

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 276/Mum/2020 (A.Y. 2009-10)

Pramod Ramakant Tiwari E-139, B-6, Ekta Apartment, Near Manorama Tower, Sector- 10, Neru West Navi Mumbai-400 706. PAN : AXDPT0392E (Appellant)	Vs.	ITO-28(2)(4) Tower No. 6 3 rd Floor Vashi Railway Station Building Vashi Navi Mumbai-400 703. (Respondent)
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Assessee by	Shri Jayant Bhatt
Department by	Ms. Naina Krishnakumar
Date of Hearing	21.07.2022
Date of Pronouncement	21.07.2022

ORDER

The assessee has filed this appeal challenging the order dated 09.10.2019 passed by Learned CIT(A)-26, Mumbai and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of LdCIT(A) in confirming the addition of Rs.16,36,000/-, being unexplained cash deposits made into his bank account.

2. The facts relating to the issue are that the assessee is an astrologer and was having his office in the premises of Mr. Pravin B Ahire, proprietor of M/s N R Enterprises. During the year under consideration, it was found that the assessee had made cash deposits aggregating to Rs.16,35,000/- into his bank account. Since the assessee had not filed his return of income, the AO reopened the assessment by issuing notice u/s 148 of the Act on 18-03-2016.

3. The assessee submitted that he had borrowed a sum of Rs.20,000/- from Shri Pravin B Ahire and had issued blank cheques to him as security. The assessee was not aware of the cash deposits. However, he received phone call

from the manager of bank in 2009 informing him that cash deposits have been made into his bank account by using fake PAN numbers. Upon enquiries, it was found that the said deposits have been made by Shri Pravin B Ahire and another person named Shri Shwet Kumar Dora. The assessee obtained letters from both of them at that point of time, who confirmed that they only had made cash deposits into the bank account of the assessee and withdrawn them by using cheque leaves given by the assessee. The letters so furnished by them to the bank manager has been extracted by the AO in the assessment order. It is pertinent to note that Shri Shwet Kumar Dora had also confirmed to have received blank cheques from the assessee against an advance given by him to the assessee. Both the letters given by the above said parties to the manager of the bank are dated 26-06-2009. The assessee furnished copies of above said letters and accordingly pleaded that the deposits have not been made by him. The AO did not accept the above said explanations of the assessee and accordingly assessed the above said amount of Rs.16,36,000/- as unexplained deposits u/s 68 of the Act. The Learned CIT(A) also confirmed the same.

4. I heard the parties and perused the record. I noticed that the assessment of the assessee has been reopened by issuing notice u/s 148 of the Act on 18-03-2016. The impugned transactions have happened in the financial year 2008-09. The explanation of the assessee that the impugned deposits have not been made by him is corroborated by the fact that the Manager of the bank has also conducted enquiries, when he found that the cash deposits have been made using fake PAN numbers. In that enquiry, it was accepted that the deposits have been made by Shri Pravin B Ahire and Shri Shwet Kumar Dora. Thus, I notice that, prior to the initiation of reassessment proceedings, the veracity of the explanations given by the assessee has been established by the private enquiry conducted by the manager of the bank.

5. It is also a fact that the assessee is a small time astrologer having meagre income. He was not assessed to tax in any of the earlier years and the Ld A.R submitted that he has not been assessed subsequently also. Under the provisions of sec.68 of the Act, the initial onus to prove the nature and source of cash credit is placed upon the shoulders of the assessee, i.e., he has to prove the identity of the creditor, the credit worthiness of the creditor and genuineness of the transactions. If the assessee fails to prove the above said three main ingredients, then the AO "may" assess the cash credit as income of the assessee. It can be noticed that an option is given to the assessing officer u/s 68 not to assess cash credits as income of the assessee as the section uses the word "may", meaning thereby, the AO has to examine each cash credit in an objective manner and take a decision on the facts of each case. This proposition is supported by the decision rendered by Hon'ble Supreme Court in the case of P K Noorjahan (AIR 1999 SC 1600). Viewed from this angle, in my view, the facts and circumstances of the case would suggest that the explanations given by the assessee with regard to the cash deposits cannot be found fault with. Accordingly, I am of the view the impugned deposits do not warrant making addition u/s 68 of the Act. Accordingly, I set aside the order passed by Learned CIT(A) and direct the AO to delete the addition of Rs.16,36,000/- made by the AO.

6. In the result, the appeal filed by the assessee is allowed.
Order pronounced in the open court on 21.07.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/07/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai