

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI

Before Shri Mahavir Singh, Judicial Member  
& Shri Rajesh Kumar, Accountant Member

ITA No.3182/Mum/2014  
Assessment Year : 2009-10

Shri Manish Damji Shah 602, Aashish Apartment Tilak Mandir Road, Vile Parle (E) Mumbai – 400 057 PAN AAGPS4937E	Vs.	The ITO 21(1)(3), Mumbai
(Appellant)		Respondent)

Appellant By : Shri Suneet V Mahale  
Respondent By : Shri G N Maknana

Date of Hearing :23.05.2016

Date of Pronouncement : 27.05.2016

**ORDER**

**Per Mahavir Singh, Judicial Member**

This appeal by assessee is arising out of the order of the CIT(A) – 22, Mumbai, in appeal No.CIT(A)-22/ITO-21(1)(3)/IT-220/2012-13 dated 31.12.2013. The assessment was framed by the ITO 21(1)(3), Mumbai, vide his order dated 29.12.2011 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. At the outset, it is noticed that this appeal is time barred by fifty five days and assessee has filed condonation petition supported by affidavit stating reasons for delay. The learned counsel for the assessee stated that there was a split up in the firm of the counsels i.e. Chartered Accountant's firm and due to that the appeal could not be filed due to the failure of the Chartered Accountant. It was explained

that in February, 2013 there was re-organization of M/s.A M Solanki & Associates, who used to handle and appear on behalf of the assessee in the assessment and appellate proceedings. It was explained that Mr. Suneet Mahale resigned from the firm and, subsequently, set up another partnership firm, Mahale Chheda & Associates, which was registered with ICAI on 12/02/2013 and after that he took up the matter of the assessee and filed the appeal. According to the learned counsel this was the reason for delay. When this was confronted the learned senior DR fairly conceded that the cause is reasonable and delay can be condoned. In view of the concession given by the learned senior DR and going by the reasons stated, we are of the view that the cause is reasonable and delay is accordingly condoned. The appeal is admitted.

3. The only issue in this appeal of the assessee is against the order of the CIT(A) confirming the action of the AO in making the addition of the opening cash balance of Rs.2,92,000/-.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that a survey u/s. 133A of the Act was carried out by the department on the business premises of the assessee i.e. M/s. Shrimati Sarees, a proprietary concern, on 27.02.2009 and from there cash to the tune of Rs.2,92,000/- was found. According to the AO this cash was unaccounted and, hence, he added the same as unexplained/unaccounted cash. Aggrieved, the assessee preferred appeal before the CIT(A), who also confirmed the action of the AO. Aggrieved, the assessee is in second appeal before the Tribunal.

5. Before us the learned counsel for the assessee drew out attention to assessee's paper-book at page 34, wherein the closing balance as on 31.03.2009 i.e. cash in hand was Rs.2,61,875/-. The learned counsel for the assessee explained that there was a cash balance of Rs.2,92,000 as on 27.02.2009 in its cash book and for this he referred to the extract of cash book enclosed in assessee's paper-book at pages 67 to 80, wherein closing balance as on 27.02.2009 was Rs.2,92,000/-. On query from the Bench, the learned counsel for the assessee explained that this extract of cash book was also produced before the AO during the course of assessment proceedings and nothing adverse was pointed out by the AO. He further explained that these documents were also placed before the CIT(A). When these documents were confronted to the learned senior DR, he only requested for setting aside this issue to the file of the AO.

6. We find from the above facts that in the cash book the assessee has cash balance amounting to Rs.2,92,000/- as on the date of survey i.e. 27.02.2009, which was found by the revenue. There is no discrepancy in the cash found and the cash recorded in the books of account. Accordingly, we delete the addition and allow the appeal of the assessee.

7. In the result, the assessee's appeal is allowed

Order pronounced in the open court on this day of 27<sup>th</sup> May 2016.

**Sd/-**

**(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai; Dated : 27<sup>th</sup> May, 2016.

**Sd/-**

**(Mahavir Singh)  
JUDICIAL MEMBER**

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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
Income Tax Appellate Tribunal, Mumbai