

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2876/Mum/2023
(Assessment Year: 2006-07)**

Mr. Aashish Luthra Shiv Krupa CHS Ltd. Room No. C-12, Plot No. 83, Mhada Malvani, Mumbai- 400095 PAN : AAAPL6270D	Vs.	ITO-19(2)(1), Matru Mandir, Tardeo Mumbai.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Shashank Mehta, CA
Revenue/Respondent by : Shri Srinivas, DR

Date of Hearing : 11.01.2024
Date of Pronouncement : 16.01.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of Commissioner of Income Tax, Appeals, / National Faceless Appeal Centre [In short ‘the CIT(A)’] dated 20.06.2023 for the AY 2006-07.

2. The assessee is an individual and did not file any return of income for AY 2006-07. The Assessing Officer (AO) based on AIR information that the assessee has deposited cash of Rs. 25,98,250/- into the Savings Bank A/c with Corporation Bank during the Financial Year (FY) 2004-06 reopened the assessment under

section 147 of the Income Tax Act, 1961 (the Act). Accordingly, the AO issued a notice on 14.03.2013 to the assessee under section 148 of the Act. The AO subsequently issued a notice under section 142(1) of the Act calling for details pertaining to cash deposited. The assessee through Authorized Representative (AR) appeared before the AO on 21.02.2014 and filed a letter stating that the Savings Bank A/c in Corporation Bank was a joint account held along with assessee's father Mr. Ram Prakash Luthra and Mother Mrs. Usha Luthra and that the account is operated by assessee's father. The assessee further submitted that from 07.07.2005 the assessee was living in Mauritius and America and therefore, during the year under consideration the account was operated by the other co-holders. The assessee also submitted that the deposits made after his date of departure from India i.e. 07.07.2005 were not done by him and that the money deposited never belong to him. For the deposits made from 1st April 2005 to 7th July 2005 amounting to Rs. 4,02,250/-, the assessee submitted that he had made the deposits from his cash in hand which is reflected in the Income Tax return filed for the previous AY. The assessee submitted that since he did not have any income taxable in India during the year under consideration no return was filed.

3. The AO did not accept the submissions of the assessee and made an addition of the entire deposits of Rs. 25,98,250/- under section 68 of the Act by holding that

“4.4 From this bank statement it is observed that there are cash deposits having been made periodically therein. The assessee has submitted that he has migrated from the country and these deposits are not made by him. This submission does not hold as the passport document submitted by the assessee show that the assessee used to travel periodically only for business purpose for few months and used to return India every year and that the deposits though may not actually have been done by him, but by his parents are attributable to him as the Loan has been effected by the bank on him based

on his repayment obligation made to the bank based on the NET INCOME. The parents have been made co-applicants, merely because they were the original owners of the property on which the three additional floors was being built as confirmed in the agreement terms entered with the bank. Hence from the assessee's income tax return for A.Y. 2005-06 and business visits made, it is held that the cash deposits made by him. But at the same time the assessee did not disclose the source of these cash deposits.

4.5 In view of the above facts, explanation filed by the assessee is not acceptable. As the assessee could not explain the source of cash deposits of Rs. 25,98,250/- into Corporation Bank a/c during F.Y. 2005-06, the same is being treated as undisclosed income of the assessee and being taxed as income from concealed sources.”

4. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee filed details evidencing that he has moved out of India from 07.07.2005 and also filed an affidavit from assessee's father admitting that he had deposited around Rs. 22,00,000/- in the bank account maintained in the Corporation Bank out of the advance proceeds of a property and transfer of tenancy rights. The CIT(A) admitted the additional evidences submitted by the assessee. Before the CIT(A), the assessee also made a without prejudice plea that if at all the addition needs to be made it should be done to the extent of only 1/3 of the amount deposited since the assessee is jointly holding the account with two other persons his father and mother. The CIT(A) after perusing the details furnished by the assessee gave partial relief to the assessee whereby he restricted the addition to 1/3rd of the deposits made i.e. 1/3rd of Rs. 25,98,250/- equal to Rs. 8,66,083/-. The relevant observations of the CIT(A) in this regard is reproduced below:

“6. Decision: The appellant in it ground of appeal has assailed the AO in making addition of RS. 2598250/- being cash deposit in the bank account during the impugned A.Y u/s 68 of the Act as undisclosed income of the appellant. The AO in the assessment order noted that the assessee had not

filed the ROI for the A.Y 2006-07 and that there was a cash deposit of Rs. 2598250/- in his bank account maintained with the Corporation Bank. Therefore, notice u/s 148 of the Act was issued after recording the reasons. The AO noted that the assessee in its submission submitted that the said account is in joint name along with his parents i.e., mother and father are the joint account holder with him in the said account. The assessee further submitted that he was NRI and had migrated outside India on 7.07.2005 and remained outside till January 2009 and since he was not in India during the period so the deposit in the said account cannot be made him. To support his point, the appellant submitted the copy of the passport pointing out the same.

6.1 The appellant submitted additional evidence which are admitted and the same were forwarded to the AO for the comments, however the AO had not provided comments. However, in the interest of justice the additional evidence is admitted and the appeal is decided accordingly taking them into account. The perusal of the submission reveals that the appellant had left India on 7.07.2005 and remained outside India for the whole of the year, It is seen that only Rs. 402250/- was deposited from 01.04.2005 to 07.07.2005 and rest of the amount i.e. Rs 2196000/- was deposited in the year when the appellant was not in India. Further the account is in joint name with his parents. The appellant also submitted the affidavit notarized wherein the father of the appellant had admitted that he had deposited around Rs. 22 lakh in the purported bank account maintained in the Corporation Bank. The affidavit further read as that the said amount was received from the advance proceeds of a property and transfer of tenancy rights. The appellant further in its submission stated since the account is in the joint name along with his parents therefore, he could be only made liable to 1/3rd of the deposits i.e., Rs. 866083/- being 1/3rd of Rs. 2598250/-.

6.2 The submission of the appellant is examined as its is seen that the appellant had left India on 07.07.2005 and that he is the joint holder in the bank account, he can only be made liable to 1/3rd of the income and accepting the alternatively ground, the addition of Rs. 2598250/- is restricted to Rs. 866083/-, The Ground of Appeal is partly allowed”

5. Aggrieved the assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred upholding the action of

the Ld. Assessing Officer to the extent of sustaining the addition made for cash deposits aggregating to Rs. 8,66,083/- under section 68; disregarding the factual and legal matrix of the case.

2) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in not appreciating the fact that out of the total cash despot a sum of Rs. 4,02,250/- was made out of the opening cash in hand and the balance amount of cash deposit was made by the Appellant's father from his own funds.

3) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred upholding the action of the Ld. Assessing Officer in making addition of cash deposits aggregating to Rs. 8,66,083/- under section 68 disregarding the fact and law that in absence of Books Of Accounts of the Assessee, no addition can be made under section 68 of the Act.

4) Appellant craves leave to add, alter, modify or substitute all or any of the above grounds of appeal. All the above grounds are without prejudice to each other."

6. The ld AR reiterated the submissions made before the lower authorities. The ld. AR also drew our attention to the financial statements of the assessee for the year ended 31.03.2005 wherein a cash balance of Rs. 5,08,370.34 is reflected. The ld. AR submitted that the assessee has deposited the sum of Rs. 4,02,250/- from 01.04.2005 to 07.07.2005 i.e. until he left India out of the opening cash balance as mentioned above. The ld. AR further submitted that the assessee is an Architect by profession and has closed his profession due to bad financial conditions and the assessee has been out of India from 07.07.2005 to 31.03.2006. The ld. AR also submitted that from the affidavit filed by the father of the assessee wherein he has admitted that he has deposited Rs. 22,00,000/- into the bank account out of the advanced money received from sale of property and tenancy rights substantiates the fact that the impugned amount is not deposited by the assessee. The ld. AR in summary submitted that the assessee has clearly established the source for the cash

deposited during his period of stay in India and also the evidence that the cash deposited after he left India was done by his father. Given that the ld. AR submitted that the CIT(A) after acknowledging these facts is not correct in making 1/3rd of the amount as addition in the hands of the assessee. The ld. AR relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Everest Kento Cylinders Ltd. ([2015] 378 ITR 57/58 (Bom)) to submit that the without prejudice plead raised by the assessee before the CIT(A) stating that the additions could be made to the extent of 1/3rd does not prevent the assessee to contend the said addition before the Tribunal.

7. The ld. DR relied on the order of the lower authorities.

8. We have heard the parties and perused the material on record. The AO based on the AIR information noticed that the cash is deposited to the tune of Rs. 25,98,250/- into the Savings Bank of the assessee with Corporation Bank during the FY relevant to AY under consideration. The AO did not accept the submission that out of the said amount the assessee has deposited only Rs. 4,02,250/- out of his cash in hand and that the balance amount deposited were done by the father of the assessee. Before the CIT(A) the assessee submitted evidences claiming that he has left the country on 07.07.2005 and remained outside India for the rest of the year and also an affidavit that the balance amount deposited after the date of the assessee leaving India is done by his father. From the perusal of the records, we noticed that the assessee had opening cash balance of Rs. 5,08,370.34 (refer page no. 31 of PB) as per the financial for the year ended 31.03.2005. We further noticed that the credits in the Corporation Bank up to 05.07.2005 (before assessee leaving India) total to Rs. 4,02,250/-. Therefore, there is merit in the contention of

the assessee that the source for the amount deposited until the date of he leaving India is from the cash in hand which is declared in the return of income for the previous AY. We also noticed that the CIT(A) has not disputed the fact that the assessee has left India on 07.07.2005 and remained outside India for the whole of the year. The CIT(A) has also not recorded any adverse finding with regard to the affidavit filed by the assessee wherein the father of the assessee has admitted that he has deposited Rs. 22,00,000/- in the bank account with Corporation Bank out of the advance proceeds from the property and transfer of tenancy rights. Considering the facts of the present case the documentary evidences submitted by the assessee, we see no reason to sustain the addition of 1/3rd of the amount deposited amounting to Rs. 8,66,083/- made by the CIT(A). Given that the assessee has explained the source for the cash deposited during his stay in India which is fact is not disputed by the Revenue and that the affidavit of the father not being rejected by the Revenue, we are of the considered view that no addition is required to be made in assessee's case with regard to the amount deposited in cash in Corporation Bank. Therefore, we delete the addition made by the CIT(A).

9. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 16-01-2024.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

**SK, Sr. PS*

Sd/-
(MS. PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai