

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.396/SRT/2019

निर्धारण वर्ष/Assessment Year: (2011-12)

(Virtual Hearing)

The ITO, Ward-5, Navsari.	Vs.	M/s. Shivam Paints, 3, Shreenathji House, Near Kaliawadi, Jakat Naka, Navsari.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJFS6754Q		

Appellant by	Shri Vinod Kumar, Sr. DR
Respondent by	Shri Hardik Vora, AR
Date of Hearing	14/03/2023
Date of Pronouncement	17/04/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short “the Id. CIT(A)”], in Appeal No. CIT(A)/VLS/472/17-18/295, dated 04.06.2019, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

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

“i) On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of unexplained cash deposit of Rs.45,10,000/- considering the fact that in the revised 26AS form, cash deposit of Rs.45,00,000/- is not reflected and these cash entries are being reflected in some other person's books of account. But this fact was misrepresented before Ld.CIT(A) as non-reflection of cash deposit in 26AS does not guarantee that there is no cash deposits in the case of the assessee and moreover assessee nowhere prove that this amount has been correctly offered for taxation. Furthermore at present the Departmental database shows that there is a cash deposit transaction reflecting in the case of assessee.

ii) Further the Ld.CIT(A) has erred in deleting credit entries of Rs.1,42,97,242/- by observing that no adverse comment has been made by the AO about

treatment of these credit entries in the hand of individual in remand report. But, in remand report no comments on this issue has been called for from Assessing Office, hence AO made no comments.

iii) On the facts and circumstances of the case, the Ld.CIT(A) ought to have upheld the order of the Assessing Officer.

iv) It is, therefore, prayed that the order of the CIT(A), may be set-aside and that the order of the Assessing Officer may be restored.

v) The assessee craves to add, modify or alter any grounds during the course of appeal proceedings.”

3. The facts necessary for disposal of the appeal are stated in brief. The assessee under consideration did not file the return of income for the AY.2011-12 (i.e. the assessment year under consideration), therefore assessee's case was re-opened after recording the reasons for re-opening and taking necessary approval from the concerned authority. A notice u/s 148 of the IT Act dated 28.03.2017 was issued and duly served upon the assessee. In response, the assessee submitted its reply dated.03.04.2017 and also filed return of income for the A.Y. 2011-12 declaring total income at Rs. NIL/-. Copy of reasons recorded was provided to the assessee vide letter dtd. 08.05.2017. Subsequently, a notice u/s. 143(2) dated 08.06.2017 and notice u/s 142(1) r.w.s. 129 of the Act dated 08.06.2017 were issued and served upon the assessee. The case was re-opened u/s 148 of the Act, as per the information supplied through AIR; wherein it was reflected that the assessee, during the year relevant to A.Y. 2011-12 had deposited Cash exceeding Rs.45,10,000/- in his saving Bank account Bank of Maharashtra and no return of income was filed, for which explanation was sought from the assessee with supporting evidence by issue of notice u/s 142(1) of the Act dated 14.06.2017. In response to the notices issued, the assessee attended the office of the assessing officer on 08.05.2017 and filed its reply. During the assessment proceedings, the assessing officer noted that amount of Rs.45,10,000/- pertaining to cash deposits and Rs.1,42,97,242/- pertaining to other credits in the Bank account as unexplained income from unaccounted sources. The assessing officer observed that assessee failed to explain Rs.45,10,000/- pertaining to cash deposits and Rs.1,42,97,242/- pertaining to other credits. In the assessment order, the AO noted that the case of the assessee

firm was reopened u/s 147 of the Act on the basis of AIR information indicating cash deposits of Rs.45,10,000/- in the saving bank account of the assessee firm. In response to query by the AO during reassessment proceedings, the assessee had replied that the assessee firm was dissolved w.e.f. 1.04.2009 and business was taken over by Sh. Ranjit C. Sethna who carried on the business in the name of proprietary concern M/s Shivam Paints. The assessee had also questioned the reopening of firm assessment as there was no savings bank account as claimed in the AIR information. The assessee also contended before the AO that the mistake on the part of bank was corrected as can be seen from updated Form 26 AS dated. 07.09.2017.

4. The AO did not accept assessee's contention on the ground that the PAN of the firm should have been surrendered and even the bank could have been informed about the firm's dissolution. The assessee replied to the assessing officer that these amounts were reflected in the case of proprietary firm by the same name and assessed in the case of Ranjit C. Sethna. However, assessing officer rejected the claim of the assessee and made additions of cash deposits of Rs.45,10,000/- and other credits of Rs.1,42,97,242/-.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by Assessing Officer. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us.

6. Learned 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. Shri Hardik Vora, Learned Counsel for the assessee, begins by pointing out that assessee furnished before AO an updated copy of Form 26AS as on 07.09.2017 in the name of the firm M/s Shivam Paints indicating no AIR transactions. The Id Counsel contended that this updated form 26 AS was also filed before the CIT(A) also. As there was no finding regarding revised form 26 AS dated.

07.09.2017 in the assessment order, therefore AO was asked to verify the same and submit remand report. In the remand report dated. 19.03.2019 again, the AO did not comment on the revised form 26 AS of the assessee firm indicating no transactions as certified and revised by the bank itself. After considering the submissions of the assessee and findings of the AO in the remand report, the Id CIT(A) passed a detailed order deleting the addition made by assessing officer. Thus, Id Counsel stated that order passed by Id CIT(A) may be upheld.

8. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that partnership firm was discontinued from 01.04.2009 and the bank account is duly reflected in audit report vide paper book page nos.96. The Ld. Counsel submitted that assessee has informed the bank to change the PAN and address, however the bank has not changed the name and address. The Ld. Counsel also argued that in substance, there is no difference between the partnership firm and assessee, as the firm is dissolved and its assets and liabilities will become the assets and liabilities of individual partners in their personal capacity. Therefore, just because the bank has not changed the address and PAN Number does not mean that the amount is taxable in the hands of the assessee. We note that assessee furnished the following documents and evidences before the assessing officer:

- (i) Income Tax Return and Computation of Income (vide PB. 15 to 19)
- (ii) Bank Statement (vide PB. 20 to 50)
- (iii) Reasons for reopening (vide PB. 51 to 52)
- (iv) Objection against reopening (vide PB. 53 to 54)
- (v) Order disposing objection raised (vide PB. 55 to 56)
- (vi) Audit Report and books of account of Shri Rajnikant Chimanlal Shethna (vide PB. 57 to 85)
- (vii) Deed of Retirement (vide PB. 86 to 95)
- (viii) Revised Form 26AS (vide PB. 96)

9. From the above documents and evidences, it is vivid that assessee had discharged its onus to prove that its claim was genuine. The Learned CIT (A) after considering detailed submission, has deleted the addition on the basis of below facts:

(i) The firm was dissolved on 01.04.2009 and no transactions were done thereafter.

(ii) Updated form 26AS does not reflect the Bank account transactions in the name of assessee firm as bank has rectified its mistake and shown the transactions under correct PAN.

(iii) Earlier business of assessee firm was taken over by Mr. Rajnikant Chimanlal Shethna (Proprietor of Shivam Paints). Audit report, Income Tax Return and Computation of Income of Mr. Rajnikant Chimanlal Shethna which reflects entries in the stated bank account as part of his books. There are no adverse comments by Assessing Officer on this issue and once bank account is accepted as part of books of one person, the same cannot be again taxed in the name of another person.

(iv) Right person who has done the transactions has already offered its Income from Bank account and hence already taxed once.

Accordingly, on the same transactions assessee cannot be taxed again, only on account of mistake of wrong PAN number in the Bank account, which is also rectified afterwards.

10. The Id CIT(A) noted that the AO ignored the facts and evidences in the form of audit report of proprietary concern and updated form 26AS. It is also noticed from the P & L a/c of proprietary concern for current A.Y. that the sales turnover was Rs.2,23,54,058/- and the deposits in the bank statement supported the cash deposits of Rs.45,10,000/- and other credits of Rs.1,42,97,242/-. Thus, there is no case for addition of Rs.1,88,07,242/- (Rs.45,10,000+ Rs.1,42,97,242) in the case of non-existent assessee firm. Accordingly, the addition of Rs.1,88,07,242/- was deleted by Id CIT(A). We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the order of Id CIT(A). The conclusions arrived at by the CIT(A) are, therefore, correct and

admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the appeal of Revenue.

11. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 17/04/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 17/04/2023

SAMANTA

Copy of the Order forwarded to

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

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

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat