

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No. 6032/Del/2019
Asstt. Year 2011-12

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| Puneet Traders, A-75 Derawal Nagar, Model Town, New Delhi 110 009 PAN AAAFP6066B (Appellant) | Vs. | ITO, Ward-47(4) New Delhi. (Respondent) |
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| Assessee by: | Shri S.Krishnan, Advocate |
| Department by : | Shri Sanjiv Mahajan, Sr. DR |
| Date of Hearing | 28/01/2021 |
| Date of pronouncement | 18/02/2021 |

ORDER

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the order dated 13th June 2019 of the Ld. CIT(A)- 16, New Delhi relating to assessment year 2011-12.

2. The grounds raised by the assesses are as under :-

1. *“On the facts and in the circumstances of the case and in law the Authorities below erred in initiating proceedings under section 147/148 of the Income Tax Act, 1961 without there being any valid reason leading to belief of escapement of income.*

2. *On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in confirming the following actions of the Assessing Officer*
 - (i) *making an addition in a sum of Rs. 6,71,545/- wrongly invoking section 68 of the Act treating cash deposits in bank as unexplained income*

 - (ii) *charging interest under section 234A, 234B and 234C of the Act.*

All the above actions being erroneous unlawful and untenable it is prayed that the same must be quashed with directions for appropriate relief.”

2.1 Ld. Counsel for the assessee at the time of hearing did not press ground of appeal No. 1 for which the Ld. DR has no objection. Accordingly the ground of appeal No. 1 challenging

the validity of reassessment of assesses is dismissed as not pressed.

2.2 So far as ground No. 2 is concerned, the facts of the case, in brief, are that the assessee is a partnership firm. On the basis of AIR information that the assessee has deposited cash amounting to more than Rs. 2 lacs in the account maintained with HDFC bank, the case of the assessee was reopened by issue of notice u/s 148 of the Act. In response to the same, the assessee filed his return of income on 7th October 2018 declaring NIL income. During the course of assessment proceedings, the AO noted that assessee has made cash deposit of Rs. 7 lacs in the bank account maintained with HDFC bank. On being confronted by the AO, it was submitted that there was opening balance of Rs. 1,79,293/- in the bank account and also certain cheques in hand as on 31.3.2009 which were deposited in subsequent months. It was further submitted that an amount of Rs. 2,77,252/- was realized out of sale of closing stock. Further an amount of Rs. 2,74,319/- was received from sundry debtors.

2.3 However, the AO did not accept the arguments advanced by the assessee. He accepted an amount of Rs. 28,455/- as explained and made addition of Rs. 6,71,545/- to the total income of the assessee being unexplained.

2.4 In appeal, Ld. CIT(A) upheld the action of the AO by observing as under :-

“Discussion & Decision

The facts of the case, the submission of the AR and the finding of the AO were examined at length. The brief facts of the case are that the AO was in receipt of information that assessee had deposited Cash amounting to Rs. 2 lacs or more with the HDF.C Bank during the F.Y. 2010-11 relevant to A.Y. 2011-12 and that the assessee had not filed its return of income even after having been given sufficient opportunity for filing the same. Accordingly, re-assessment proceedings were initiated and notice us/ s 148 was issued on 31.03.2018, after seeking and being accorded approval of the Competent Authority. During the course of assessment proceedings, the AR was required to explain the deposit of cash of Rs 7,00,000/- (Rs. 4,00,000/- on 11.01.2011 and Rs. 3,00,000/- on 18.01.2011. However, the explanation in this regard did not satisfy the AO who accepted the source of cash deposit-to the extent of Rs. 28,455/-

and made an addition on this account of Rs 6,71,545/- by invoking the provisions of Section 68 of the Income Tax Act.

Before me the appellant contended that the AO was wrong in making an addition of Rs 6,71,545/-, being unexplained cash credits. The claim of the appellant was examined.

It is noted that before the AO, the appellant contended that during the A.Y 2011-12 the entire stock was sold off and an amount of Rs 2,77,252/- was received on account of this sale. Also, Rs. 2,74,319/- was received from the debtors. However, in the absence of any primary evidence to substantiate this claim in the form of sale bills or confirmations of debtors, the AO did not accept the claim of the appellant and only allowed the appellant benefit of Rs 28,455/- being cash in hand as submitted by the assessee during assessment proceedings. The finding of the AO seems to be correct and I see no reason to interfere with the same considering that any claim unsubstantiated by evidence has no evidentiary value in a court of law or during the course of quasi-judicial proceedings.

Before me the appellant further contended that the opening cash in hand as on 01.04.20 10 was Rs 6,82,206/-and there was an accretion of cash of Rs, 19,606/- on account of sales. Thus, the Total cash in hand as on 30.06.2010 was at Rs. 7,01,812. The cash deposit of Rs 7,00,000/- was sourced from this amount of cash in hand. The appellant submitted that the AO had wrongly

taken cash in hand of 31.03.2009. The claim of the appellant was examined. To substantiate his claim of cash in hand, the AR of the appellant produced the ledger account, sale account and cash flow statement for A.Y 2009-2010. The AR of the appellant was required to furnish a copy of the ITR for A.Y 2010-11 to substantiate the details of sales/purchases/cash-in-hand to further substantiate the ledger accounts and cash flow statements furnished. However, the AR admitted that no return had been filed for the said year, although return for A.Y 2009-10 was filed. The appellant contended that the entries of purchases matched with bank entries and hence the ledger account and cash flow statement so filed should be accepted as being credible. However, such a claim of the AR cannot be accepted. It is clear that the claim of purported cash-in- hand of Rs 6,82,206/- as on 31,03,2010 is simply a flimsy attempt to justify the source of cash deposit of Rs 7,00,000/- during the A.Y 2011-12. This cash-in- hand is a figure drawn out of the hat with no credible substantiation. Filing of ledger account of purchase and sales on a plain computer sheet unsubstantiated by corroborating evidence cannot prove the credibility of cash-in-hand figure of Rs 6,82,206/-. The AR did attempt to produce sale bills of the A.Y 2010-11 but they cannot be considered as these evidences are clearly in the nature of self- serving documents that bespeak afterthought and have no credibility as they cannot be matched against the ITR filed reflecting the said sales or audited accounts. Here it is pertinent to observe that the assessee is not required to

maintain any books of account u/s 44AD and 44AE. However, taxpayers (as does the appellant who in his ITR filed in response to Section 148 has returned Nil income) who claim that their Income from business is lower than the presumed income calculated under section 44AE must maintain books of accounts as specified in section 44AA and have them audited under section 44AB. No court of law would allow consideration and cognizance of self-serving documents used to further the case of the appellant. I draw strength from the unambiguous provisions of Section 114(g) of the Indian Evidence Act which clearly states as under:

Section 114(g) in The Indian Evidence Act, 1872]
(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

*The Apex Court in the case of **Keshav Mills & Co (56 ITR, 365)** has held that:*

Parties must lead evidence before the ITQ i.e. at the assessment stage.

In the light of the above detailed discussion and in the light of the fact that the appellant was unable to substantiate the claim of cash in hand or sales to explain the source of Rs 6,71,545/- of cash deposited in the HDFC bank account of the appellant, either before the AO or before me during the course of appellate proceedings, the addition made by the AO is upheld.

Result

Grounds of Appeal 1 and 2 are Dismissed.”

3. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

3.1 Ld. Counsel for the assessee submitted that the amount of cash deposited in the bank account was out of cash in hand amount received from sundry debtors and realization of sale proceeds of the closing stock of the preceding year. He submitted that although the assessee has explained all these things, however, due to non filing of the return by the assessee for earlier years, the AO did not accept the source of cash deposits and made the addition which has been sustained by the Ld. CIT(A). He submitted that the assessee is not maintaining regular books of accounts and was offering his income u/s 44AF of the Act. He submitted that given an opportunity the assessee is in a position to explain the source of such cash deposit in the bank account. He accordingly, submitted in the interest of justice assessee should be given one more opportunity to substantiate its case.

4. Ld. DR on the other hand heavily relied on the order of the Ld. CIT(A).

5. I have considered the rival arguments made by both the sides, perused the orders of the AO and Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me .I find the AO in the instant case made addition of Rs. 6,71,545/- as unexplained cash in the bank account maintained with HDFC account on the ground that assessee could not explain the source of such cash deposits of Rs. 7 lacs except Rs. 28455/- . I find the Ld. CIT(A) upheld the action of the AO the reason of which has already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that such cash deposit is out of the realisation of sundry debtors and out of sale proceeds of the closing stock lying with the assessee apart from some opening cash in hand. It is also his submission that given an opportunity the assessee is in a position to explain the source of such cash deposit so made in the bank account. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law.

I hold and direct accordingly. Grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on
18/02/2021.**

sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 18 /02/2021

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi