

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.455/Ind/2017

Assessment Year 2013-14

Deputy Commissioner of Income Tax (Central)-1 Indore	Vs.	M/s. Pumarth Commodities Pvt. Ltd, 5/5A, Navratan Bagh, Opp. Geeta Bhawan Square, Behind Vishesh Hospital, Indore
(Appellant)		(Respondent)
PAN No.AADCP5381K		

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	S/Shri Sumit Nema, Sr.Adv & Gagan Tiwari, Adv.
Date of Hearing	10.01.2019
Date of Pronouncement	11.01.2019

ORDER

PER MANISH BORAD, AM.

The above captioned appeal is filed at the instance of Revenue pertaining to Assessment Year 2013-14 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-3 (in short 'Ld.CIT(A)'], Indore dated 28.03.2017 which is arising out of the

order u/s 143(3) of the Income Tax Act 1961(In short the 'Act')
dated 16.03.2014 framed by DCIT(Central)-I, Indore.

3. Revenue had raised following grounds of appeal;

“On the facts and in the circumstances of the case, learned CIT(Appeals) erred in deleting the addition made by the A.O. of Rs.1,70,77,904/- on account of unaccounted income from undisclosed source without appreciating the facts and evidences brought into light by the A.O during assessment proceedings”.

4. Brief facts of the case as culled out from the records are that the assessee is engaged in the business as commodity broker. Return of income for Assessment Year 2013-14 was filed on 30.09.2013 declaring income of Rs.49,55,360/-. Notices u/s 143(2) was issued on 30.06.2004. Questionnaire along with notice u/s 142(1) was also issued on 04.08.2014 and served upon the assessee. Search and seizure operations u/s 132 were carried out on the business as well as residential premises of the Apollo Group of Indore including the assessee along with other concerns/business associates on 21.09.2012. Since the search operations were carried out simultaneously and most of the concerns and individuals are interconnected and have business

connections, they have been clubbed under the overall name Apollo (Pumarth) Group of Indore. The assessee company is one of the companies of Pumarth Group of Indore. The company was incorporated on 04.10.2004 and as per memorandum of association, the company is a registered commodity broker with MCX and NCDEX. Assessment u/s 153A r.w.s. 143(3) was completed on 16.03.2015 after making an addition of Rs.1,70,77,904/-.

5. Aggrieved assessee preferred an appeal before Ld. CIT(A) and succeeded.

6. Now the revenue is in appeal against the deletion of addition made by the Ld.A.O.

7. Ld. Departmental representative vehemently argued and supported the order of Ld. A.O.

8. The Ld. Counsel for the assessee supporting the finding of Ld. CIT(A) submitted that the alleged amount of Rs.1,70,77,904/- has been duly accounted for in the regular books of accounts and they relates to bank fixed deposit of Rs.1.70 crores and accrued interest

on FD at Rs.77,904/-.

9. We have heard rival contentions and records placed before us. Revenue is aggrieved with the deletion of addition of Rs.1,70,77,904/- which was made by Ld. A.O treating the sum as unaccounted income from undisclosed sources. This addition made by the Ld.A.O have its nexus from page No.62 of LPS-B1/5 found during the course of search in which amount of Rs.1,70,77,904/- was appearing. These documents was seized from the office premises of the assessee and it was obligatory on the part of the assessee to explain at the time of search but the assessee failed at that point of time. Even though the assessee contended before the Ld. A.O during the course of assessment proceedings that the alleged amount relates to the fixed deposit receipts of Canara Bank but the same were not accepted by the Learned Assessing Officer which lead to the addition.

10. Subsequently when the assessee came in appeal before the Ld. CIT(A) all the related documents along with the copy of two fixed deposit receipts of Rs.50,00,000/- each and premature redemption of FDR of Rs.70,00,000/- as well as details of accrued interest on

FDR at Rs.77,904/- were placed before Ld.CIT(A). The impugned addition was deleted by Ld.CIT(A) observing as follows;

“4. During the assessment proceedings the appellant filed the following submission:-

"B.3.14 The paper in question is a rough document -which was probably being used for preparing a rough statement of cash flow available with the assessee group, to pay to the books on the dealers mentioned above by a junior accountant.

The paper as such is of no importance as the same is merely focusing on the available cash reserves in various files for making the necessary payments for exchange dealings.

In fact the amount Rs. 1,70,00,000/- mentioned against the assessee's name is the amount of FDR with Canara Bank, Siyaganj Br., Indore held by the company in which the accrued interest amount of Rs. 77,904/- is further shown. ..

4.1 The Assessing Officer held that the appellant had failed to explain the entries on the said document. He also did not accept the appellant's contention that the said entry is related to the FDR with Canara Bank as no documentary evidence was filed to justify the said claim.

4.2 The appellant has submitted in the appeal proceedings that the seized page no. 62 of LPS-B 1 /5 is a dumb document and no cognizance can be taken unless it has correlation of the undisclosed income of the appellant. Further, no questions were asked during the search regarding the said page. Reliance has been placed on the

decisions of Delhi High Court in CIT vs. S .M Agarwal (293 ITR 43) and Bombay High Court in the case of CIT Vs. Lata Mangeshwar (96 ITR 696) (Born.).

4.3 First and foremost, the issue of evidentiary value of the seized page no.62 of LPS-B1/5 is being dealt with. It is seen that on the said seized documents dates from 21/06/2012 to 03/07/2012 are mentioned in the first column. In the next 10 columns 10 entities with initials are mentioned. In column 11 it s written "PCPL" which stands for Pumarth Commodities Pvt. Ltd., the appellant. For these 11I columns amounts are mentioned against total in the bottom row. Under PCPL is written 17077904. In the 12th column, total cash received is mentioned against various dates (short period of 13 days from 21/06/2012 to 03/07/2012) and the total is written as Rs 12,61,94,000. This figure is however incorrect and the correct total comes to Rs 13,61;94,000. In the 13th column under the head "Other" an amount of Rs 68,40,000 is written against 28.6.2012. In the 14th column "Total Recd" is shown and the total is Rs 51,60,29,454. This is the correct total of all bottom row entries of Cols. 1 to 13 (by taking total of Col. 12 at correct figure of Rs 13,61,93,600). The next Col. 15 is titled "Paid" and mentions total payment of Rs 51,87,06,923.01 to "Desai (Mum) and Rajesh (Mum) Mumbai". The last column (Col.16) is titled "Diff and mentions:amount of Rs. 28,77,469.06. The amounts recorded are precise to the last rupee.

4.3.1 In the written submissions filed by the group before the Investigation Wing during post search inquiries and in the reply given to the questionnaire issued by the Assessing Officer, this seized paper was explained as a "rough document" prepared by the accountant to work out cash flow available with the Group.

4.3.2 *The appellant and the other group members submitted before the Hon'ble Settlement Commission in the SOF that the bottom row entries against 10 "entities of the group are reflecting sales consideration of off market share sales and amounts received as calls in arrears for share application money in PIPL. It was admitted that the amounts mentioned on this seized paper below the respective entities relate to sale of shares for which necessary affidavits were filed.*

4.3.3 *From the above, it is clear that the appellant and the group has accepted the entries in the first 11 columns of the seized document page no.. 62 of LPS-B1/5. Also the amount matches with the deposits in the bank accounts during the said period of the different entities mentioned in the seized document. Therefore, it is clear that page no. 62 of LPS-B 1/5 is not a dumb document.*

3.4 *However, Cols. 12 to 16 of the seized paper were neither explained in Statement of Facts (SOFs) filed along with Settlement Applications nor in the written submissions filed before the Settlement Commission. An oral submission was made before the Settlement Commission that the cash mentioned at Col. 12 belongs to SKK, Sumati Kurnar Kasliwal who was not an applicant before the Settlement Commission. Even for Col. 13 titled 'Other' an oral submission was made that it belongs to SKK, Sumati Kurnar Kasliwal who was not an applicant before the Settlement Commission. Even before the Settlement Commission the group did not explain columns 12 to 16 of the seized document and therefore, the Hon'ble Settlement Commission in its order u/s 245D(2C) dated 27/11/2015 held that no full and true disclosure of income in the Settlement Applications has been made by the appellant and other members of the group on account of the page no. 62 of LPS-B 1/5.*

The Settlement Commission observed that applicants cannot accept/explain part of the document and treat the other half as rough document of no value.

4.3.5 Thus; it is clear that part of the document has entries which are substantiated with deposits in the bank accounts of the entities of the group and also the tally accounts maintained for the various entities. In view of the above, it is held that page no. 62 of LPS-B1/5 is not a dumb document.

5. The appellant has submitted the copies of the fixed deposits with Canara Bank. It is seen that the appellant company is having two FDRs with Canara Bank, Mumbai Stock and Commodity Exchange Branch for Rs. 50,00,000/- each which were issued on 21/03/2012. Further, there is an entry in the Canara Bank, Siyaganj Branch, Indore on 14/07/2012 on account of pre-mature redemption of FDR of Rs. 70,00,000/-. The appellant has submitted that Rs. 77,904/- is on account of accrued interest of these FDRs.

6. In view of the appellant's submissions and the evidence placed on record it is held that the appellant company has explained the entry of Rs. 1,70,77,904/- and therefore, addition on this account is not justifiable. Therefore, the addition of Rs. 1,70,77,904/- is deleted. Ground Nos, 2 and 3 are allowed”.

11. From perusal of the findings of Ld.CIT(A) as well as copies of bank statements and fixed deposit receipts placed before us as well as in the given facts and circumstances of the case there remains

no doubt that the alleged amount of Rs.1,70,77,904/- is duly accounted for in the regular books of accounts of the assessee and it comprises of three fixed deposit receipt totaling to Rs.1,70,00,000/- (Rs.50,00,000/-, Rs.50,00,000/- and Rs.70,00,000/-) and accrued interest of Rs.77,904/- and therefore this amount cannot be treated as unaccounted income from undisclosed source. No interference is therefore called for in the finding of Ld.CIT(A) deleting the impugned addition.

10. In the result appeal of the revenue is dismissed.

The order pronounced in the open Court on 11.01.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 11 January, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore