

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.731/Del./2020
Assessment Year 2016-2017

| | | |
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| Shri Arun Kapoor, B-33, G.T. Karnal Road, Industrial Area, Delhi – 110 033. PAN ABAPK5582G | vs. | The Income Tax Officer, Ward-36(5), New Delhi 110 002. |
| (Appellant) | | (Respondent) |

| | |
|----------------|-----------------------------|
| For Assessee : | Shri Rajiv Saxena, Advocate |
| For Revenue : | Shri Om Prakash, Sr. D.R. |

| | |
|-------------------------|------------|
| Date of Hearing : | 02.12.2021 |
| Date of Pronouncement : | 31.01.2022 |

ORDER

This appeal filed by the Assessee is directed against the Order dated 27.11.2019 of the Ld. CIT(A)-12, New Delhi, relating to the A.Y. 2016-2017.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the Ld. CIT(A) in confirming the addition of Rs.25,40,867/- made by the A.O. under section 68 of the I.T. Act, 1961.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from salary, income from business or profession and income from other sources. He filed his return of income on 27.02.2017 declaring taxable income of Rs.5,00,250/-. During the course of assessment proceedings, the A.O. noted that assessee has declared NIL cash in hand for the F.Y. 2015-16 whereas as per ITR filed for the A.Y. 2016-17 he has declared Rs.25,40,867/- as cash in hand. He, therefore, asked the assessee to explain the same, to which, the assessee submitted as under :

“.....assessee is being handicapped, have to keep cash in hand in order to meet any sudden/unforeseen eventually....”

3.1. The assessee also submitted copy of cash book for the period from 01.04.2015 to 31.03.2016 wherein an amount of Rs.5,77,577/- was shown as opening balance. However, in absence of any documentary evidence filed before him to his satisfaction and considering the fact that assessee has entered into total transaction of

Rs.11,90,000/- during the period, the A.O. rejected the various explanations given by the assessee and made addition of Rs.25,40,867/- to the total income of the assessee under section 68 of the I.T. Act, 1961.

3.2. In appeal, the Ld. CIT(A) sustained the addition made by the A.O.

4. Aggrieved with such order of the Ld. CIT(A) in sustaining the addition, the assessee preferred the present appeal before the Tribunal, by raising the following grounds:

1. *“The learned CIT (A) has grossly erred both in law and on facts in confirming the order of assessment passed u/s 143(3) of the Income Tax Act (“Act”) on 18.12.2018 determining the income of the appellant of Rs. 30,41,120/- as against the income returned of Rs. 5,00,250/-.*
2. *The learned CIT (A) has grossly erred both in law and on facts in confirming the addition u/s*

68 of the Act of Rs.25,40.867/- being cash in hand.

- 3. The Learned CIT (A) has grossly erred both in law and on facts in treating cash in hand as the income of the appellant.*
- 4. The learned CIT (A) has grossly erred both in law and on facts in disposing the appeal without providing to the assessee, a fair, proper and meaningful opportunity of being heard, violating the principles of natural justice and thus such an order is vitiated both on fact and in law.*
- 5. The order passed by the learned CIT (A) is illegal, bad in law, ultra vires and contrary to the provisions of law and facts and is passed without application of mind and in violation of the principles of natural justice.*

6. *The learned CIT (A) has grossly erred both in law and on facts by initiating penalty proceedings u/s 274 r.w.s. 271 (1)(c) of the Act.*
7. *The learned CIT (A) has grossly erred both in law and on facts in charging interest u/s 234A, 234B, 234C and 234D of the Act, by completely failing to appreciate that on the facts and circumstances of the case, no such interest could be validly charged.*

The above grounds of appeals are independent of, and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.”*

5. Learned Counsel for the Assessee submitted that the assessee is a handicapped person and is entitled to claim deduction under section 80U of the I.T. Act, 1961 . The assessee is getting salary from a company and also has installed a water cooling plant opposite Azadpur Sabzi Mandi from where he used to supply water to the water trolleys who are selling water in glasses. He submitted that the assessee is running two proprietorship concerns, namely, M/s Eagle Water Cooling plant & M/s Arun Kapoor Water Cooling Plant. The sale of water is used to be in cash and the assessee being a handicapped person keeps cash in hand to meet any uneventuality. He submitted that in the balance sheet of M/s. Arun Kapoor Water Cooling Plant. Assessee has declared cash of Rs.6,76,244.55 as on 31.03.2015 which is evident from Page-42 of PB. He submitted that apart from this proprietorship concern, in the balance sheet for another proprietorship concern M/s Eagle Water Cooling Plant, assessee has declared cash and bank balances of Rs.12,28,609.81, which is verifiable from Page-49 of the PB. He submitted that although all these

details were filed before the A.O. in response to notice under section 142(1) of the I.T. Act, 1961, however, the A.O. without going through the details, made the addition which is not sustainable in law. Learned Counsel for the Assessee filed the following summary giving consolidated details of cash account as on 31.03.2016.

| Cash in Hand | | (As on 01.04.2015) |
|--|--|----------------------------|
| 1. Personal | | 5,77,577.64 (PB-21) |
| 2. M/s Eagle water Cooling Plant | | 12,25,785.41 (PB-45) |
| 3. M/s Arun Kapoor Water Cooling Plant | | <u>6,76,244.55</u> (PB-42) |
| | | 24,79,607.51 |
| Add: | | |
| 4. Total Cash received from sales of water, Miscellaneous income, cash withdrawal from bank and partnership firm during FY 2015-16 i.e AY 2016-17 | | <u>13,43,500.00</u> |
| | | 38,23,107.00 |
| Less: | | |
| 5. Cash deposit in bank during FY 2015-16, i.e., AY 2016-17 | | <u>5,42,700.00</u> |
| | | 32,80,407.60 |
| 6. Cash Expenses incurred During FY 2015-16, i.e., AY 2016-17 | | <u>7,39,539.00</u> |
| Net Cash in hand as at 31.03.2016 | | <u>25,40,868.60</u> |

5.1. He further submitted that it is not a case of cash deposit where the source of cash has to be explained, but, it

is only cash in hand declared by the assessee in the return of income which was disagreed by the A.O. Further the figure of Rs.11,90,000/- taken by the A.O. is wrong because it is not known from where he has taken this figure. He submitted that the addition was made on irrelevant ground and, therefore, the same deserves to be deleted.

6. The Ld. D.R. on the other hand heavily relied on the orders of the A.O. and the Ld. CIT(A).

7. I have considered the rival arguments made by both the sides, perused the orders of the A.O. and the 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 A.O. in the instant case made addition of Rs.25,40,867/- under section 68 of the I.T. Act, 1961 on the ground that assessee could not explain the cash in hand of Rs.25,40,867/- as on 31.03.2016 since the cash balance was declared by him at NIL as on 31.03.2016. According to the A.O. the total transactions entered into by the assessee is Rs.11,90,000/- during the period and assessee could not justify such huge cash in hand as on 31.03.2016. It is the

submission of the Learned Counsel for the Assessee that assessee has shown cash in hand of Rs.12,25,785.41 as on 31.03.2015 in the proprietorship concern of M/s. Eagle Water Cooling Plant. Similarly, he has shown cash in hand of Rs.6,76,244.55 in the case of M/s. Arun Kapoor Water Cooling Plant as on 31.03.2015 and, therefore, the finding of the A.O. that assessee has shown NIL cash in hand as on 31.03.2015 is absolutely wrong.

7.1. I find some force in the above arguments of the Learned Counsel for the Assessee. I find from the paper book that assessee during the course of assessment proceedings has filed the copies of Profit & Loss A/c and balance-sheet etc., of M/s. Arun Kapoor Water Cooling Plant and M/s. Eagle Water Cooling Plant his two Proprietorship concerns, wherein cash in hand at Rs.6,76,244.55 and Rs.12,25,785.41 respectively as on 31.03.2015 has been shown. I, therefore, find merit in the arguments of the Learned Counsel for the Assessee that the net cash in hand as on 31.03.2016 shown by him at Rs.25,40,868.60 could not have been ignored by the A.O. merely on the ground

that assessee could not justify the huge cash in hand. Since the A.O. has not looked into the various details filed before him during the course of assessment proceedings itself in the shape of balance-sheet and P & L A/c of M/s. Arun Kapoor Water Cooling Plant and M/s. Eagle Water Cooling Plant of which the assessee is proprietor and since the assessee before me has explained the availability of cash in hand as on 31.03.2016 at Rs.25,40,868.60, therefore, I set aside the order of the Ld. CIT(A) and direct the A.O. to deletion of the addition. Grounds raised by the assessee are accordingly allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 31.01.2022.

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

Delhi, Dated 31st January, 2022

VBP/-

Copy to

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT 'SMC' Bench, Delhi |
| 6. | Guard File. |

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.