

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.1557/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Dy.CIT,Circle-3, Pune	Vs.	M/s. H.B. and Associates, 1 Payal Apartments, 1098/15, Model Colony, Pune – 411 016 PAN : AAAFH7376N
Appellant		Respondent

Assessee by
Revenue by

Shri C .V. Deshpande
Shri S.P. Walimbe

Date of hearing

04-08-2020

Date of pronouncement

04-08-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue is directed against the order passed by the CIT(A)-3, Pune, dated 25-01-2017 in relation to the assessment year 2012-13.

2. The only issue raised in this appeal is against the deletion of addition of Rs.2.25 crore made by the Assessing Officer (AO) u/s. 68 of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the assessee is a partnership firm engaged in the business of development of immovable properties. A sum of Rs.51.02 crore was shown as unsecured loans in its balance sheet. The AO required the assessee to submit confirmation from the creditors. The assessee submitted the confirmations in respect of all the unsecured loans except the two persons, namely, Shri Amitkumar Khemchandbhai Patel – Rs.1.15 crore and Mrs. Sonalbahen Amitkumar Patel – Rs. 1.10 crore. The assessee, by submitting their complete addresses, requested the AO to get confirmations directly from them. The AO issued letters to both the persons requiring them to submit whether they had given advances to the assessee firm along with other necessary details. Both the persons responded vide letter dated 11-03-2015 stating that they had not advanced any loan to the assessee firm but have, in fact, booked Flat No.C2 at Final Plot No.411, Sl.No.707-A, Mukundnagar, Gultekdi, Pune and also furnished acknowledgement of receipt of payment of Rs.1.15 crore and Rs.1.10 crore respectively. On being called upon to explain variation in the submission made by these two persons *vis-à-vis* the assessee, it was explained that as per the oral agreement with these

two persons, the money was to be kept as deposit with the assessee for a few months and then the same was to be transferred as booking advance to M/s. H.B. – K.J. & Advance, a partnership firm, in which one of the partners of the assessee firm was a partner, that was to construct the concerned flat. It was in pursuance of such an understanding that both the persons issued cheques in favour of the assessee. The AO did not accept the stand of the assessee and made the addition of Rs.2.25 crore. The Id. CIT(A) deleted the addition, against which the Revenue has come up in appeal before the Tribunal.

4. We have heard the rival submissions through virtual court and gone through the relevant material on record. Admittedly, the amounts of Rs.1.15 crore and Rs.1.10 crore were received by the assessee from Shri Amitkumar Khemchandbhai Patel and Mrs. Sonalbahen Amitkumar Patel respectively, which were deposited in the assessee's bank account. A copy of the assessee's bank statement is available at page 9 onwards of the paper book, which primarily indicates the receipt of money from these persons. This shows that it was the assessee who received these cheques from Shri Amitkumar Khemchandbhai Patel and Mrs. Sonalbahen

Amitkumar Patel and deposited the same in its bank account. Because of some oral understanding with these two persons, the amount was first received as advance by the assessee firm which was later on transferred to M/s.H.B. – K.J. & Advance, another partnership firm, in which one of the partners of the assessee was also a partner. Pages 7 & 8 of the paper book are copy of accounts of Shri Amitkumar Khemchandbhai Patel and Mrs. Sonalbahen Amitkumar Patel in the books of the assessee, in which the amounts have been credited with the corresponding debit to the bank account. Page 6 is an extract from books of account of M/s.H.B. - K.J. & Advance, which shows credit in the name of these parties. When we further examine the dates of receipt by the assessee firm and transfer of the amount by way of adjustment entry to H.B. - K.J. & Advance account, it becomes manifestly evident that the amounts received by the assessee firm in the last quarter of the year ending 31-03-2012 were transferred in the third quarter to H.B. - K.J. & Advance of the next year. In view of the fact that both the persons did admit to have given the amounts of Rs.2.25 crore through banking channel, which were subsequently adjusted against the booking of flat, there remains no doubt about

the genuineness of the transactions appearing in the books of the assessee. It is not a case that the said amount of Rs.2.25 crore was firstly recorded by M/s.H.B. - K.J. & Advance in its books of account and was simultaneously reflected by the assessee also in its books of account. Since the cheques were issued in the name of the assessee, these could have only been deposited in the assessee's bank account, which led to the generation of credit in the names of Shri Amitkumar Khemchandbhai Patel and Mrs. Sonalbahen Amitkumar Patel in the books of the assessee. We, therefore, affirm the order of Id. CIT(A) on this score.

5. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 04th August, 2020.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 04th August, 2020
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT-3, Pune
4. The Pr.CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	04-08-2020	Sr.PS
2.	Draft placed before author	04-08-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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