

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3102/MUM/2017
Assessment Year: 2011-12**

Mohd. Yasin Mohd. Arif Patel, H. No. 92, Patel Mohalla, Panvel, Dist. Raigad PAN: AWUPP8613J	Vs.	The I.T.O. Ward 2, Panvel, Panvel Range Trifed Tower, Opp. Khanda Colony, Navi Mumbai - 410206
(Appellant)		(Respondent)

Assessee by : Mr. Prakash Pandit (Advocate)
Revenue by : Bharti Singh (DR)

Date of Hearing: 17/12/2019
Date of Pronouncement: 28/02/2020

ORDER

PER RAM LAL NEGI, JM

The assessee has filed the present appeal against the order dated 26.09.2016 passed by the Commissioner of Income Tax (Appeals)-2 (for short 'the CIT(A), Thane, which pertains to the assessment year 2011-12. Vide the said order, the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring the total income at Rs. 2,47,190/-. The case was selected for scrutiny and the AO issued notice u/s 143 (2) and 142 (1) of the Act. However, the assessee did not respond to the said notices. In response to the subsequent notices issued by AO, father of the assessee attended and sought adjournment. On the next date of hearing, the assessee submitted some of the documents. Thereafter, the assessee did not appear before the AO. Accordingly, the AO completed the assessment on the basis of available record and determined the total income of the assessee at Rs.

54,60,550/- after making an addition of Rs. 37,02,610/- as undisclosed income and Rs. 15,10,750/- on account of disallowance of agriculture income claimed by the assessee. As per the information available on the basis of AIR the assessee had deposited cash amounting to Rs. 37,02,610/- in his bank account maintained with Konkan Mercantile Cooperative Bank Ltd. and Union Bank of India on different dates. The AO made addition of the said amount to the income of the assessee. It was further noticed that assessee had claimed agriculture income of Rs. 15,10,750/-, however, the AO rejecting the claim, made addition the said amount to the income of the assessee holding that the assessee has not furnished any details/documents to substantiate its claim. In the first appeal, the Ld. CIT (A) partly allowed the appeal of the assessee. Still aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1 "In the facts and circumstances of the case and in law C.I.T. (Appeal) erred in confirming addition of Rs. 28,07,910/-. Out of total addition of Rs. 37,02,610/- made by A.O. on cash deposit.

2. Reasons given by C.I.T (Appeal) for confirming addition of Rs. 28,07,910/-. Out of total addition of Rs. 37,02,610/- made by A.O. on cash deposit are wrong insufficient and contrary to the facts and evidence on records."

4. Before us, the Ld. counsel for the assessee submitted that during the assessment proceedings the assessee was asked to explain the cash deposits on various dates in Konkan Mercantile Cooperative Bank Ltd. and Union Bank of India. The assessee explained that the entire cash withdrawn and deposited pertain to the current account and overdraft account while carrying out its business. The assessee further submitted that the said deposits also include income from agriculture as the assessee had an agriculture income of Rs. 15,10,750/- during the year relevant to the assessment year under consideration. The Ld. counsel further pointed out that the Ld. CIT (A) has held that the addition to the extent of Rs. 6,50,000/- on account of cash withdrawal

made from Konkan Mercantile Cooperative Bank and agriculture income amounting to Rs. 2,44,700/- is found to be explainable. The Ld. counsel invited the attention of the Bench to schedule G of the balance sheet, in which the assessee has shown cash in hand amounting to Rs. 9,71,994/- as on 31.03.2010. The Ld. counsel further submitted that as per schedule A of the balance sheet as on 31.03.2010, the assessee had an agriculture income of Rs. 4,35,310/-. The assessee has further reflected cash in hand amounting to Rs. 4,93,479/- in schedule C of the balance sheet as on 31.03.2010. The Ld. counsel further submitted that the assessee had retained cash to meet the requirements in connection with agricultural activities. In view of the aforesaid facts and submissions, the Ld. counsel submitted that the addition sustained by the Ld. CIT (A) is not in accordance with the evidence on record. Hence, the impugned order is liable to be set aside.

5. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT (A) submitted that since the Ld. CIT (A) has passed the order after taking into consideration, the submissions of the assessee, there is no infirmity in the order of the Ld. CIT (A) to interfere with.

6. We have heard the rival submissions of the parties and also perused the material on record in the light of the rival contentions of the parties. The only grievance of the assessee is that the Ld. CIT (A) has wrongly sustained the addition of Rs. 28,07,910/- out of the total addition of Rs. 37,02,610/- made by the AO on account of cash deposits in the two banks accounts of the assessee. As pointed out by the Ld. counsel, the Ld. CIT (A) has admitted that the assessee had agriculture income amounting to Rs. 2,44,700/-. The Ld. CIT (A) has further admitted that the addition to the extent of Rs. 6,50,000/- on account of cash withdrawal made from Konkan Mercantile Cooperative Bank is also explainable. The observation of the Ld. CIT (A) reads as under:

“5.9 To summarize the above findings, the addition of the extent of Rs. 6,50,000/- on account of each withdrawal made from Konkan Mercantile Cooperative Bank on 15.10.2010 and agricultural income to the extent of Rs. 2,44,700/- is found to be

explainable, therefore, deleted and the balance amount of Rs. 28,07,910/- (37,02,640 – 6,50,000/- - 2,44,700) is hereby sustained. Likewise separate addition of Rs. 15,10,750/- made on account of unexplained agricultural income is also deleted, in view of the above findings. All the grounds of appeal are decided accordingly.”

6. We further notice that the assessee had made application under rule 46 during the appellate proceedings before the Ld. CIT (A) for admission of additional evidence in form of 7/12 abstract in support of agriculture income and copy of cash book showing the source and application of cash in assessee's account in respect of the additions made. As pointed out by the Ld. counsel, the authorities below have not taken into consideration the withdrawals made by the assessee from the accounts in question. The assessee has furnished the details showing amount of cash deposits and source of deposits, which is available at page 98 and 99 of the paper book. The assessee has also furnished the copy of cash and bank summary in support of source and application of cash deposits, which are available at page 39 to 57 of the paper book. The assessee has furnished the 7/12 abstracts in respect of 5 agriculture land to prove the claim of agricultural income. The assessee has reflected the agriculture income in its computation of income for the earlier assessment years 2009-10 and 2010-11 and subsequent assessment years 2012-13 and 2013-14.

7. We further notice that the authorities below have not taken into consideration, the agricultural income earned by the assessee during the earlier assessment years. The authorities below have further not taken into consideration the cash in hand reflected in the balance sheets of the assessee. From the above mentioned facts and evidence on record, it can be concluded that the addition sustained by the Ld. CIT (A) is not based on evidence on record and in accordance with the settled principles of law. The addition sustained by the Ld. CIT (A) is not based on evidence on record. We therefore, find merit in the arguments of the Ld. counsel that the Ld. CIT (A) has sustained the addition in question without taking into consideration the submissions made

by the assessee in the light of the evidence on record. Hence, we allow the appeal of the assessee and set aside the order passed by the Ld. CIT (A). Accordingly, we direct the AO to delete the addition.

In the result, appeal filed by the assessee for assessment year 2011-2012 is allowed.

Order pronounced in the open court on 28th February, 2020.

Sd-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/02/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai