

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRIPAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.573/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2010-11)

(Virtual Court Hearing)

Assistant Commissioner of Income Tax, Circle-3(2), Room No. 410, 4 th Floor Aaykar Bhavan, Majurat Gate, Surat- 395001	Vs.	Shri Hitesh Laljibhai Patel 52, Narayanmuni Nagar Society, Nani Ved, Ved Road, Surat-395004
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AANPP 3560 B		
(Appellant)		(Respondent)

Assessee by : Shri Biren Shah, A.R

Respondent by : Shri Deependra Kumar, Sr.DR

सुनवाईकीतारीख/ **Date of Hearing** : 27/04/2022

घोषणाकीतारीख/**Date of Pronouncement**: 28/06/2022

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to assessment year 2010-11, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat, ['CIT(A)' for short] dated 22.10.2019, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), dated 19.12.2016.

2. The grounds of appeal raised by the Revenue are as follows:

"1. Whether on the facts and circumstances of the case, the ld. CIT(A) has erred in deleting the addition made by the assessing officer of Rs.15,00,000/- under section 68 of the Act without appreciating the fact that the assessee has not explained the credit entries in his books of account?"

2. Whether on the facts and circumstances of the case, the ld. CIT(A) has erred in accepting the submission of the assessee that the firm Dharam Exim, in which, the assessee is a partner, is keeping two set of accounts, one for the diamond processing and second for jewellery unit and relevant entries of cash transaction of Rs.15,00,000/- were already existing in the books of account of the firm as well as the assessee, inspite of the fact that the ledger account of M/s Dharam Exim does not reflect cash transaction of Rs.15,00,000/- on 11.05.2019.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the assessing officer. It is therefore, prayed that the order of the ld. CIT(A) maybe set-aside and that of the assessing officer may be restored.”

3. Brief facts of the issue in dispute are stated as under. During the assessment proceedings, the assessing officer on the verification of the details, observed that in the copy of the cash book submitted by the assessee during the original assessment proceedings that assessee had shown cash receipts of Rs. 15,00,000/- from M/s Dharam Exim on 11.05.2009 in which the assessee was also a partner. On the verification of the capital account filed by the assessee from the books of M/s Dharam Exim, it was noticed that Dharam Exim has not given any payment to the assessee on 11.05.2009. Therefore, the assessee`s case was reopened u/s 147 of the Act and the notice was served u/s 148 on 14.12.2015. The copy of the reasons recorded for reopening was provided to the assessee. The assessing officer held that during the year the assessee has derived remuneration as the director in the company namely, M/s Dharmanandan Diamonds Pvt. Ltd. and share of profits from partnership firm M/s Shreeji Corporation and M/s Dharam Exim. The assessing officer held that in the books of M/s Dharam Exim the payment of Rs. 15,00,000/- is not reflected to have been given to the assessee and therefore assessing officer made the addition u/s 68 of the Act to the tune of Rs. 15,00,000/-.

4. On appeal, ld CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before us.

5. Learned Counsel for the assessee submitted that assessee is a partner in the firm M/s Dharam Exim which was having two units of diamond processing and jewellery units which were maintaining two different sets of accounts and explanation was submitted during the appellate proceedings before the ld CIT(A).

Therefore, Id Counsel contended that order passed by the Id CIT(A) may be upheld.

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have heard both the parties and perused the materials available on record and case law cited by both the parties. We note that during the appellate proceedings, remand report was called from the Assessing Officer and in the said remand report proceedings, Assessing Officer reiterated his submission as made originally. The Ld. CIT(A) observed that assessment u/s 143(3) was completed on 19.12.2016, in which the details of the accounts including the balance-sheet, ledger account etc., were filed which reflected the cash of Rs.15,00,000/-. The assessee had withdrawn Rs.15,00,000/- from the Jewellery unit on 11.05.2009 which was debited in the capital account of the assessee by crediting the cash account in the books of the firm M/s Dharam Exim Jewellery unit. At the end of the year on 31.03.2010 the balance of the assessee in the books of M/s Dharam Exim Jewellery units was transferred to capital account of the assessee in the books of M/s Dharam Exim diamond processing units which is the main books. The consolidated capital account from both the units reflects the transactions debited to the capital account of the assessee. In reference to the remand report, it was submitted that the assessee was the partner in the firm of M/s Dharam Exim in which he was having the capital of Rs.18,02,48,060/- as on 01.04.2009 and on 11.05.2009 the withdrawal of Rs.15,00,000/- was made which is reflected in the audited books of accounts which was produced before the assessing officer during the assessment proceedings. The audit report dated 17.04.2010 reflects these transactions and the observation of the assessing officer that the entries were made in the books are as an afterthought is not correct. Based on these factual position, Id CIT(A) deleted the addition. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order is pronounced on 28/06/2022 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 28/06/2022

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat