

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.927/Bang/2015
Assessment Year:2011-12

M/s. Arshad Ispat Khan Building College Road Behind HDFC Bank Hospet 583 201  <b>PAN NO :AAPFM8139B</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Circle-2(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Shri Dilip, Junior Standing Counsel for Dept.

Date of Hearing	:	02.08.2021
Date of Pronouncement	:	06.09.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 13.2.2015 passed by Ld. CIT(A)-11, Bengaluru and it relates to assessment year 2011-12.

2. Though the assessee has raised as many as 10 grounds of appeal, the Ld. A.R. pressed only ground Nos.7 & 8, which read as under:

“7. Without prejudice to the above, the learned CIT(A) was not justified in upholding the addition of a sum of Rs.2,30,90,941/-

*made by A.O. as unexplained investment in plant and machinery under the facts and in the circumstances of the appellant's case by unreasonably rejecting the truthful and correct explanation as an after-thought.*

8. *The A.O. is not justified in adding a sum of Rs.18,76,610/- as undisclosed cash under the facts and in the circumstances of the appellant's case by unreasonably rejecting the truthful and correct explanation as an after-thought."*

Accordingly, the remaining grounds are dismissed as not pressed.

3. The facts relating to the above said issues are stated in brief. The assessee is a partnership concern. The revenue carried out a search & seizure operation in the hands of Shri B. Nagendra and in connection with the same, the premises of the assessee was also subjected to search. During the course of search proceedings, certain documents were seized, which disclosed that the assessee has paid a sum of Rs.21.28 crores for purchase of first and second kiln on 25.10.2010. However, the Balance sheet as on 31.3.2010 submitted by the assessee disclosed a sum of Rs.18.72 crores under the head "Capital work in progress". The Balance sheet prepared as on the date of search disclosed capital work in progress at Rs.18.89 crores. Accordingly, the A.O. took the view that the difference between amount shown in seized documents and the balance sheet represents payment made outside the books of account. The said difference was spread into 2 different years by the A.O., viz., Rs.2.30 crores in assessment year 2010-11 & Rs.8,49,561/- in assessment year 2011-12. Before the AO, the assessee furnished copy of Balance sheet finalized for the year ending on 31.3.2010 and also 31.3.2011. In 31.3.2011 the capital work in progress was disclosed at Rs.26.28 crores and accordingly, it was contended that the total investment made in purchase of kiln is more than the amount found in the seized document. The A.O.,

however, took the view that the Balance sheet furnished by the assessee is an afterthought and accordingly he added the sum of Rs.8,49,561/- to the total income of the assessee.

4. During the course of search, the revenue found cash balance of Rs.18,76,610/-, out of which a sum of Rs.18,70,000/- was seized. The AO wanted to assess the above said cash balance. The assessee submitted that the cash balance actually represents cash balance of two firms namely the assessee herein and a sister concern named M/s. Arshad Exports. It was submitted that the cash balance available with the assessee firm as on 31.3.2010 was Rs.13.84 lakhs. It was also submitted that a sum of Rs.4 Crores has been surrendered by M/s. Arshad Exports in order to take care of deficiencies and hence the above said cash balance should be telescoped with the disclosure. The A.O. did not accept the explanations of the assessee and accordingly added the cash balance of Rs.18,76,610/- to the total income of the assessee.

5. The Ld. CIT(A) confirmed both the additions and hence, the assessee has filed this appeal before us.

6. We heard the rival contentions and perused the record. The first addition relates to undisclosed investment made in the purchase of kiln. We notice that the A.O. has drawn inference on undisclosed investment on the basis of certain seized materials found during the course of search. The said seized material disclosed investment of Rs.21.28 crores. However, the undisputed fact remains that the Balance sheet as on 31.3.2011 disclosed an investment of Rs.26.28 crores, which figure is more than the amount shown in the seized document. We notice that the A.O. has not examined the aspect whether the entries found in the seized document were duly accounted for by the assessee in the books of

accounts or not. Without carrying such examination, the A.O. has brushed aside the Balance sheet holding it as an afterthought. In our view, it is not justified. The AO should have pinpointed the difference, if any, should have sought explanations from the assessee and then should have taken a decision. In the absence of such an exercise, the impugned addition should be considered as having been made on surmises and conjectures. Accordingly, we are of the view that the addition of Rs.8,49,561/- made by the A.O. as undisclosed investment has not been properly established by the A.O. Accordingly, we do not find any merit in this addition. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance.

7. The next issue relates to addition of cash found during the course of search. It is an undisputed fact that the assessee has surrendered a sum of Rs.4 crores as unexplained income in the hands of sister concern M/s. Arshad Exports. It is also a fact that the assessee and sister concern are operating in the same premises. Hence, the assessee has submitted that the cash balance found during the course of search belong to two firms namely M/s. Arshad Ispat and M/s. Arshad Exports. We notice that the A.O. has not proved the above said submissions of the assessee to be wrong. When the assessee makes an adhoc disclosure of Rs.4 crores to take care of all deficiencies, then there is merit in the prayer of the assessee that the impugned cash balance should be telescoped with the surrendered income of Rs.4 crores. On this reasoning, we are of the view that the impugned addition is not called for. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the disallowance of undisclosed cash balance.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 6<sup>th</sup> Sept 2021.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 6<sup>th</sup> Sept, 2021.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.