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**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH, NAGPUR**  
**BEFORE SHRI P.K.BANSAL, VICE-PRESIDENT AND**  
**SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No. No. 607/Nag/2016 (Assessment Year- 2012-13)**

M/s J.V. Kulkarni & Friends Associates, Krupaldas Wadhvani Complex , Opp. Bus Stand, Buldhana Road, Malkapur-443101. PAN: AAEFJ4199C	Vs.	DCIT Central Circle-1(2), Nagpur -440001
(Appellant)		(Respondent)

Revenue by : Miss. Thomas (DR)

Assessee by : Shri ~~C.J. Thakar~~ & Sanjay Thakar

Date of hearing : 22.11.2017

Date of Pronouncement : 01.01.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee under section 253 of the Act is directed against the order of Id. CIT(A)-3, Nagpur dated 23.11.2016 for Assessment Year (AY) 2012-13. The assessee has raised the following grounds of appeal:

- 1) The order passed by the A.O. is bad in law and same is confirmed by C.I.T.(A) without appreciating of the fact and various decision cited by the assessee.
- 2) Learned C.I.T(A) erred in confirming the addition amounting to Rs.1,69,50,000/- on account of unexplained cash credit U/s.68 of I.T. Act.
- 3) Learned C.I.T(A) erred in not considered assessee's submission and various document filed before him in support of above addition.
- 4) Learned C.I.T(A) erred in confirming the addition of Rs.11,94,225/- on excess interest paid to partner Shri Narayandas Nihalani, without appreciating of the fact.
- 5) Learned C.I.T(A) erred in adding amounting to Rs.25,000/- on account of cash payments U/s 40A(3).
- 6) Learned C.I.T(A) and A.O. has not properly considered assessee's submission, various supporting document & without applying his mind and passed the order.

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2. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that he is not pressing the Ground No. 4 & 5. We have noted that after not pressing the Ground No. 4 & 5, the only substantial ground of appeal remains for adjudication is if the Id. CIT(A) erred in confirming the addition of Rs. 1,69,50,000/- on account of unexplained cash credit under section 68 of the Act.
  3. Brief facts of the case are that the assessee-firm is engaged in the business of civil construction, filed its return of income for relevant AY on 25.03.2013 declaring total income of Rs. 9,06,070/-. The assessment was completed under section 143(3) on 27.03.2015. The Assessing Officer (AO) while passing the assessment order besides the other addition and disallowance made the addition of Rs. 1,69,50,000/- holding that assessee has not offered reasonable and acceptable explanation with regard to the credit in the books maintained by the assessee. On appeal before the Id. CIT(A), the addition under section 68 of the Act was upheld. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
  4. We have heard the Id. Departmental Representative (DR) for the Revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. AR of the assessee argued that during the assessment proceeding as well as in appellate proceeding, the assessee has furnished complete details in respect of deposits in the account of partners. The assessee furnished all the documents in the form of ledger account of

partners, copy of Profit & Loss Account, return of income, audited balance-sheet for relevant AY. The Id. AR of the assessee argued that he has discharged his onus. There was no dispute about the identity of the person. The assessee also filed affidavit of all seven partners stating that the amounts were withdrawn from the firm in Financial Year 2010-11 and the purpose for withdrawal were not achieved. Hence, amount was re-deposited in the firm in Financial Year 2010-11. The assessee has conclusively proved the credit to the accounts of partners in the books of firm. The assessee has proved the creditworthiness of the partners. The AO as well as Id. CIT(A) ignored the direct and conclusive evidence which proved the credit in the accounts of partners in the books of firm. The lower authorities instead of referring the direct evidence added the amount on wrong presumptions. On the other hand, the Id. DR for the Revenue supported the order of authorities below and argued that the assessee has not discharged his onus.

5. We have considered the submission of the parties and perused the orders of authorities below. We have seen that during the assessment proceeding, the AO noted that the following amount was deposited in the capital account of the partner of the assessee-firm.

Sr. No.	Name of the parties	Date	Amount
1	Gajendra Dawala	01.04.2011	18,00,000
2	Jitendera Kulkarni		
		03.02.2012	7,50,000
		28.03.2012	12,00,000
3	Mohan Talreja	01.04.2011	18,00,000
4	Nand Kumar Rajput	01.04.2012	28,00,000
5	Narendra Nihlani	01.04.2011	50,00,000
6	Shirish P Dorle	01.04.2011	18,00,000

7	Tejrao S Kabre	01.04.2011	18,00,000
		Total	1,69,50,000/-

6. The assessee was asked to explain the source of deposits. The assessee furnished the copy of bank withdrawal of Narendra Nihlani, Jitendera Kulkarni and Mohan Talreja. The assessee further stated that cash was withdrawn for business purpose. The AO not accepted the contention of assessee holding that the specific purpose for withdrawal of amount from capital account is not specified. The assessee was again asked to produce the partner for examination. The partners were not produced for verification, thus the contention of assessee that the partner were trying to acquire property for the purpose of business of the firm and that negotiation could not be completed, they decided to close the business activity and refund that the money, was not accepted by the AO. The AO made the addition under section 68 of the Act. Before the Id. CIT(A), the assessee contended the similar contention and filed the copy of all the documents furnished before the AO. In addition to the document furnished before the AO, the assessee filed affidavit of all the partners. In the affidavit, the partners contended that all the partners decided to invest the fund in landed property so as to deal in real estate business. The partners were given advance in cash. The detail of cash by date-wise withdrawal was provided. It was further contended that when land dealing was not materialized they decided to refund the advance in their capital account.

7. We have noted that the Id. CIT(A) has not disputed the fact that there was withdrawal in cash by the partners from the assessee's firm in the earlier years. The AO as well as the Id. CIT(A) raised suspicion about the specific business purpose. Their suspicious was based as the partners has not disclosed as to whom the negotiation was carried out. We have further noted that no finding was given on the documents furnished by assessee either by AO or by Id. CIT(A). In our view, there is no dispute about the withdrawal in cash by the partners from the assessee's firm in earlier year and deposit in subsequent Financial Year. The creditworthiness and identity of the partners are not disputed. It is well settled law that a revenue officer cannot sit in the armchair of a businessman and dictate how a business is to be carried out. Thus, taking into account the totality of facts and circumstances of the case, we find that the AO had no material in his possession so as to enable him to make the impugned additions. Thus, the addition was made by AO on mere suspicion and is not sustainable in eyes of law and therefore, the same is liable to deleted. No contrary decision is brought to our notice. Thus, the ground nos. 1 to 3 of the appeal are allowed.
8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 1<sup>st</sup> day of January, 2018.

Sd/-

(P.K.BANSAL)

VICE-PRESIDENT

Mumbai; Dated 01/01/2018

S.K.PS

Sd/-

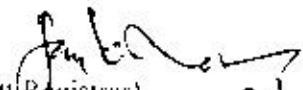
(PAWAN SINGH)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Nagpur
4. CIT
5. DR, ITAT, Nagpur
- ~~6.~~ Guard file.

BY ORDER.

  
(Asstt Registrar)  
ITAT, NAGPUR

21/12/2016