

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A No.6171 /Mum/2019
(Assessment year : 2012-13)

Mr. Kailashkumar A Kothari
132A, New Urmi Building
2nd Floor, Walkeshwar Road
Mumbai-400 006
PAN : AAEPK4502D
(Appellant)

vs The Income-tax Officer
Ward 19(2)(2), Mumbai

(Respondent)

Assessee represented by : Shri K.K. Tiwari
Department represented by : Shri T Sankar, Sr, DR
Date of hearing : 03/02/2022
Date of pronouncement : 22/02/2022

O R D E R

Per: Gagan Goyal (AM):

This appeal has been filed by the assessee against the order dated 29/07/2019 passed by the Commissioner of Income-tax (Appeals)-30, Mumbai for the assessment year 2012-13.

2. The facts in brief governing the issues raised in the appeal are that the assessee, an individual, derived 'Income from other sources', during the year under consideration. Return of income declaring total income of Rs.1,79,343/- was filed on 04/06/2012 which was selected for compulsory scrutiny norms. In

the course of assessment proceedings, the assessing officer noticed that the assessee's bank account with Kotak Mahindra Bank had frequent cash deposits aggregating to Rs.7,98,985/-. The assessing officer held the same as unexplained cash deposits under section 68 of the Act. On appeal, the Ld.CIT(A) remanded the issue to the assessing officer calling for remand report from him. As no remand report from the assessing officer was forthcoming, the Ld.CIT(A) decided the issue on merits by finding that the source of cash was not explained before him, as well.

2.1 With regard to the other addition of Rs.20,27,703/- which was claimed to be inherited out of the estate of assessee's deceased brother in the form of silver and gold, the assessing officer found that as per capital account of the assessee for assessment year 2011-12, the assessee had received 500 gms of gold worth Rs.13,42,290/- and 11.3 kgs of silver worth Rs.6,85,413/- from the estate of late Dilipkumar A Kothari, assessee's deceased brother. When the assessee was asked to substantiate the same by producing documentary evidences like will, succession certificate, etc. the assessee was unable to substantiate the claim as the successor of property relating to his deceased brother. Also, the Ld.AO found from the copy of return of late Dilipkumar Amichand Kothari that he had only income from other sources of Rs.1,36,820/- and hence, the genuineness and creditworthiness of late Dilipkumar A Kothari was in doubt. Thus, the assessing officer made an addition of Rs.20,27,703/-. On appeal, the Ld.CIT(A) upheld the addition.

3. Aggrieved on both the counts, the assessee is in appeal before us.

4. The learned counsel for the assessee referred to the documents on record and material before us in the form of paper book copy of bank statement of Kotak Mahindra Bank of the brother, late Shri Dilipkumar Amichand Kothari buttress the point that his late brother had purchased gold worth Rs.20,56,238/- through his bank account. He also submitted that the assessee's late brother also had redemption of investments from Reliance Mutual Funds to the extent of Rs.63,28,380/-. He also invited our attention to the copy of invoice of Flax Investment Services P Ltd for purchase of gold bars (paper book page 22). Therefore, the assessee had sufficient funds from the estate of his late brother to invest in the bank account and the receipt of jewellery from the estate of late brother is corroborated with the evidence. As such, the findings of the authorities below are only surmises and conjectures, which need to be brushed aside.

5. The learned departmental representative, on the other hand, relied upon the orders of authorities below.

6. We have considered the rival submissions and perused the materials available on record. We find that the assessee deposited cash in his bank account on various dates. The assessee has placed on record 'Cash balance summary' alongwith cash book extract, average cash balance and bank statement. A perusal on these documents would adequately prove that the assessee is a man of means. Nowhere the assessing officer found any deficiency in the cash book maintained and produced by the assessee. Merely on surmises and conjectures, assessing officer brushed aside the books of accounts produced by assessee. Therefore, in our opinion, the authorities below were not justified in making the addition.

7. With regard to the other ground pertaining to the addition of Rs.20,27,703/-we find from the documents on record that the assessee's late brother Shri Dilipkumar Amichand was a man of worth. Shri Dilipkumar Amichand redeemed his investment in Reliance Mutual Funds to the extent of Rs.63,28,380/-. The assessee has, in the paper book produced copy of invoice issued in the name of M/s Dilipkumar Amichand Kothari by Flax Investment Services Pvt Ltd for sale of gold bar for Rs.40,26,870/-(owned by Shri Dilipkumar Amichand). Further, from the order of Ld.CIT(A), it transpires that the Ld.CIT(A) had called for remand report from the assessing officer. But the assessing officer did not file any remand report. Therefore, it was not fair on the part of the Ld.CIT(A) to decide the issue against the assessee as all the material evidence that needed for his decision were filed before him and the assessing officer had an opportunity to put on his say on the matter. For these reasons, we do not see any merit in the findings recorded by the Ld.CIT(A). Therefore, we reverse the orders of authorities below on this issue and hereby delete the addition.

8. As a result, both the grounds of the assessee are allowed.

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

Order pronounced in the open court on the 22nd February, 2022.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER
Mumbai, Dt : 22nd February, 2022
Pavanan

sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR
6. Guard File

/True copy/

Assistant Registrar / Senior Private Secretary
ITAT, Mumbai Benches