

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

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

ITA Nos.67 & 68/Bang/2018
AssessmentYear:2011-12 & 2012-13

ACIT Central Circle-2(3) Bangalore	Vs.	M/s. Cauvery Aqua Pvt. Ltd. #5/1 & 5/2, 1 st Main Road Jayahmahal Extension Bangalore 560 046 PAN NO :AAACC7357B
APPELLANT		RESPONDENT

C.O. Nos.61 & 62/Bang/2018 (Arising out of ITA Nos.67 & 68/Bang/2018) AssessmentYear:2011-12 & 2012-13
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M/s. Cauvery Aqua Pvt. Ltd. #5/1 & 5/2, 1 st Main Road Jayahmahal Extension Bangalore 560 046	Vs.	ACIT Central Circle-2(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	04.08.2021
Date of Pronouncement	:	11.10.2021

ORDER

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The appeals filed by the revenue and the cross objections filed by the assessee are directed against the orders passed by Ld. CIT(A)-11, Bengaluru and they relate to the assessment years 2011-12 & 2012-13. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The revenue is challenging the decision of Ld. CIT(A) in deleting the undisclosed income of Rs.1.74 crores and Rs.2.51 crores assessed by the A.O. respectively in assessment years 2011-12 & 2012-13. In the cross objections, the assessee is challenging the decision of Ld. CIT(A) in upholding the validity of search conducted in the hands of the assessee u/s 132(1) of the Income-tax Act,1961 ['the Act' for short].

3. The facts relating to the case are stated in brief. The assessee company is engaged in the business of manufacturing and processing of animal feed supplements in feeds and farm division, manufacturing & processing of packaged drinking water in water division. Besides, the assessee is also engaged in generation of power. The assessee was subjected to search on 18.12.2012 and accordingly the present assessments were completed u/s 143(3) r.w.s. 153A of the Act.

4. The issue urged by the revenue relates to the undisclosed income assessed by the AO in both the years. The facts relating to both the years are identical. The A.O. noticed that the assessee company has given advances to one of the Directors named Shri Prakash Ladhani and the same has been debited to "Imprest

Account”. The aggregate amount of advances given was Rs.1.74 crores and Rs.2.51 crores respectively in the years relevant to assessment year 2011-12 & 2012-13. The A.O. confronted the ledger print out of “Imprest Account” to Shri Rajiv Saxena, Financial Consultant to the assessee. It was submitted by him that the payments were made to the Director in the form of imprest in order to incur expenses on behalf of the company. He also submitted that the details of expenditure may be found in the final trial balance of the head office. However, Shri Saxena was unable to provide details of expenditure, if any, incurred by Shri Prakash Ladhani on behalf of the assessee company. The A.O. also confronted the above said materials to Shri Prakash Ladhani and he also stated that the details of expenditure may be available in head office.

5. The A.O issued questionnaires dated 9.1.2015 and 12.1.2015 to the assessee and asked it to explain how the amounts advanced were accounted in the books of the company and also directed to furnish the details of withdrawals made from banks. The assessee submitted that it has withdrawn money from United Bank of India and the same was deposited with Bank of India. It was submitted that it was necessitated, since it has fully used the loan granted by United bank of India. Hence money was withdrawn from United bank of India and the same was deposited into Bank of India, so that it can use the funds as per its requirements. However, while withdrawing funds from United bank of India, the imprest account of Prakash Ladhani was debited. When depositing money with Bank of India, the imprest account was credited. It was submitted that the imprest account was used for accounting purposes only in order to exercise control over these transactions. Accordingly, it was submitted that the amount was not actually paid to Prakash Ladhani. Since the assessee has failed to furnish relevant details

from cash book, the A.O. took the view that these amounts have been advanced to Prakash Ladhani outside the books of account. Accordingly, the A.O. treated the amount of Rs.1.74 crores and Rs.2.51 crores as undisclosed income of the assessee in assessment year 2011-12 and 2012-13 respectively. The Ld. CIT(A) deleted the additions and hence the assessee has filed this appeal before us.

6. We heard the parties and perused the record. The Ld. D.R. submitted that the assessee has failed to furnish the details and hence the A.O. was constrained to make the impugned additions holding the same as payments made out of undisclosed sources. He further submitted that the assessee has produced the cash book before the Ld. CIT(A) without citing proper reasons and he has also accepted the same in violation of Rule 46A. The A.O. has pointed out the same to Ld. CIT(A) in the remand report furnished to him. He further submitted that the amount was given to Shri Prakash Ladhani and it would also fall under the category of deemed dividend within the meaning of section 2(22)(e) of the Act.

7. The Ld. A.R., however, submitted that the cash book was not a new evidence and it was furnished before the A.O. also during the course of assessment proceedings. Only at the fag end of the assessment proceeding, the A.O. asked for the details of payments made to the Imprest account of Shri Prakash Ladhani and assessee has also explained the same. The Ld CIT(A) also confronted the cash book with the AO and hence there is no violation of Rule 46A. He further submitted that the imprest account is finding place in the cash book and ledger, which means that these transactions are duly recorded in the books of account. Hence, the question of treating it as undisclosed income in the hands of the assessee firm does not arise at all. Since the imprest account has been created only to have the control over these transactions and further since

Shri Prakash Ladhani was not given any amount for his personal use, the provisions of section 2(22)(e) of the Act will also not apply. The Ld. A.R. submitted that the Ld. CIT(A) has correctly appreciated these facts and hence his order does not call for any interference on this issue.

8. We heard the rival contentions and perused the record. The decision rendered by Ld. CIT(A) on this issue are extracted below for the sake of convenience.

*“6.4 I have considered the submissions made and materials on record. It is seen that there was materials found in the search in the shape of a ledger account showing payments in cash to Sri Prakash Ladhani on different dates. It has been observed by **the** A.O. that in search proceedings, the statement of Sri.Rajeev Saxena, Financial Consultant to the appellant was recorded. He was asked to explain the seized ledgers found and he stated that these payments to the directors were made in the form of imprest to incur expenses on behalf of the company. On being asked that there were no details of expenses in the ledger account, Sri.Rajeev Saxena replied that the details of the expenditure may be found in the final trial balance of the head office. A.O. has also observed that at the time of search, Sri.Prakash Ladhani was also examined and no details of the expenditure incurred by him from the above money advanced were given. He also stated that the details of the expenditure may be available in the head office. Hence, the A.O. regarded that no satisfactory explanation of expenses incurred were given at the time of search.*

6.5 In the assessment proceedings, the AO has asked the appellant once again about the seized ledgers. The A.O. asked the appellant to establish 2 things — first how the advances given to Sri.Prakash Ladhani have been accounted and secondly to explain the source of the advances given. The A.O. wanted the appellant to explain whether any expenses have been booked in relation to the amount advanced to Sri Prakash Ladhani. The cash book was also required to be produced and point out the relevant entries in the name of Sri Prakash Ladhani. In reply, the appellant stated that the cash advanced to Sri Prakash Ladhani was drawn from United Bank of India and deposited in Bank of India for expenses. It was explained that the appellant group had overdrawing situation and

hence, cash was withdrawn and deposited in Bank of India where there were no credit facilities. In short, it was the claim that this cash shown in the seized ledgers were never used by Sri Prakash Ladhani and only for accounting purpose and to have a control over the extent of funds drawn from United Bank, the seized ledgers were prepared. This explanation of the appellant was not accepted by the A.O. since the cash book of the appellant was not produced and also the details of the expenses incurred by the appellant from out of the funds.

6.6 Before me the appellant has produced the cash book and the A.O. was also called upon to examine the same and give his report. The A.O. -has objected the admission of the cash book under Rule 46A on the ground that there was sufficient opportunity was given to the appellant in the assessment proceedings to produce the same and the reasons stated for the failure of the appellant to produce the cash book cannot be accepted. I have examined the reasons stated by the appellant and the objections of the A.O. It is the case of the appellant that the cash book produced is strictly not additional evidence since it was produced in course of the assessment proceedings in normal course. However, after furnishing the explanation about the source of the cash payments by letter dated 16/03/2015, the appellant has not produced the cash book before the A.O. to substantiate its explanation. The submission of the appellant that several assessment proceedings of the entire group were being taken up together and there was a bonafide oversight in producing the cash book appears to be a reasonable explanation. Hence, I hold that the additional evidence tendered by the appellant requires to be admitted to serve the ends of justice. No prejudice will be caused by admitting the additional evidence as the A.O. has also been given the opportunity to examine the same and furnish his comments.

6.7 I find from the examination of the cash book that the cash payments made to Sri Prakash Ladhani are properly recorded therein as per the seized ledger account. The appellant has also filed the ledger account of United Bank of India to show that the cash withdrawal from the said bank account has been incorporated in the cash book of the appellant. The source of the cash payments as per the seized ledger stands established with regard to the cash withdrawals made from United Bank of India and duly recorded in the cash book of the appellant. The major objection of the A.O. in the assessment order is that the appellant had failed to produce the cash book and explain the source of the cash payments as per the seized ledgers. The appellant has now furnished the cash book and the ledger account in United Bank of India and bank of India to substantiate its explanation and stand before the A.O. The observations of the A.O. in the remand report

that the appellant has not established the end to end cash flow with regard to the expenses incurred is not material since the issue under consideration relates to the source of the cash payments made as per the seized materials. Hence, the addition made by the A.O. considering the said cash payments as undisclosed income of the appellant is deleted.”

9. On a perusal of the order passed by Ld. CIT(A), we notice that the transactions relating to imprest account, withdrawal from United Bank of India and deposit into Bank of India have been routed through the books of account. As submitted by assessee, the imprest account was fastened between cash withdrawal from United Bank of India and deposit into Bank of India in order to have control over these transactions. We notice that the imprest account is created as conduit between the bank transactions. We notice that the Ld. CIT(A) has examined the books of account which has also been confronted before the A.O. Further, the Ld. CIT(A) has also recorded a finding that all the transactions are duly recorded in the books of account. When all the transactions have been routed through the books of accounts, the question of undisclosed income will not arise. Hence we are of the view that the AO has made the impugned addition on surmises and conjectures only and accordingly, in the facts and circumstances of the case, we do not find any infirmity in the decision rendered by Ld. CIT(A) in deleting this addition in both the years.

10. In the C.O., the assessee is challenging the decision of Ld. CIT(A) in upholding the validity of such proceedings u/s 132(1) of the Act. At the time of hearing, the Ld. A.R. did not press the C.O. filed by the assessee for both the years.

11. In the result, both the appeals filed by the revenue as well as both cross objections filed by the assessee are dismissed.

Order pronounced in the open court on 11th Oct, 2021.

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

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

Bangalore,
Dated 11th Oct, 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.