

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

**ITA No.4588/M/2015
Assessment Year: 2011-12**

M/s. Kshirsagar Construction Co. Pvt. Ltd., C-20/A, Bharat Nagar, Grand Road (E), Mumbai – 400 007 PAN: AAACK1671N	Vs.	DCIT-5(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shailesh Parmar, A.R. & Shri Pratik Jain, A.R.
Revenue by : Shri M.C. Omi Ningshen, D.R.

Date of Hearing : 19.04.2017
Date of Pronouncement : 28.04.2017

ORDER

Per D.T. Garasia, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 24.03.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The shore facts of the case are as under:

The assessee is engaged in the business of development of property. Assessee has furnished the return of income for A.Y. 2010-11 declaring total income as 'Nil'. During the course of hearing, the Assessing Officer (hereinafter referred to as the AO) noticed from AIR information that the assessee has deposited cash of Rs.3,51,000/-. Accordingly, assessee was asked to furnish the source of this cash deposit. The assessee has stated that cash was received on account of allotment of car parking and same was returned back to the party because car parking could not be allotted to that party. The AO observed that assessee did not substantiate his claim because allotment letter of

parking was issued on 20.04.10 but the cash was deposited in January 2011. Therefore, AO treated the cash deposit of Rs.3,51,000/- as unexplained cash credit under section 68 of the Act and added the same to the income of the assessee.

3. Matter carried to Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal of the assessee.

4. The Ld. A.R. submitted before us that assessee's books of accounts are duly audited and assessee maintained all books of accounts under section 44AA of Income Tax Act, 1961. Accordingly, as per the cash book on hand for the period of 01.04.10 to 31.03.11 the assessee has deposited Rs.3,51,000/- out of available cash of Rs.4,77,635/- as on 01.01.2011. Therefore, the cash deposit is duly explained and the same is available as cash on hand. The assessee has submitted the copy of bank statement for F.Y. 2010-11, copy of the ledger account on cash on hand from page 31 to 41 by way of paper book and pleaded that the addition may be deleted.

5. On the other hand, the Ld. D.R. submitted that before the AO assessee claimed that he had received the cash against allotment of parking before the parking was not allotted. But before the Ld. CIT(A), the assessee had taken the contention that the cash deposit was made out of cash in hand available with him. Therefore, assessee is changing the stand before the AO and the Ld. CIT(A). Therefore, assessee could not explain the source of the money deposited in the bank.

6. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that during the course of hearing the assessee has submitted cash on hand book for the period from 01.04.10 to 31.03.11. From the cash on hand it transpires that on 01.01.11 assessee was having opening balance of Rs.4,77,635/-. The assessee on 04.01.11 has

deposited Rs.3,51,000/-. We find that assessee has also submitted the copy of bank statement for the same period. From the above statement and copy of the ledger account on cash in hand it transpires that assessee was having sufficient cash on 01.01.11 i.e. Rs.4,77,635/- out of which assessee claimed that he has deposited Rs.3,51,000/-. We find that assessee has given explanation before the AO that this amount was received on account of allotment of car parking and the same was returned to the party because car parking could not be allotted to that party. The said allotment of car parking is also reflected in the cash on hand but assessee was having cash balance on that day. Therefore, we are of the view that no addition can be made. During the course of hearing, the Ld. D.R. relied upon the statement made by the assessee before the AO and Ld. CIT(A), but he has not doubted the genuineness of the cash book as the cash on hand book was supported by the bank statement. Assessee's books of accounts are audited under section 44AB of the Act and assessee is a private limited company. Therefore we delete the same.

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

Order pronounced in the open court on 28.04.2017.

Sd/-
(N.K. Pradhan)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 28.04.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.