

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.4895/Del/2013
Assessment Year 2009-10

DCIT Circle-2(1) New Delhi	Vs.	M/s. Ashwani Kumar & Co. Pvt. Ltd. A-1, Mayapuri Indl. Area, Phase-I New Delhi.
TAN/PAN: AACCA0441J		
(Appellant)		(Respondent)

Applicant by:	Shri Akshit Seth, CA		
Respondent by:	Shri Sanjay Kumar, CIT-DR		
Date of hearing:	08	04	2024
Date of pronouncement:	08	04	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal is a recalled matter arising from the order passed under Section 254(2) of the Act in Misc. Application No.371/Del/2018 order dated 06.09.2023 arising in ITA No.4895/Del/2023 for AY 2009-10.

2. When the matter was called for hearing, the Id. CIT-DR for the Revenue submitted at the outset that only Ground No.2 of the captioned appeal requires adjudication on account of restoration thereof in the Misc. Application. The Ground no.2 thus reads as under:

“Ld. CIT(A) has erred in deleting the addition of Rs.9,50,000/- on account of cash deposit, the assessee has failed to explain the sources of cash deposit before the AO.”

3. The Id. DR for the Revenue referred to and relied upon paragraph 5 of the assessment order dated 30.12.2011 for the AY 2009-10 in question. Paragraph 5 of the order of the AO is reproduced hereunder:

“5. This page show that an amount of Rs.9.5 lacs was deposited in cash in the PNB Internet Banking Account of the assessee-company. During the course of search/survey operation statement of Sh. Ashwani Mahajan was recorded u/s. 132(4) of the Act was recorded in the said statement he was asked vide question no. 8 to explain the same. In reply Sh. Ashwani Mahajan stated that the said cash is company amount and must have been reflected in the books of account of the company. However, on perusal of books of account of the company, it was seen that no such cash deposit was shown there. During the course of assessment proceedings, the assessee was again asked to explain the above cash deposit.

The assessee has submitted as under:-

“That the said deposit of Rs. 9,50,000/- on 07.07.2008 is duly reflected in the books of account of the assessee-company. Copy of cash book is enclosed herewith which justifies the said cash deposit of Rs.9,50,000/- in the bank account of the assessee company.”

On perusal of the so called cash book as stated by the assessee, it has been noticed that this is not a cash book rather the same is payment voucher dated 07.07.2008. In this payment voucher, no source has been shown. As such, the cash book as stated by the assessee is nothing but a self serving paper and does not support the contention of the assessee. Therefore, the said cash deposit of Rs.9,50,000/- is held as unexplained and added to the income of the assessee.”

4. With reference to assertions made, the Id. DR submitted that the deposit of cash in Punjab National Bank was not vouched from the cash book found at the time of search and thus source of the cash deposit remained unexplained.

5. The Id. counsel for the assessee, on the other hand, defended the first appellate order and submitted that the source of deposit of Rs.9,50,000/- is duly reflected in the cash book. The Id. counsel further pointed out that the dispute arising in the present appeal is now settled under Vivad Se Vishwas Scheme 2020 (VSVS) for which relevant Form No.5 is placed on record.

6. We have considered the rival submissions and perused the material available on record.

7. We take note of the finding of the CIT(A) that the source of deposit of Rs.9,50,000/- in the bank account is supported by corresponding entries in cash book which shows adequate cash availability at the relevant time. The AO has also vouched such facts. The AO has contradicted the claim of the assessee before CIT(A) only on the ground that the cash book reflects excessively large amount of cash availability of seeking adverse inference from the CIT(A). The CIT(A) has addressed the objection of the AO and decided the issue in favour of the assessee

holding that there is no requirement in law that assessee cannot have large cash in hand. Without delineating the issue further, we also simultaneously note the submissions on behalf of the assessee that the disputes arising in the appeal have been settled in VSVS. In such backdrop, we see no reason to interfere with the order of the CIT(A) at this stage on both counts as noted above.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 08 April, 2024.

Sd/-
[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: **April, 2024**
Prabhat