

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI "E" BENCH,  
NEW DELHI

BEFORE SHRI R.K. PANDA ACCOUNTANT MEMBER AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 1138/DEL/2014  
[Assessment Year: 2005-06]

Shri Marghoob Alam 11, Green Market, Bara Tooti Chowk Sadar Bazar, Delhi  (PAN: AEGPA 5747 Q)	Vs.	The I.T.O Ward 39(3) Delhi
(Appellant)		(Respondent)

Assessee by: Dr. Rakesh Gupta, Adv  
Revenue by: Shri Rajesh Kumar, Sr.DR

Date of hearing : 02.05.2017  
Date of pronouncement : 05.05.2017

**ORDER**

**PER R.K. PANDA, ACCOUNTANT MEMBER:-**

This appeal filed by the assessee is directed against the order dated 04.12.2013 of the CIT(A)-XXVIII, New Delhi relating to A.Y. 2005-06.

2. The assessee has challenged the order of the Id. CIT(A) in sustaining addition of Rs. 6,61,580/- out of Rs. 28,55,008/- made by the A.O as unexplained deposits.

3. This is the second round of litigation before the Tribunal.

4. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 30.07.2005 declaring total income of Rs. 1,02,700/-. During the course of original assessment proceedings, the A.O made an addition of Rs. 33,55,008/- as undisclosed income of the assessee as per section 68 of the I.T. Act, 1961 on the ground that the assessee could not explain the source of cash deposited in the accounts maintained in the UTI Bank. The assessee filed appeal before the ld. CIT(A) who allowed part relief of Rs. 5 lakhs on account of an entry which was wrongly credited into assessee's bank account and was subsequently rectified by passing a contra entry. The balance amount of Rs. 28,55,008/- was sustained by the ld. CIT(A).

5. The assessee preferred an appeal before the Tribunal. However, due to non appearance by the assessee on the date of hearing, the Tribunal dismissed the appeal filed by the assessee. Subsequently, the assessee moved a Miscellaneous Application before the Tribunal seeking recall of the ex parte order. The Tribunal, vide ITA No. 2952/DEL/2010 order dated 12.05.2011 remitted the issue to the file of the A.O to consider the matter afresh. Accordingly, the A.O issued notice to the assessee to explain the amount deposited with the UTI Bank. It was explained by the assessee that the cash deposited into the UTI Bank bearing Account No. 12610100067935 does not belong to him and belonged to the firm viz., M/s Zeroplus in which he is one of the partners. In order to support that the cash deposited into

his bank account is of M/s Zeroplus, the assessee furnished the following details/documents/arguments:

(i) Copy of ITR of M/s Zeroplus for A.Y 2005-06 filed on 14.07.2006 [due date was 31.07.2005] wherein the assessee's UTI Bank A/c No. 12610100067935 was mentioned in which cash of the firm was stated to be deposited.

(ii) Copy of ITR of M/s Zeroplus for A.Y 2006-07 filed on 14.07.2006 [due date was 31.07.2006] reflecting the assessee's UTI Bank A/c No. 12610100067935 was filed.

(iii) It was submitted that as per the balance sheet of M/s Zeroplus as on 31.03.2005 bank balance is shown at Rs. 5.58.146/- which is nothing but bank balance in the firm's Axis Bank A/c of Rs. 16,766/- and the assessee's UTI Bank A/c of Rs. 5,41,380/-. Since the firm M/s Zeroplus has taken assessee's A/c closing balance as his bank balance establishing that whatever amount is deposited or withdrawn from the assessee's UTI Bank account is the belonging of the firm M/s Zeroplus

6. The assessee also produced the books of account of M/s Zeroplus. However, the A.O was not satisfied with the explanation given by the assessee. He observed that the assessee in his paper book filed before the ld. CIT(A) has enclosed a copy of Ack. of ITR of M/s Zeroplus filed for A.Y 2005-06 wherein at Col. No. 13 of ITR details of the assessee's UTI Bank account are appearing. However, while the whole page is filled up by computer but the bank details on this page are handwritten. Since the

assessee did not produce the original Ack. copy and only filed Xerox copy of the same, the A.O held that it is not understood as to why the assessee did not fill up that particular column by computer and instead it was handwritten. The A.O, further observed that during the course of assessment proceedings for A.Y 2005-06, the assessee vide Question No. 5 of notice u/s 142(1) of the Act dated 18.08.2006 was specifically asked to furnish the details of bank accounts maintained by the assessee during the year under consideration. The assessee, in his response, had stated that he is not maintaining any other bank account in his name except the ICICI Savings Account. The A.O, therefore, inferred that it is not understood as to why this wrong statement was given when the assessee himself was aware that he has also opened an account with the UTI Bank in his name and maintaining the same in the year under consideration as well as in the subsequent A.Y. He observed that if the cash deposited in assessee's UTI bank account was of M/s Zeroplus, then why this fact was not brought to the notice of the A.O during the course of assessment proceedings. Although the A.O observed that the total cash available in assessee's UTI Bank account and M/s Zeroplus tallies with the figures of cash in bank appearing in the balance sheet of M/s Zeroplus as on 31.03.2005, he held that the same is not found enough to establish that the cash deposited in assessee's UTI Bank account are of M/s Zeroplus. According to the A.O, when the firm consists of three partners, it is not understood as to why the firm has opened bank account in the name of one of the partners. Rejecting the

various explanations given by the assessee, the A.O held that the assessee could not substantiate with corroborative documentary evidence that the cash deposited in the UTI Bank Account actually belonged to the firm M/s Zeroplus. He accordingly made addition of Rs. 28,55,008/- to the total income of the assessee as unexplained cash deposit.

7. In appeal, the Id. CIT(A) upheld the addition made by the A.O by observing as under:

*“5.3 I have carefully considered the assessment order and submissions thereof. The facts of the case as per assessment order are that the assessee had deposited cash amounting to Rs.33,14,489/- in the bank account with UTI Bank. Assessment was framed under section 144 vide order dated 26.12.2007 treating the unexplained cash deposits of Rs.33,14,489/- made in the UTI, Bank account as undisclosed income. The Commissioner of Income Tax(A) vide his order in appeal No.141/2007-08 dated 8.07.2008 allowed part relief of Rs.5 lacs and upheld rest of the additions. In the appeal before Hon'ble' ITAT, the appeal of the assessee was dismissed as the assessee did not appear on the date of hearing. The assessee moved a misc. application seeking recall of the ex-parte order. The Hon'ble' ITAT, in I.T.A. No.4639/Del/2010 dated 12.05.2011 remitted the issue to the file of Assessing Officer to consider the matter afresh.*

*In compliance to the directions of the Hon'ble ITAT the Assessing Officer re-examined the case and issued fresh notice to the assessee. The Assessing Officer also authorized the Inspector to conduct local enquiries and verify the modus operandi of the business and other details as per page 5 of the assessment order. It was claimed by the assessee that the*

bank account belonged to the firm. The Assessing Officer, however, on the basis of detailed reasons given in the assessment order and on the basis of the fact that the said bank account was not reflected in the income tax return of M/s. Zeroplus, held that the claim of the assessee that the bank account was of M/s. Zeroplus was only an afterthought. Further the assessee was unable to reconcile the cash deposited in the bank account with the sales reflected by M/s. Zeroplus. Thus the Assessing Officer made an addition of Rs.28,55,008/- as unaccounted income of the assessee under section 69 of the Income Tax Act.

During appellate proceedings the appellant claimed that when the Inspector visited the premises of the firm, the firm was found to be in existence and was carrying out the work of whole sale trading of Utensils. Further the appellant also reiterated his claim that the bank account belonged to the firm and the cash deposited in the bank was the sale proceeds of the firm. The account was opened in individual name only to get the benefit of ATM Card.

The claim of the appellant has been considered. There are main two issues for consideration. The first important issue is in regard to whether the bank account is of Marghoob Alam as individual or of the firm. In this connection the following points are relevant

- Col 13 in regard to bank account is hand filled.
- The return of the firm has been filed after information of cash deposited in the bank account was available with the department
- In the statement recorded at the time of survey no such claim was made.
- Bills and vouchers were not produced and only printed cash book and ledger were produced.

- *Original partnership deed was not produced.*
- *As per the finding of the Assessing Officer at no place in the income tax return and balance sheet of the firm there is any mention about a bank account being operated in individual name nor any such mention has been made at the time of opening the bank account. The appellant has been unable to contradict this in his submissions.*
- *There is clear finding that as per all details available in the bank record the account was being operated in the name of Shri Marghoob Alam in his individual capacity and not as a partner.*

*Thus the finding of the Assessing Officer that the bank account belongs to the appellant and not to the firm is upheld.*

*Without prejudice to above the appellant has claimed in ground No. 3 that if the account is treated as belonging to the appellant the addition that should be made should be of peak credit as the Assessing Officer has not given credit for withdrawals. The claim of the appellant has been considered. The perusal of the bank account shows both cash deposits as well as cash withdrawals. The Assessing Officer has not given any finding as to why the entire addition of Rs.28,55,008/- has been made, inspite of the fact that there has been regular withdrawals and deposits in the bank account. In the absence of any specific finding or decision of the Assessing Officer to contradict the claim of the assessee, the claim of the appellant is accepted and the addition of Rs.28,55,008/- reduced to the peak credit i.e. Rs.6,61,580/-. In the result the alternate claim of the appellant is accepted.*

*6. In the result, the appeal is partly allowed.”*

8. Aggrieved with such order of the ld. CIT(A), the assessee is in appeal before us.

9. The ld. counsel for the assessee strongly objected to the amount sustained by the ld. CIT(A). He submitted that the return of the firm M/s Zeroplus was filed on 14.07.2006, a copy of which is placed at page 2 of the paper book. In the said Ack., the existence of UTI Bank at Lajpat Nagar, New Delhi is clearly mentioned. Referring to page 4 of the paper book, he drew the attention of the Bench to the balance sheet of the firm M/s Zeroplus as on 31.03.2005 wherein cash at bank amounting to Rs. 5,58,146.94 has been shown. Referring to page 7 of the paper book, he drew the attention of the Bench to the cash balance of Rs. 16,766.94 with Axis Bank Ltd. Referring to page 23 of the paper book, he drew the attention of the Bench to the closing balance of Rs. 5,41,380.80 as on 31.03.2005 with UTI Bank Ltd. He submitted that if the two amounts are added, the balance with the bank as per page 4 tallies. Referring to page 41 of the paper book, which is the copy of original assessment order passed u/s 144 of the Act, the ld. counsel for the assessee drew the attention of the Bench to the notice issued u/s 143(2) of the Act on 13.06.2007 and submitted that when the assessee has filed the return of the partnership firm M/s Zeroplus on 14.07.2006 which is much prior to the issue of notice u/s 143(2) of the Act, therefore, it cannot be said that the assessee has hidden any bank account from the department. He submitted that the assessee has submitted enough

evidence to substantiate that the bank account belongs to the partnership firm. Therefore, merely on the basis of surmises and conjectures, the A.O could not have made addition on account of income from undisclosed sources and the ld. CIT(A) is not justified in partly sustaining the addition.

10. The ld. DR, on the other hand, heavily relied on the order of the ld. CIT(A). He submitted that when the firm had one bank account, it is not understood as to why the firm had to open an account in the name of one of the partners. Further, the assessee has not filed copy of the original partnership deed. The bills and vouchers were never produced and only printed cash books were produced. Column 13 of the Income Tax Return was filled up by hand whereas the other columns were typed in computer. Moreover, the return of the firm has been filed after information of cash deposit in bank account was available with the department. He, accordingly, submitted that there is some element of doubt regarding the submission of the ld. counsel for the assessee that the account maintained with the UTI Bank belongs to the firm and not to the assessee.

11. The ld. counsel for the assessee, in his rejoinder, submitted that the return of the firm has been filed before the issue of notice u/s 143(2) of the Act. He submitted that merely on the basis of surmises, addition cannot be made.

12. We have considered the rival arguments made by both the sides, perused the orders of the A.O and the ld. CIT(A) and the paper book filed on behalf of the assessee. We find the only dispute in the grounds raised by the assessee is regarding the order of the ld. CIT(A) in sustaining the addition of Rs. 6,68,580/- out of the addition made by the A.O of Rs. 28,55,008/- on account of unexplained cash deposit in the UTI Bank. It is the case of the Revenue that the assessee had maintained a bank account with AXIS Bank wherein cash to the tune of Rs. 28,55,008/- has been deposited, the source of which has not been explained for which addition was rightly made by the A.O as unexplained cash deposit. The ld. CIT(A) has already granted substantial relief and sustained addition of only Rs. 6,68,580/- as the basis of peak credit. It is the case of the assessee that the said bank account belongs to the firm M/s Zeroplus and account was opened in the name of the partner for obtaining ATM and credit card that full details were given before the A.O as well as the ld. CIT(A) to substantiate that the said account belongs to the firm.

13. From the various details furnished by the assessee in the paper book, we find the firm M/s Zeroplus has filed return of income on 14.07.2006 which is prior to the issue of notice u/s 143(2) of the Act dated 13.06.2007 in the original assessment proceedings. From the copy of balance sheet filed in the case of M/s Zeroplus as on 31.03.2005, cash at bank has been shown at Rs. 5,58,146.94 which is the sum total of the amount appearing in

the AXIS Bank Account at Rs. 16,766.94 and another amount of Rs. 5,41,380/- with UTI Bank. We find the assessee during the course of assessment proceedings has substantiated before the A.O with documentary evidence that the said bank account, in fact, belongs to the firm and does not belong to the assessee. We find the A.O, on the basis of mere suspicion, rejected the contention of the assessee that cash deposited in the said UTI Bank Account actually belongs to the firm since the assessee, according to him, failed to substantiate with corroborative documentary evidence that the account maintained with AXIS Bank belongs to the firm. In our considered opinion, when the assessee has filed return of partnership firm showing balance outstanding in the impugned bank account as the bank balance of the firm and such disclosure was much earlier to the issue of first notice u/s 143(2), therefore, we fail to understand as to how the A.O has considered the deposits as unexplained cash deposits in the hands of the assessee. Nothing has been brought on record that the various deposits in and withdrawals from the said bank account do not appear in the books of account of M/s Zeroplus which were produced before the A.O. It has been held in various decisions including that of the Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Vs. CIT reported in 26 ITR 775 [SC] that presumptions and surmises, however strong may be, cannot be basis for addition. Since the assessee in the instant case, in our opinion, has proved beyond doubt that the account maintained with UTI Bank though stands in the name of the assessee actually belongs to the firm since the same has

been shown in the balance sheet of the partnership firm M/s Zeroplus and return of the said firm has been filed much prior to the issue of notice u/s 143(2) of the Act in the original proceedings, therefore, merely because the relevant column in the return form has been hand written instead of typed in computer and the assessee did not file original partnership deed cannot be a ground to disbelieve the same. In this view of the matter, we hold that the ld. CIT(A) was not justified in sustaining the addition of Rs. 6,61,580/-. Ground raised by the assessee is accordingly allowed.

14. In the result, the appeal filed by the assessee is allowed

Order pronounced in the open court on 05.05.2017.

**Sd/-  
(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

Dated: 05.05.2017

*V. Lakshmi*

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT (Appeals)
- 5) DR: ITAT

ASSISTANT REGISTRAR

	Date
Draft dictated on	02.05.2017
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Approved Draft comes to the Sr.PS/PS	
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Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	