

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1923/Mum./2022

(Assessment Year : 2017-18)

Dy. Commissioner of Income Tax
Central Circle-5(2), Mumbai

..... Appellant

v/s

Krishiraj Enterprises
Flat no.15, Building no.1
Bhagirathi Apartment
Ameya Park, Boisar (West)
Mumbai 401 501 PAN – AAHFK9411C

..... Respondent

Assessee by : Shri Kunal Agarwal a/w
Shri Suchek Anchaliya and
Shri Mrinal Agrawal

Revenue by : Shri P.D. Chogule

Date of Hearing – 05/09/2023

Date of Order – 27/09/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 13/05/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-53, Mumbai, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In its appeal, the Revenue has raised the following grounds:-

"1. On the facts and circumstances of the case and in law, whether the Ld CIT(A) is justified in deleting the addition made u/s 68 of the Income Tax Act,

1961 on account of cash deposited during the demonetisation period as the has failed to furnish the documentary supporting and corroborative evidence in respect, of sources of the cash deposits of Rs.1,63,92,000/-.

2. On the facts and circumstances of the case and in law, whether the Ld CIT(A) is justified in deleting the addition made u/s 68 of the Income Tax Act, 1961 on account of cash deposited during the demonetisation period as the assessee has failed to prove the link or nexus between the income offered before the Hon'ble Income Tax Settlement Commission and the cash deposited during the demonetisation period.

3. The Applicant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be."

3. The only grievance of the Revenue, in the present appeal, is against the deletion of addition of Rs.1,63,92,000, on account of cash deposited during the demonetisation period.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: For the year under consideration, the assessee filed its return of income on 01/08/2017, declaring a total income of Rs.Nil. The return filed by the assessee was selected for scrutiny through CASS for complete scrutiny.

The following issues were also generated on the system for scrutiny:-

(i) Undisclosed income reported by PCIT (on ITBA AIMS portal) after online verification of cash deposit during demonetisation.

(ii) Abnormal increase in cash deposits during demonetisation period as compared to pre-demonetisation period.

5. During the assessment proceedings, it was observed that the assessee has made cash deposits total amounting to Rs.1,63,92,000, in its bank account no.409000532485 in RBL Bank, Crawford Market Branch, Mumbai, on 25/11/2016, by way of 4 transactions of Rs.30,00,000, Rs. 68,50,000, Rs.61,50,000 and Rs.3,92,000. The assessee was asked to explain the nature and source of the said cash deposits along with supporting documentary

evidence. The assessee in response thereto submitted that the cash deposit was made out of cash balance available from income earned in cash of Rs.1,75,00,000 and the said income has duly been offered to tax before the Hon'ble Income Tax Settlement Commission ("*Hon'ble ITSC*"). It was further submitted that the assessee was able to find buyers only for 38 acres 5 gunthas and the said income was earned in the assessment year 2012-13, i.e. the year in which the said portion of land was sold. The assessee further submitted that it had earned brokerage income on minor land deals that have been offered to tax before Hon'ble ITSC. The AO again issued a show cause notice the assessee was asked to establish the link or nexus between the income offered before the Hon'ble ITSC and cash deposited during the demonetisation period.

6. The Assessing Officer ("*AO*") vide order dated 15/12/2019, passed under section 143(3) of the Act did not agree with the submissions of the assessee and found the same to be vague and not supported by any documentary evidence. The AO further held that the assessee has failed to furnish supporting documents and corroborative evidence in respect of the source of cash deposits of Rs.1,63,92,000, and thus has failed to prove the link or nexus between the income offered before the Hon'ble ITSC and the cash deposited during the demonetisation period. The AO further held that the search was conducted on 26/11/2014, and income offered by the assessee before the Hon'ble ITSC is on account of the sale of land and brokerage earned, spanning the period from the assessment years 2009-10 to 2016-17, however the same does not establish and prove the availability of physical cash of Rs.1,63,92,000

which was deposited by the assessee during the demonetisation period in its account with RBL Bank. Accordingly, in the absence of any cogent explanation and corroborative documentary evidence, the AO treated the cash deposit of Rs.1,63,92,000, as unexplained cash credit under section 68 of the Act and added the same to the total income of the assessee.

7. The learned CIT(A), vide impugned order, deleted the addition made by the AO under section 68 of the Act and held that the assessee had earned unaccounted income of Rs.1,75,00,000, from sale of land and brokerage income which was offered by the assessee before the Hon'ble ITSC and thus the cash of Rs.1,75,00,000, was available with the assessee from which cash of Rs.1,63,92,000, was deposited in the bank account on 25/11/2016. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as under:-

"5.3.4 Thus, the fact is clear that the appellant had earned unaccounted income of Rs.1,75,00,000/- from sale of land and brokerage income which was offered by the appellant before the Settlement Commission in the application made before the Settlement Commission. The Settlement Commission, after considering the submission made by the appellant and also after considering Rule 9 Report submitted by the Pr.CIT, has accepted the additional income of Rs. 1,75,00,000/- offered by the appellant before the Settlement Commission. The unaccounted income of Rs. 1,75,00,000/- was earned by the appellant for A.YS. 2009-10 to 2016-17. Thus, the cash of Rs. 1.75,00,000/- was available with the appellant. The AO has not brought on record that the cash of Rs. 1,75,00,000/- available with the appellant was utilized by the appellant for any other purpose. It means the cash of Rs. 1,75,00,000/- remained with the appellant and the cash of Rs. 1,63,92,000/- deposited in the bank account on 25.11.2016 was from the cash of Rs. 1,75,00,000/- available with the appellant. The appellant had already explained this fact before the AO during the assessment proceedings. The availability of the cash of Rs. 1,75,00,000/- and the source of such cash from sale of land and brokerage income has been accepted by the Settlement Commission in the order u/s. 245D(4) dated 30.01.2018. Thus, the finding of fact brought on record by the Hon'ble Settlement Commission cannot be brushed aside in absence of any contrary evidences brought on record by the AO. Thus, the appellant has successfully explained the nature and source of cash of Rs. 1.63,92,000/- in the bank

account on 25.11.2016. Accordingly. the addition of Rs. 1,63,92,000/- made by the AO in respect of unexplained cash credit is, therefore, deleted.

5.3.5 As far as the applicability of provisions of Sec. 115BBE of the Act in respect of addition made u/s. 68 of the Act is concerned, the argument made by the appellant is that the provisions of Sec. 115BBE is not applicable to the cash credit which was offered to tax at a higher rate. The provisions of Sec. 115BBE are attracted once the addition is made u/s. 68 of the Act in respect of unexplained cash credit. The nature of unexplained cash credit may be the cash credit offered for taxation or not, is immaterial. Thus, this argument of the appellant is rejected.

However, the entire addition of Rs. 1,63,92,000/- made by the AO u/s. 68 has been deleted. Therefore, the applicability of provisions of Sec. 115BBE in respect of addition made u/s. 68 by the AO is merely an academic issue.

In view of the above discussion, the addition of Rs. 1,63,92,000/- made u/s. 68 in respect of cash deposit in the bank account is deleted.”

Being aggrieved, the Revenue is in appeal before us.

8. We have considered the submissions of both sides and perused the material on record. As per the assessee, it is a partnership firm and is engaged in the business of investment in shares, securities, and immovable properties. As evident from the record, during the assessment proceedings, it was observed that the assessee has deposited cash total amounting to Rs.1,63,92,000 in its bank account in RBL Bank on 25/11/2016, vide 4 entries. As per the assessee, the cash of Rs.1,63,92,000, was deposited out of cash of Rs.1,75,00,000, earned by the assessee from the sale of land and brokerage income, which was offered to tax before the Hon'ble ITSC, and the same has also been accepted vide order dated 30/01/2018, passed under section 245D(4) of the Act.

9. From the perusal of the order dated 30/01/2018, passed by the Hon'ble ITSC under section 245D(4) of the Act, forming part of the paper book from pages 37-74, we find that during the course of search at the premises of

Responsive Industries Ltd and Axiom Coedrages Ltd a writing pad was found and seized. On the basis of the said document, it was found that the assessee had received a commission for the sale of the land, and commission income was earned in the assessment year 2012-13. During the proceedings before the Hon'ble ITSC, the assessee submitted that apart from the above income it had earned the brokerage income on minor land deals. Accordingly, the sum of Rs.1,75,00,000 was, inter-alia, offered to tax by the assessee as additional income. The assessment year-wise details are as under:-

| <i>Assessment Year</i> | <i>Amount (Rs.)</i> |
|------------------------|----------------------|
| <i>2009-10</i> | <i>2,50,000/-</i> |
| <i>2010-11</i> | <i>3,75,000/-</i> |
| <i>2011-12</i> | <i>3,25,000/-</i> |
| <i>2012-13</i> | <i>1,52,00,000/-</i> |
| <i>2013-14</i> | <i>4,00,000/-</i> |
| <i>2014-15</i> | <i>4,50,000/-</i> |
| <i>2015-16</i> | <i>3,50,000/-</i> |
| <i>2016-17</i> | <i>1,50,000/-</i> |
| <i>Total:</i> | <i>1,75,00,000/-</i> |

10. After considering the statement of facts, Rule 9 report, reply to Rule 9 report, and further submissions, the Hon'ble ITSC accepted that additional income offered by the assessee. It is the claim of the assessee that the said additional income of Rs.1,75,00,000, which was offered before the Hon'ble ITSC is the source of the deposit of cash of Rs.1,63,92,000. We find that the AO specifically asked the assessee to prove the link or nexus between the aforesaid income offered before the Hon'ble ITSC and cash deposited in its bank account on 25/11/2016, during the demonetisation period. However, as

evident from the record, despite sufficient opportunity being granted, the assessee could not prove the live link/nexus between the additional income offered to tax before the Hon'ble ITSC and the cash deposited in its bank account. It is undisputed that the cash of Rs.1,63,92,000, was deposited by the assessee in its bank account in 4 trenches on 25/11/2016, and the application before the Hon'ble ITSC was filed on 28/11/2016. Therefore, despite the fact that the cash was deposited in the bank account well before the application was filed by the assessee before the Hon'ble ITSC for settlement of its tax dispute, no material could be brought on record by the assessee, despite specific query being raised during the hearing, to prove the least that the assessee submitted before the Hon'ble ITSC that out of the additional income of Rs. 1,75,00,000 the cash of Rs.1,63,92,000, has now been deposited by it in its bank account and the same has also been shown in its cash book for the financial year 2016-17. Since, even in the proceedings before us, the assessee could not establish the link/nexus between the cash deposited in its bank account and additional income offered before Hon'ble ITSC, we find no merits in the submissions of the assessee. The entire basis of arguments of the assessee appears to be a mere afterthought after receipt of the order dated 30/01/2018, passed by the Hon'ble ITSC under section 254D(4) of the Act. Further, from the aforesaid table of additional income offered by the assessee before the Hon'ble ITSC, it is evident that the amount totalling Rs.1,75,00,000, pertains to the assessment years 2009-10 to 2016-17. We are of the considered view that when the said additional income was not at all disclosed earlier by the assessee, the onus cannot be cast on the AO to prove its utilisation by the assessee for any other purpose. Rather, the onus

is on the assessee to prove that the said undisclosed additional income was not utilised by it for any other purpose in the aforesaid years and was the source of the deposit of Rs.1,63,92,000, in its bank account on 25/11/2016. We find that the decisions relied upon by the learned AR are factually distinguishable and thus not applicable to the present case. Accordingly, we find no merits in the findings of the learned CIT(A) and thus the impugned order is set aside. As the assessee failed to establish beyond doubt with any cogent evidence the nature and source of the cash deposit in its bank account, the addition of Rs.1,63,92,000, made by the AO under section 68 of the Act is affirmed. As a result, grounds raised by the Revenue are allowed.

11. In the result, the appeal by the Revenue is allowed.

Order pronounced in the open Court on 27/09/2023

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

MUMBAI, DATED: 27/09/2023

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai