

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER
(Through Video Conferencing)**

ITA. No. 2392/Del/2017
(Assessment Year : 2012-13)

Shri Mohit Mishra & Smt. Usha Mishra, Legal Heirs of Late Shri Rakesh Kumar Mishra, C – 38, Sector : P-3, Greater Noida, Uttar Pradesh – 201 308. PAN: AGWPM4014G	Vs.	ACIT, Circle : 23 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Ajay Wadhwa, Advocate;
Department by:	Shri T. Kipgen [CIT] – DR;
Date of Hearing :	18/11/2021
Date of Pronouncement :	18/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the legal heirs of Shri Rakesh Kumar Mishra, against the order of the Id. Commissioner of Income Tax (Appeals)-11, New Delhi, dated 23rd February, 2017.
2. The assessee has raised the following grounds of appeal:-

“1. That having regards to facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing Officer under section 143(3) without serving notice u/s 143(2) to all legal heirs of the deceased assessee he Shri Rakesh Kumar Mishra u/s 153.

2. That having regards to facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing Officer as per the provisions of section 143(3).

3. That having regards to facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is not right in confirming the addition of Rs, 3,20,000/- on account of cash requisition by the Assessing Officer.

4. That the Hon'ble Commissioner of Income Tax (Appeals) has not afforded proper opportunity to explain the matter and whole order is arbitrary and against the principle of natural justice.

5. That in any view of the matter and any case the order under appeal is bad in law and against the circumstances of the Case. “

3. The brief facts of the case shows that for assessment year 2012-13 assessee filed return of income of Rs.5,40,540/- on 12.10.2012.
4. In this case there was a cash requisition under Section 132A of the Income Tax Act, 1961 (the Act) of Rs.3,20,000/-. The fact shows that assessee was carrying Rs.3,20,000/- with him on 26.02.2012, which was withdrawn by him from Standard Chartered Bank of his company, M/s. Numex Techbuild (Pvt.) Ltd., wherein he was a Director, for disbursement of the salary. The above sum was seized by the Election Duty In-charge. Accordingly, a notice under Section 153A of the Act was issued. In response to the query the assessee submitted the above fact that cash of Rs.3,00,000/- was withdrawn from the bank on 22.02.2012 and also a sum of Rs.1,00,000/- on 14.02.2014, but due to some reason he could not go to the site of the company. The above sum was for the disbursement of salary at site being a construction company. The ld. Assessing Officer did not believe the same and made an addition of Rs. 3,20,000/-. The assessment order was passed on 31.03.2014 under Section 153A read with Section 143(3) of the Act determining total income of Rs. 8,60,540/-.
5. Assessee preferred an appeal before the ld. CIT (Appeals), who dismissed the same and, therefore, the assessee is in appeal.
6. We have heard the rival contentions. In this case, we find that Shri Rakesh Mishra died on 2.03.2013. The notice was issued under Section 143(2) on 25.02.2014 in the name of the name of the deceased person. The notice was served on legal heirs. The facts of the case shows that Shri Rakesh Mishra, Director of one of the company, M/s. Numex Techbuild (Pvt.) Ltd., was carrying Rs.3,20,000/- from Delhi to Ghaziabad for payment of wages. As elections were held in the Uttar Pradesh State Assembly, the appellant was stopped and a sum of Rs.3,20,000/- was seized from the assessee. The assessee produced before them copies of the bank statement and extract of cash book. However, the cash was seized and on that basis an addition was made in the hands of the assessee. It was shown before us that assessee withdrew the cash from Standard Chartered Bank on 22.02.2012 the sum of Rs.3,00,000/-. The above fact has been shown by the bank statement as well as the bank book and cash book of M/s. Numex Techbuild (Pvt.) Ltd. As on

22.02.2012 that company was having an opening cash on hand of Rs.3,24,258/- and after withdrawal of the above amount the total cash on hand available with that company was Rs.6,24,258/-. In view of the above facts as on the date of the seizure, the assessee has explained the availability of cash on hand. The Id. CIT (Appeals) confirmed the addition merely because of the reason that the above cash was requisitioned under Section 132A of the Act. We do not agree with the findings of the lower authorities for the reason that assessee has adequately explained the holding of cash on hand with cash book of the company as well as withdrawal of the cash from the bank account. The evidences produced by the assessee were not found to be incorrect. It is also not the case of the Revenue that it is not the same cash, which was available with the company, where the assessee is a Director, which was found and requisitioned.

7. In view of this, we do not find any reason to uphold the addition of Rs.3,20,000/- as assessee has correctly disclosed the source of above sum from the books of the company.
8. Thus, the appeal of the assessee is allowed and the addition of Rs.3,20,000/- stands deleted.
9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 18/11/2021.

-Sd/-
(K. N. CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 18/11/2021

MEHTA

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1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi