

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.342/Bang/2024
Assessment Years : 2016-17

Anand Sweets & Savouries, No.8, Sangeetha Complex, Commercial Street, Bengaluru-560 001.  <b>PAN – AAIFA 8522 F</b>	Vs.	The Dy. Commissioner of Income Tax (CPC) Central Circle - 1(4), Bengaluru.  .
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, C.A
Revenue by	:	Shri Chinmay, Anand Jain, JCIT (DR)

Date of hearing	:	04.07.2024
Date of Pronouncement	:	21.08.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the Id. CIT(A)-11, Bangalore dated 09/02/2024 in DIN No. ITBA/APL /M/250/2023-24/1060695509(1) for the assessment year 2016-17.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the order of the AO by not allowing the adjustment of cash seized from the premises of the partners during the search proceedings.

2.1 The necessary facts are that there was cash seized from the premises of the partner which was offered as self assessment tax by the partnership firm but the same was denied in the intimation generated u/s 143(1) of the Act.

3. On appeal, the Id. CIT(A) observed that the partners and the partnership firm are two different assessees. The cash was sized from the premises of the partners and, therefore, the same cannot be adjusted against the tax liability of the partnership firm. Thus the Id. CIT-A dismissed the appeal of the assessee.

4. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

5. The Id. AR before us filed a paper book running from pages 33 to 193 and submitted that the cash belongs to the partnership firm, and it was duly recorded in the books of accounts of the partnership firm. To this effect, the Id. AR drawn our attention on the cash book of the partnership firm placed at page 133 of the paper book. The Id. AR also field an Affidavit duly signed by all the partners stating that the cash belongs to the firm and none of the partners has any objection if the impugned cash is adjusted against the tax liability of the firm. The Id. AR also submitted that none of the partner has adjusted such cash against their individual tax liability.

6. On the other hand, the Id. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the cash was seized from the premises of the partners of the assessee which the partners of the firm claimed to adjust against the liability of the partnership firm being the assessee. However, the learned CIT-A denied making such adjustment on the reasoning that that the partners of the firm and the partnership firms are different entities under the provisions of law. Therefore, the cash belonging to the partner cannot be adjusted against the tax liability of the partnership firm. However, the learned AR of the assessee before us contended that cash belongs to the firm. To this effect, the Id. AR drawn our attention on page 133 of the paper book demonstrating that cash seized by the revenue for Rs. 9,30,000.00 was duly recorded in the cash book of the partnership firm.

7.1 Besides the above, the Id. AR before us has also filed the affidavit of the partners duly notarized stating that the seized cash belongs to the partnership firm which has also been recorded in the cash book of the partnership firm. The affidavit was signed by the partners and the legal heir of the partner. Thus, from the above, it appears to us that the cash seized by the revenue from the premises of the partner of the firm belongs to the firm and not the partners.

7.2 It is not out of the place to mention that a partnership firm is represented by the partners of the firm and if anything found relating to the partnership firm from the premises of the partner, no inference can be drawn that such document belongs to the partner and not the partnership firm. The relationship between the partnership firm and its partners is closely interrelated. As such, from the finding of the authorities below, it appears that the authorities below have formed a

belief that the cash seized belongs to the partners merely on the reasoning that it was seized from the premises of the partner. Such basis formed by the Revenue is based on surmise and conjecture.

7.3 It is equally important to note that the cash seized by the revenue was not adjusted against the existing liability of the partners. It is because the partners have paid the due taxes on the income disclosed in the income tax return. This fact also indicates that the firm was the owner of the impugned cash seized from the premises of the partner of the firm. In view of the above, we are not convinced with the findings of the authorities below. Accordingly, we set aside the order of the Id. CIT-A and direct the AO to adjust the amount of cash seized for ₹ 9,30,000.00 against the liability of the partnership firm. Hence the ground of appeal of the assessee is hereby allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in court on 21<sup>st</sup> day of August, 2024

Sd/-

Sd/-

**(KESHAV DUBEY)**

**(WASEEM AHMED)**

Judicial Member

Accountant Member

Bangalore

Dated, 21st August, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore