shown

only at Rs.1,07,99,000/-. On being called upon to explain wherefrom the remaining amount of Rs.4,94,100/- was deposited, the assessee submitted that some of the cash withdrawals or part thereof was re-deposited in the bank. The AO made addition by observing that the assessee failed to furnish any evidence for the differential amount. It is with reference to this amount of addition to the tune of Rs.4,94,100/- that the instant penalty of Rs.1,38,772/- was imposed, which came to be affirmed in the first appeal.

3. We have heard the ld. DR through virtual court and gone through the relevant material on record. There is no appearance from the side of the assessee. It is seen that the assessee is a private limited company and has maintained regular books of account, which is borne out from the audited balance sheet, whose copy has been placed in the paper book. The penalty is based anent to the addition of Rs.4,94,100/- which was made by the AO on the ground that the cash deposits in the bank at Rs.1.12 crore and odd were more than the cash sales at Rs.1.07 crore and odd. There is no dispute on the fact, which is also evident from the Statement of facts filed before the ld. CIT(A), that the cash

deposits in the bank was duly recorded in the cash book and nowhere the AO pointed out any sort of negative cash balance in the cash book. We fail to apprehend any reason for the disallowance at the first instance for *raison d'etre* that the assessee was maintaining books of account and the cash deposited in the bank to the tune of Rs.1.12 crore and odd was duly reflected in the books of account. It is basic that once cash deposit entries are recorded in the books of account, there can be no question of treating such amount as unexplained unless and until the AO finds a negative cash balance in the books of account on any date anterior to that. Here is a case in which the assessee deposited certain cash out of sale proceeds, withdrew some part and re-deposited the amount of Rs.4,94,100/- over the year. Simply because cash deposited in the bank is a little more than the cash sales, it cannot call for any addition, what to talk of penalty, unless it is proved that the excess cash deposited had no origin. Where the assessee tenders explanation that the excess cash deposit represented cash withdrawals at the earlier stages, there can be no question of making any addition and the consequential penalty, moreso when the entries of cash deposits and withdrawals are

recorded in books of account regularly maintained by the assessee and that are not found fault with by the AO. We, therefore, set-aside the impugned order and delete the penalty sustained in the first appeal.

4. In the result, the appeal is allowed.

Order pronounced in the open Court on 31<sup>st</sup> July, 2020.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 31<sup>st</sup> July, 2020  
*Satish*

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

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

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	29-07-2020	Sr.PS
2.	Draft placed before author	29-07-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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