

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI**

**BEFORE  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.3634/Del/2016  
Asstt. Year : 2006-07

Rahul Mehendiratta, C-75, Mahendru Enclave Delhi – 110 009 PAN AJQPM7663J (Appellant)	Vs.	ITO, Ward 19(3) New Delhi.  (Respondent)
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Assessee by:	Shri C.S. Anand, Advocate
Department by :	Shri Om Prakash, Sr. DR
Date of Hearing	23.08.2022
Date of pronouncement	14.11.2022

**ORDER**

This is an appeal by the assessee against order dated 31.03.2016 of learned Commissioner of Income Tax (Appeals)-12, New Delhi, for the assessment year 2006-07.

2. The dispute in the present appeal is confined to addition of Rs. 10,37,260/- representing cash deposit made in the bank account being sustained by Ld. Commissioner (Appeals).

3. Briefly, the facts are, the assessee is a resident individual deriving income from certain business activities. For the

assessment year under dispute, assessee filed his return of income on 27.09.2006 declaring income of Rs. 1,73,290/-. In course of scrutiny assessment proceedings, the Assessing Officer noticed that as per information available on record, in the year under consideration, the assessee had deposited cash aggregating to Rs. 17,93,050/- in three different bank accounts as detailed in paragraph 3 of the assessment order. Noticing this, the Assessing Officer called upon the assessee to explain the source of cash deposits made in the bank account. Alleging that the assessee could not explain the source of cash deposits, the Assessing Officer added the entire amount of Rs. 17,93,050/- to the income of the assessee by invoking the provision of section 69 of the Act. Contesting the addition made, the assessee preferred an appeal before learned Commissioner (Appeals). In course of proceedings before the first appellate authority, the assessee furnished additional evidences to explain the source of cash deposit. Based on submissions made and additional evidences furnished, learned Commissioner (Appeals) called upon the Assessing Officer to examine them and furnish his report. After considering the report of the Assessing Officer and material available on record, learned Commissioner (Appeals) found that the total cash deposits made

in three bank account were to the tune of Rs. 17,23,050/-. Whereas, the Assessing Officer had added an amount of Rs. 17,23,050/-. Therefore, he deleted the excess addition of Rs. 71,000/- made by the Assessing Officer. Further, partly accepting assessee's contention that part of the deposits were out of receipts from his business, learned Commissioner (Appeals) granted further relief of Rs. 6,84,790/-. Thus, he confirmed addition to the extent of Rs. 10,37,260/-. Still aggrieved, the assessee is before the Tribunal.

4. I have considered rival submissions and perused material on record. Though, it appears, in course of assessment proceedings the assessee could not furnish requisite documentary evidences to prove the source of cash deposits, however, before the first appellate authority, the assessee did produce certain additional evidences to prove the source of cash deposits. It was submitted by the assessee that he had received advance of Rs. 15,00,000/- in three tranches of Rs. 5,00,000/- each from M/s. Sheela Credit & Leasing Ltd. for sale of property bearing Shop No. 36, DDA Market, Ashok Vihar, Delhi 110 052. However, the aforesaid claim of the assessee was rejected on the ground that the assessee neither could establish the fact that he is the owner of the

property nor the fact that the advance received from the concerned party was repaid on cancellation of the deal. It is observed, while deciding this particular appeal earlier, the Tribunal has sustained the addition confirmed by learned Commissioner (Appeals) in order dated 23.06.2017. The Bench observed that the assessee failed to prove the repayment of advance received from M/s. Sheela Credit & Leasing Ltd. The Bench also observed that the agreement to sell with M/s. Sheela Credit & Leasing Ltd. was a sham agreement. However, subsequently the assessee filed a miscellaneous application under section 254(2) of the Act and while deciding the miscellaneous application No. 174/D/2018 dated 11.11.2021 Tribunal observed as under:-

*“4. We have carefully considered the rival contentions. We find that in para No. 3 the co-ordinate bench has stated that no details of re-payment to M/s. Sheela Credit & Leasing Limited has been submitted. Therefore, the bench held that agreement to sell entered into by the assessee with M/s. Sheela Credit & Leasing Limited was a sham agreement and it was made just to explain the source of money deposited in the bank account of the*

*assessee. We find that assessee has submitted letter dated 21<sup>st</sup> June, 2017 wherein in para No. 3 the assessee referred to the confirmation from that company along with the letter of confirmation dated 31<sup>st</sup> March, 2019 was also submitted. The above letter was erroneously not considered by the co-ordinate bench. Therefore, to that extent there is an error in the order of the ITAT. The fact shows that the assessee has submitted the details of re-payment. In view of this, the claim of the assessee is found to be correct that assessee has re-paid Rs. 8,40,000/- out of the total advance of Rs. 15,00,000/- received by the assessee. Even as a material has not been considered by the co-ordinate bench, we hold that there is an error apartent from the record in the order of the ITAT. Thus, the order passed by the bench is recalled. The Misc. Application filed by the assessee is allowed. Appeal of the assessee is directed to be fixed for hearing in regular course.”*

5. On careful analysis of the observations of the Tribunal, as reproduced above, it can be seen that after verifying the documentary evidences including letter of confirmation of M/s.

Sheela Credit & Leasing Ltd. the Bench had given a categorical finding that assessee's claim that it has repaid an amount of Rs. 8,40,000/- out of the total advance of Rs. 15,00,000/- received from M/s. Sheella Credit & Leasing Ltd. towards sale of the property was found to be correct. Irrespective of the fact whether the assessee had enough documentary evidences to prove the ownership of the property, fact remains that assessee's claim that he has received advance of Rs. 15,00,000/- from M/s. Sheela Credit & Leasing Ltd. on the basis of agreement to sell is established on record through proper documentary evidence. Therefore, in my view, the source of cash deposited in the bank account stands explained. Accordingly, I delete the addition of Rs. 10,37,260/- sustained by learned Commissioner (Appeals).

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

**Order pronounced in the open court on 14<sup>th</sup>  
November, 2022.**

**sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 14/11/2022

***Veena***

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	