

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

Before Shri G S Pannu, AM, & Shri Saktijit Dey, JM

ITA No. 2345/Mum/2014
Assessment Year 2009-10

Shri Pawan Kumar R Modi 1D Chirag Apartment Hazari Dargah Road, Wagle Estate, Thane (W), Mumbai 400 604 PAN AFMPM7433A	Vs.	ITO Ward 3(2) Thane
(Appellant)		(Respondent)

Appellant By : Shri P K Parida &
Smt. Sanjukta Chowdhury
Respondent By : Shri Saurabh Kumar Rai

Date of Hearing : 22.03.2017

Date of Pronouncement : 05.04.2017

ORDER

Per Saktijit Dey, Judicial Member:

The aforesaid appeal by the assessee is directed against the order dated 4.12.2013 of the learned CIT(A)- I, Thane, for assessment year 2009-10.

2. Ground no.1 is in relation to confirmation of the addition of an amount of Rs.2,50,000/- u/s. 69A of the Act.

3. In the course of assessment proceedings, the AO found deposits made by the assessee in a bank account to the tune of Rs.36,92,600/-. After

calling for explanation of the assessee with regard to the source of such deposit, the AO made addition of Rs.16,92,600/- u/s. 69A of the Act. Though the assessee challenged the aforesaid addition before the CIT(A), the learned CIT(A) while deciding the appeal of the assessee sustained the addition to the extent of Rs.2,50,000/- while deleting the balance amount.

4. The learned AR submitted before us that two parties viz. M/s.Rajesh Trading Company and M/s. Saroj Steel Traders were having some dispute between them. He submitted, the assessee was acting as mediator to settle the dispute between the parties. He submitted, the assessee received an amount of Rs.2,50,000/- from M/s. Saroj Steel Traders on behalf of M/s. Rajesh Trading Company towards settlement of dispute. He submitted that the entire amount was received in cheque and the assessee had repaid the money to the concerned party also in cheque. To substantiate such fact, he drew our attention to the bank statement, copy of which is at page 10 of the paper-book. He therefore, submitted that the addition made should be deleted.

5. The learned DR relied upon the observations of the departmental authorities.

6. We have considered the submissions of the parties and perused the material on record. On a perusal of the bank statements of the assessee, a

copy of which is at page 10 of the paper-book, we have noticed that the assessee in February, 2009 has received an amount of Rs.2,50,000 in three different cheques and has also remitted the amount to Rajesh Trading Company in three separate cheques. Thus, it is evident from the bank statement that the amount of Rs.2,50,000/- was received by the assessee on behalf of M/s. Rajesh Trading company. That being the case, the amount in question cannot be treated as unexplained money of the assessee. Accordingly, the addition made is deleted.

7. In ground no.2, assessee has challenged addition of Rs.20 lacs u/s. 69A of the Act.

8. Briefly, facts are, assessee is an individual carrying on legal profession. Besides, his professional activity, the assessee is also engaged in trading in shares. In the course of assessment proceedings, the AO on the basis of information available on record found that the assessee was maintaining a Saving Bank account in Konkan Mercantile Co-op Bank Ltd., Rabodi Branch, Thane (W), jointly with two other persons. On verifying the bank statement, he found that cash deposits of Rs.20 lacs was made in the said account during the relevant previous year, which has neither been accounted for in the books of account nor shown in the balance sheet. He, therefore, called upon the assessee to explain the source of cash deposit in the said bank account. As alleged by the AO, inspite of adequate opportunity being given,

the assessee failed to furnish any explanation regarding the source of cash deposits. The AO therefore, concluded that the cash deposits of Rs.20 lacs has to be treated as unexplained money in terms of section 69A of the Act and added it back to the income of the assessee. The assessee challenged the addition before the CIT(A).

9. In the course of hearing before the first appellate authority to explain the source of deposits of Rs.20 lacs to the joint SB A/c., the assessee submitted that the said amount was received from his uncle towards loan. In support of said contention, the assessee produced confirmation letter supported by affidavit from his uncle. Further, explaining the credit worthiness of the creditor, the assessee submitted that the said amount was advanced to the assessee out of sale proceeds of agricultural land available with his uncle. In support of his contentions, assessee also produced copies of sale agreement. Since the aforesaid documentary evidences were produced for the first time before the CIT(A) as additional evidence, he called for a remand report and after examining the same, he held that the assessee's claim that he has received an amount of Rs.20 lacs as loan from his uncle is not believable. He observed, while the assessee has deposited Rs.20 lacs claimed to have been received from his uncle in the month of June 2008, the sale of agricultural land from which assessee's uncle claimed to have sourced the loan advance were executed in May 2009. The learned

CIT(A), therefore, was of the view that prior to the date of sale of agricultural land, assessee's uncle could not have got the money to advance as loan. He, therefore, opined that the explanation of the assessee that he received the amount from his uncle is only an after-thought hence, not believable. Accordingly, he confirmed the addition of Rs.20 lacs u/s. 69A.

10. The learned AR reiterating the stand taken before the departmental authorities submitted that the assessee has not only explained the source of cash deposit by furnishing requisite explanation but also supported it with evidence in the form of confirmation letter and affidavit of the creditor. He has also explained source of source by furnishing the sale agreement of agricultural land from which his uncle got money to advance loan to the assessee. The learned AR submitted, in any case of the matter, the AO has proceeded to assess the amount as unexplained money u/s. 69A of the Act. He submitted that in no case, provisions of section 69A are attracted. He submitted that the entries relating to receipt of Rs. 20 lacs are not only recorded in the books of account and forms part of the balance – sheet but the assessee in course of assessment proceedings has also explained the source of such deposit. Therefore, it cannot be treated as unexplained money u/s. 69A of the Act. The learned AR submitted that even otherwise also, the assessee has not only explained the source of Rs. 20 lacs deposited in the bank account by furnishing confirmation of the person, who advanced

the loan to the assessee but has also furnished an affidavit of the concerned person. That being the case, without making any investigation and inquiry to controvert the claim of the assessee and without bringing any material on record, the AO cannot make the addition.

11. The learned DR, on the other hand, supported the decision of the departmental authorities and submitted that assessee's claim that the amount of Rs. 20 lacs was received from his uncle is not believable considering the fact that as per sale agreement, agricultural land from the sale of which the assessee's uncle claimed to have advanced loan happened in March 2009, whereas, the assessee has deposited the amount in June 2008. Therefore, the assessee's uncle did not have ostensible source for advancing the loan. He submitted, even as per the sale agreement submitted by the assessee the total sale proceeds is much less than the amount of Rs. 20 lacs claimed to have been advanced by assessee's uncle.

12. We have considered the submissions of the parties and perused the material on record. Undisputed facts are, deposit of Rs. 20 lacs was found to have been made in SB Account jointly held by the assessee with two other persons. While explaining the source of such deposit the assessee had stated that he received the amount as loan from his uncle Shri Kailashchand Modi and he substantiated such claim by furnishing confirmation supported by affidavit from Shri Kailashchand Modi and he also explained the source from

which his uncle had advanced such amount by producing copies of the sale agreement for sale of agricultural land. Though, these documents were produced by way of additional evidence before the first appellate authority and were also examined by the AO on remand, the departmental authorities have refused to accept the claim of the assessee. It is further relevant to note that the AO has made the addition by treating the amount of Rs. 20 lacs as unexplained money u/s. 69A. Therefore, at the outset, we need to examine whether provisions of Section 69A are at all attracted. On a bare reading of section 69A of the Act, it is noticed that in a case where the assessee is found to be owner of money, bullion, jewellery etc., which has not been recorded in the books of account maintained by him and the assessee offers no explanation about the source of such money, bullion, jewellery etc., to the satisfaction of the AO, then it will be treated as unexplained money of the assessee u/s. 69A of the Act. However, in the present case, the amount of Rs.20 lacs was found in the Savings Bank Account of the assessee, further, it is the claim of the assessee that said amount has also been recorded in the books of account. This claim of the assessee appears to be correct, as on perusal of the balance sheet of the assessee as on 31.03.2009, a copy of which is at page 5 of the paper-book, it appears that the amount of Rs. 20 lacs has been shown as unsecured loan from Shri Kailashchand Modi. Moreover, there is no dispute that the source

of such money is explained from the bank account of the assessee. In the aforesaid view of the matter, the amount of Rs. 20 lacs cannot be treated as unexplained money u/s. 69A of the Act. In the worst case, the AO could have considered the amount as unexplained cash credit u/s. 68 of the Act. Even assuming that it is an unexplained cash credit u/s. 68 of the Act, it is necessary to examine whether at all it can be treated as unexplained cash credit u/s. 68 of the Act. There is no dispute that assessee has explained the source of such cash deposit in his bank account to have come from the loan advanced by his uncle Shri Kailashchand Modi. It is also a fact on record, before the first appellate authority, the assessee had submitted confirmation letter as well as affidavit of Shri Kailashchand Modi, who happens to be his uncle, stating that he had advanced amount of Rs.20 lacs as loan. To prove the source of Rs.20 lacs at the hands of Shri Kailashchand Modi, assessee has produced the sale agreement for sale of agricultural land. As it appears from record on the face of such evidence produced by the assessee, the AO has not conducted any enquiry to ascertain the credit worthiness of Shri Kailashchand Modi. Merely on presumption and surmises, the departmental authorities have discarded the claim of the assessee. Merely because the sale agreements are subsequent to the date of advancement of loan, it cannot be presumed that the creditor had no credit worthiness to advance the amount. In any case of the matter, the assessee has not only explained

the source of deposit but also substantiated it by producing the confirmation letter from the creditor supported by an affidavit. If the department disbelieves the claim of the assessee, it must not only make enquiry but also bring material on record to disprove the claim of the assessee. In the absence of any such enquiry and material brought on record, the claim of the assessee cannot be rejected / disbelieved on mere presumption and surmises. In view of the aforesaid, we hold that the addition of Rs.20 lacs u/s. 69A is not sustainable. Accordingly, we delete the same. Thus, ground no.2 is allowed.

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

Order pronounced in the open court on 5th day of April 2017.

Sd/-
(G S Pannu)

ACCOUNTANT MEMBER

Mumbai; Dated : 5th April, 2017

SA

Sd/-
(Saktijit Dey)

JUDICIAL MEMBER

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai