

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.75/RPR/2023
निर्धारण वर्ष / Assessment Years : 2017-18

M/s Arihant Associates
MIG 19 Nehru Nagar,
Bilaspur-495001(C.G.).
PAN : AAZFA1892P

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer-2(1),
Bilaspur

.....प्रत्यर्थी / Respondent

Assessee by :Shri R.B Doshi, CA
Revenue by :Shri Satya Prakash Sharma, Sr.-DR

सुनवाई की तारीख / Date of Hearing : 20.07.2023

घोषणा की तारीख / Date of Pronouncement : 20.09.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals),

(NFAC), Delhi [for short, "CIT(A)"] dated 27.01.2023, which in turn arises from the order passed by the A.O. u/s. 144 of the Income-tax Act, 1961 (for short 'Act') dated 29.12.2019 for A.Y. 2017-18. The assessee firm has assailed the impugned order on the following grounds of appeal :

“1. Ld. CIT(A) erred in confirming addition of Rs. 33,00,000/- made by AO on account of cash deposited in bank account of the appellant, holding it to be unexplained money u/s n69A. The addition made by AO & confirmed by Ld. CIT(A) is arbitrary, illegal and not justified.

2. The appellant reserves the right to add, amend or alter any of the ground/s of appeal.”

2. Based on information that the assessee firm during the year under consideration had made cash deposits aggregating to Rs. 33,00,000/- in its bank account No. 16660200000753 maintained with Federal Bank, Bilaspur but had not filed its return of income for the said year, the A.O issued notice u/s 142(1) of the Act. As the assessee firm failed to comply with the notice u/s 142(1) of the Act dated 11.12.2017, the AO called upon it explain as to why an ex-parte assessment u/s 144 of the Act be not framed in its case. Also, the AO called for the necessary information/details u/s 133(6) of the Act dated 05.09.2019 from the assessee's bank. Thereafter, the AO once again issued notice u/s 142(1) of the Act and called upon the assessee firm to explain the nature and source of the cash deposits of Rs. 33 lac in its bank account.

4. In reply, the assessee firm vide its letter dated 23.09.2019, submitted before the A.O that it was a partnership firm engaged in the business of a developer, builder, and colonizer and was constituted on 14.01.2014 with three partners, viz. (i). Shri. Anil Kumar Singh; (ii). Smt. Seema Madhukar; and (iii). Shri. Abhishek Shrivastava. It was further submitted that vide “Deed of amendment”, dated 09.06.2015, one of the partners, viz. Shri. Abhishek Shrivastava had retired from the assessee firm and the same was continued with the remaining two partners. Further, it was submitted that on 17.01.2017 the partnership firm was dissolved and the remaining two continuing partners parted ways. It was further stated that during the year under consideration the assessee firm was not engaged in any business activity and was searching for land to develop a housing project, which, though, did not materialize. Also, it was stated by the assessee that it was duly licensed/registered for carrying on the business of developer, builder, and colonizer with the concerned authority at Kota. Further, the assessee firm stated that it had filed its return of income for the immediately preceding year, i.e. A.Y. 2016-17, and to support its said claim enclosed a copy of its return of income, computation of income, profit and loss account, balance sheet and proof of tax payment for the year ended 31.03.2016. The assessee firm stated that it had in the preceding year purchased agricultural land at village Chhatona, Bilaspur, for constructing a residential housing project after getting diversion of land but in absence of necessary

permissions from the town and country planning department it had to abort its said project. The assessee further stated that the aforesaid land at Village : Chhotona, Bilaspur was, thereafter, sold in the immediately preceding year i.e. A.Y. 2016-17 and the profit on the said sale transaction was duly offered for tax in its return of income for the said year.

5. Referring to the cash deposits of Rs. 33 lacs in its bank account No. 16660200000753 maintained with Federal Bank, Bilaspur, it was stated by the assessee that the said money was utilized for repayment of the outstanding liability of the erstwhile partner, viz. Shri. Abhishek Shrivastava (supra) i.e the partner who had retired in the preceding year on 09.06.2015. Elaborating on the source of cash deposits of Rs. 33,00,000/- (supra), it was stated by the assessee that the same was sourced out of the Opening Cash In Hand (C.I.H) of Rs. 52.47 lacs that was available in its "books of account" on 01.04.2016. Explaining the reason for not having filed its return of income for the year under consideration, i.e. A.Y. 2017-18, it was stated by the assessee that as it had not carried out any business and had no income during the year, therefore, no return of income was filed by it. The assessee firm in order to fortify its aforesaid claim filed a copy of its profit and loss account and balance sheet on 17.01.2017. However, the A.O did not find favor with the aforesaid explanation of the assessee and made an addition of the entire amount of cash deposits of Rs. 33 lacs (supra) u/s 69A of the Act.

6. Aggrieved, the assessee carried the matter in appeal before us the Id. CIT(A) but without success. The Id. CIT(Appeals), while dismissing the appeal of the assessee firm, observed as follows:-

“ 5. Briefly stated the facts emerging from the assessment order are that the assessee has not filed return of income voluntarily U/s 139 of the Income-tax Act, 1961. The availability of cash for deposit in bank account of the assessee could not be verified. On the available record, the AO noticed that the assessee had deposited cash of Rs.30,00,000/- in his FEDERAL BANK account No. 16660200000753, Bilaspur but he did not explain the source of income. Absence of any satisfactory explanation leads to the conclusion that the cash deposits aggregating to Rs.33,00,000/- made in the assessee's bank account during the demonetization period represents his unexplained money within the meaning of section 69A of the Income-tax Act, 1961. The unexplained money of Rs.33,00,000/- is, therefore, treated as deemed income of the assessee in terms of section 69A of the Income-tax Act 1961 for the financial year 2016-17 relevant for assessment year 2017-18 and shall added to compute the total income of the assessee as such.

6. The appellant was provided opportunity of being heard but the appellant never responded to any of the notices issued during the course of appellate proceedings. The notices were sent to the registered Email ID of the appellant and all the notices were delivered as per the delivery status. The details of such notices are provided as under:

<i>Sl. No.</i>	<i>Notice issued on</i>	<i>Due date compliance</i>	<i>Remarks/Response</i>
<i>1.</i>	<i>19-01-2021</i>	<i>25-01-2021</i>	<i>Non-Compliance</i>
<i>2.</i>	<i>03-11-2021</i>	<i>12.11.2021</i>	<i>Non-Compliance</i>
<i>3.</i>	<i>09-12-2022</i>	<i>26-12-2022</i>	<i>Non-Compliance</i>
<i>4.</i>	<i>04-01-2023</i>	<i>11-01-2023</i>	<i>Non-Compliance</i>

6.1 In view of the non-compliance of all the above notices issued to the appellant, there is no option but to go further and dispose the present

appeal on the basis of the details furnished by the appellant at the time of filing this appeal.

7. In the course of assessment proceedings, the AO provided numerous opportunities to the appellant to explain his cash deposits. But the appellant failed to comply with all the notices. Therefore, the AO made the additions. Even in the current appellate proceedings also, the appellant never came forward with his submission/explanation to the grounds mentioned by the appellant despite being offered ample of opportunities through hearing notices issued by this office. Although the appellant has claimed in ground no.2 that the cash deposited was out of opening cash balance which was utilized for making payment to sundry creditors and partners of the firm. The firm was dissolved on 17.01.2017. But it has failed to come forward with complete details and supporting evidences in support of its claim. The onus lies on the appellant to prove his case before seeking relief in the appellate proceedings. On this front, appellant has failed miserably. In these circumstances, it is deemed fit not to interfere with the assessment U/s 144 made by AO. Accordingly, the addition of Rs.33,00,000/- made by the AO is upheld and the ground no. 1 raised by the appellant is dismissed. The ground no.2 raised by the appellant is general in nature and does not require any adjudication.

8. In the result, the Appeal is hereby dismissed.”

7. The assessee firm aggrieved with the order of the CIT(A) has carried the matter in appeal.

8. I have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record and considered the judicial pronouncements that have been pressed into the service by the Id. AR to drive home his contentions.

9. Controversy in the present appeal lies in a narrow compass, i.e., whether the assessee's explanation regarding the source of cash deposit of Rs. 33 lacs (supra) in its bank account is sustainable in the eyes of the law.

10. Admittedly, the cash deposits of Rs. 33 lacs (supra) were made in the assessee's bank account No. 16660200000753 maintained with Federal Bank, Bilaspur during the year under consideration i.e. A.Y. 2017-18, as under:-

Sl. No.	Date of deposit	Amount of deposit	Mode of deposit
1.	13.11.2016	12,50,000/-	Cash
2.	15.11.2016	10,00,000/-	Cash
3.	16.11.2016	10,00,000/-	Cash
4.	16.11.2016	50,000/-	Cash

The assessee claims that the aforesaid cash deposits of Rs. 33 lacs (supra) were sourced out of the opening "cash in hand" of Rs. 52.47 lacs available in its "books of account" on 01.04.2016. The Ld. A.R drew our attention to the "balance sheet" of the assessee firm on 31.03.2016 wherein C.I.H of Rs. 52.47 lacs (supra) was shown, Page 58 of APB. Also, the ld. AR had taken us through the income-tax return filed by the assessee firm for the immediately preceding year, i.e. A.Y. 2016-17, Page 26-57 of APB. The Ld. A.R further drew our attention to the relevant extracts of the income-tax return of the assessee firm for the preceding year wherein C.I.H of Rs. 52.47 lacs (supra) was reflected in the assessee's "balance sheet" on 31.03.2016,

Page 32 of APB. Elaborating further, it was submitted by the ld. AR that opening C.I.H of Rs. 52.47 lacs (supra) on 01.04.2016 was, in turn, sourced out of the sale proceeds of the agricultural land at Village: Chhatona, Bilaspur, which the assessee firm was constrained to sell in the immediately preceding year, i.e. A.Y. 2016-17 as necessary permissions could not be obtained from the town and country planning department and other concerned authorities for construction of a housing project on the same. In sum and substance, the assessee firm claimed that the cash deposits of Rs. 33 lacs (supra) in its bank account during the year under consideration were, in turn, sourced out of the sale proceeds of agricultural land at Village: Chhatona, Bilaspur in the immediately preceding year i.e. A.Y. 2015-16.

11. On a specific query by the bench as to why the cash sale proceeds of the aforesaid land amounting to Rs. 52.47 lacs (supra) were not deposited in the bank account by the assessee firm, the ld. AR submitted that as certain differences had cropped up amongst the remaining two continuing partners, therefore, one of the partners, viz. Shri. Anil Kumar Singh had retained the money with him. The ld. AR further submitted that the aforesaid cash of Rs. 52.47 lacs (supra) was thereafter utilized for discharging the outstanding dues towards the partner who had retired on 09.06.2015, i.e Shri. Abhishek Shrivastava. In order to fortify his aforesaid claim our attention was drawn towards confirmation of Shri Abhishek Srivastava, Page 22 of APB.

12. Per contra, the Id. Departmental Representative (for short, "D.R") relied on the orders of the lower authorities.

13. I have given thoughtful consideration to the issue in hand, i.e. sustainability of the explanation of the assessee firm as regards the source of the cash deposits of Rs. 33 lacs (supra) in its bank account. On perusal of the "balance sheet" of the assessee firm on 31.03.2016, it transpires that it had with it on the said date closing cash-in-hand of Rs. 52.47 lacs (supra). Ostensibly, the aforesaid C.I.H of Rs. 52.47 lacs (supra) was, in turn, stated to have been sourced out of the sale proceeds of the agricultural land situated at Village: Chhatona, Bilaspur that was sold by the assessee firm at the fag end of the immediately preceding year and was stated to have been received in tranches, i.e. over the period 25.02.2016 to 04.03.2016 – Page 2 of APB.

14. Considering the fact that the assessee firm had duly disclosed CIH of Rs. 52.47 lacs (supra) in its "balance sheet" for the immediately preceding year i.e. A.Y. 2016-17, therefore, the genuineness of the claim of availability of cash with it cannot be doubted. Apart from that, it is not even the case of the AO that the assessee firm did not have an opening CIH of Rs. 52.47 lacs on 01.04.2016. On a careful perusal of the assessment order, it transpires that the AO had declined the explanation of the assessee that the cash deposits of Rs. 33 lacs (supra) were sourced out of opening CIH of Rs. 52.47

lacs (supra) on 01.04.2016 for the reason that there was a substantial time gap between the date of availability of cash with the assessee i.e. 01.04.2016 and deposit of the same in its bank account in the month of November 2016. Also, the AO had observed that the fact that the assessee firm had made the cash deposits in four tranches i.e. on 13.11.2016, 15.11.2016, 16.11.2016, and 16.11.2016 did not inspire much confidence as regards the veracity of the aforesaid explanation of the assessee. Considering the fact that the cash deposits in the bank account were made by the assessee firm after a long interval and were made during the demonetization period, the AO had held the same as the assessee's unexplained money u/s 69A of the Act.

15. I am unable to persuade myself to concur with the aforesaid observation of the AO. Admittedly, the AO had not doubted the availability of C.I.H of Rs. 52.47 lacs (supra) on 01.04.2016 with the assessee firm. Although I find that there is a time gap of 7 months in depositing the cash in the bank account of the assessee firm, i.e. in the month of November 2016, but at the same time, I cannot remain oblivious of the fact that it is not the case of the department that as cash-in-hand of Rs. 52.47 lacs (supra) was utilized/invested somewhere else by the assessee firm, therefore, availability of the same to the extent of Rs. 33 lacs (supra) with the assessee firm for making cash deposits in the assessee's cannot be accepted. Apart from that, the claim of the assessee firm as regards availability with it on 31.03.2016 of C.I.H of Rs. 52.47 lacs (supra) cannot be dubbed as an

afterthought or a concocted story that was hatched to explain the source of the cash deposits of Rs. 33 lacs (supra) in its bank account. My aforesaid conviction is supported by the fact that the return of income for the preceding year, i.e. A.Y 2016-17 wherein C.I.H of Rs. 52.47 lacs (supra) was shown available in the “balance sheet” of the assessee firm on 31.03.2016 was filed on 24.11.2016, i.e much prior to the issuance of the letter dated 11.12.2017 by the A.O, wherein the latter had for the first time queried as regards the source of cash deposits of Rs. 33 lacs (supra) in the assessee’s bank account during the year under consideration. Although the return of income of the assessee firm for the immediately preceding year, i.e A.Y 2016-17 was not filed within the stipulated time period but the same being a belated return of income that was validly filed under sub-section (4) of Section 139 of the Act cannot be brushed aside. As the department has neither drawn any adverse inference as regards the claim of the assessee firm that it had C.I.H of Rs. 52.47 lacs (supra) available with it on 31.03.2016 nor initiated any proceedings to scrutinize much the less dislodge the same, therefore, the only logical inference that can be drawn is that it had accepted the factual position as was canvassed and projected by the assessee firm in its return of income for the said preceding year. So far, the A.O.'s observation that the assessee firm's explanation, regarding the source of cash deposits in its bank account did not inspire much confidence as they were made during the demonetization period; I am afraid that the

same cannot be accepted. On the contrary, the conduct of the assessee firm in depositing whatever cash that was available as C.I.H in its books of account during the demonetization period could be the only prudent approach that the assessee firm could have adopted. Also, as the A.O had neither established that the C.I.H of Rs. 52.47 lac (supra) that was available with the assessee firm on 01.04.2016 was thereafter utilized by it for making any other investment or was exhausted towards incurring any expenditure, therefore, I find no justification on his part in summarily rejecting the assessee's explanation that the cash deposits of Rs. 33 lacs (supra) made in its bank account during the year were sourced out of the same. Accordingly, I am of the view that the explanation of the assessee firm as regards the source of the cash deposits of Rs. 33 lacs (supra) in its bank account No. 16660200000753 maintained with Federal Bank, Bilaspur merits acceptance. Thus, in terms of the aforesaid observation, I set aside the order of the Id. CIT(A) and vacate the addition of Rs. 33 lacs (supra) made by the AO u/s 69A of the Act. The **Ground of appeal no. 1** of the assessee firm is allowed in terms of my aforesaid observations.

16. **Ground of appeal No. 2** is general and is dismissed as not pressed.

17. Resultantly, the appeal filed by the assessee firm is allowed in terms of the aforesaid observations.

Order pronounced in open court on 20th day of September, 2023.

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 20th September, 2023

***Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (A), Raipur
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.