

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.875/Ind/2019
Assessment Year 2017-18

M/s. Daya Properties and Finance, Balniketan Trust Heart, Hamidia Road, Bhopal	Vs.	ACIT(Central)-II Bhopal
(Appellant)		(Revenue)
PAN:AAFFD9351G		

Appellant by	Shri Manoj Fadnis, AR
Respondent by	Shri Harshit Bari, Sr.DR

Date of Hearing:	10.03.2021
Date of Pronouncement:	25.03.2021

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeal filed at the instance of the assessee pertaining to Assessment Year 2017-18 is directed against the orders of Ld. Commissioner of Income Tax(Appeals)-3 (in short 'Ld. CIT], Bhopal dated 26.07.2019 which is arising out of the order

u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 06.12.2018 framed by ACIT (Central)-II, Bhopal.

2. Assessee has raised following grounds of appeal:-

1. That the learned A.O has erred in law and on facts in making the addition of Rs.15,02,020/- to the total returned income of the appellant.

2. That the learned A.O has erred in making the addition of Rs.15,02,020/- on account of treating it to be the undisclosed income of the appellant when such amount and its sources was already explained to AO, along with the evidence.

3. That the A.O has erred to make the addition by ignoring the facts and documents submitted by appellant during the course of assessment proceedings.

4. That the A.O does not have any cogent material, so as to lead the A.O, to formation of belief that such amount is undisclosed income of the appellant, particularly so when such amount along with the documentary evidence was explained to him.

5. That the appellant reserves the right to add, alter or amend the grounds of appeal before the appeal is decided.

3. Brief facts of the case as culled out from the records are that the assessee is a firm carrying out business of money lending and also acts as broker for arranging loans from private persons. A search and seizure operation u/s 132 of the Act was carried out on residential and business premises of the assessee and other concerns on 30.08.2016. During the course of search a cash sum of

Rs.37,02,020/- was found and seized from the business premises of the assessee. Statement of the partner Mr. Amit Tharani was recorded on 31.8.2016 and he was unable to reconcile the source of cash and agreed to offer Rs.37,02,020/- as additional income. Regular return of income was filed on 11.08.2017 declaring total income of Rs.3,89,230/- thereafter, a revised return of income was filed on 29.09.2018 declaring total income of Rs.25,89,299/- after including Rs.22 lakhs towards surrender of income made during the course of search for unexplained cash. This amount was short by Rs.15,02,020/- as the surrender during the search was made at Rs.37,02,020/-. During the assessment proceedings it was contended by the assessee that since the cash in hand available in the books of M/s Daya Properties & Finance and other individuals as per the statement of capital prepared as on 31.3.2016 was at Rs.16,50,360/-, the same was sufficient to cover up the sum of Rs.15,02,020/- and thus no addition should be made for the said amount. However Ld. A.O was not satisfied and treated it as an after thought. Assessment completed u/s 143(3) of the Act by Ld. A.O at Rs.40,91,250/- making addition of Rs.15,02,020/- on

account of disclosure made during the course of search but not offered to tax.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) who considered the submissions made by the assessee but finally confirmed the action of Ld. A.O and the relevant extract of his finding is mentioned below:-

Xxxxxx ---xxx

j) Thus, from the above analysis it emerges that :

i. The retraction was made after a period of twenty five months;

ii. It was never communicated to the Departmental Authorities, merely not disclosed with the return of income;

iii. From record it is impossible to hold that any threat or coercion has been exerted during the confession statement of the assessee.

iv. Irrespective of the form or validity of the voluntary disclosure statement or of the deposition taken from the assessee on 30.08.2016, the evidence of testimony cannot be wiped out and does not become non-existent and this evidence can well be utilized to frame the assessment on that basis.

v. Shri Amit Tharani in his sworn statement recorded on oath on 30.08.2016 has admitted undisclosed income of Rs.37,02,020/-.

In view of the above position, the appellant's unsuccessful attempt to retract from the disclosure is untenable being an after-thought and is rejected. Therefore, the additions made by the A.O amounting to Rs.15,02,020/- is confirmed. Therefore, the appeal on this ground is dismissed.

5. Aggrieved assessee is now in appeal before the Tribunal.
6. Ld. Counsel for the assessee referred to the written submissions dated 10.3.2021 placed on record. He mainly contended that return of income for Assessment Year 2016-17 for M/s Daya Properties & Finance and other individuals namely Mr. Amit Tharani, Mr. Ghyanshyam Tharani and Mrs. Tulsi Tharani were filed on 18.02.2017, 31.03.2017, 31.03.2017 and 08.08.2016 respectively and the total cash in hand as on 31.3.2016 in the hands of the assessee firm and 3 persons is Rs.16.50,360/-. All these Income Tax Returns for Assessment Year 2016-17 were filed in response to notice u/s 153A of the Act and have been scrutinized u/s 143(3) of the Act and no additions have been made. This establishes that the department has accepted the cash position as on 31.3.2016 held with the assessee firm and its partners and the wife of the partner aggregating to Rs.16,50,360/-. This cash sum of Rs.16,50,360/- is sufficient to cover up the difference of Rs.15,02,020/- (amount surrendered during the search Rs.37,02,020/- less amount surrendered in the return of income at

Rs.22 lakhs). Ld. Counsel for the assessee relied on various judgments in the written submission.

7. Per contra Ld. Departmental Representative supported the order of both the lower authorities and contended that assessee has not retracted the surrender in the reasonable time and the plea taken during the assessment proceedings are merely after thought and cooked up story.

8. We have heard rival contentions and perused the records placed before us. Though the assessee has raised 5 grounds of appeal but the sole grievance is against the action of Ld. CIT(A) confirming the addition of Rs.15,02,020/- made by the Ld. A.O treating it to be undisclosed income. We observe that during the course of search cash sum of Rs.37,02,020/- was found and assessee failed to explain its source and accepted to offer it as additional income. No specific retraction was made before filing of return of income. In the return of income assessee partly honoured the surrender by offering Rs.22,00,000/- as undisclosed income as

against Rs.37,02,020/- made during the course of search. It is true that the assessee had not made any specific retraction showing its intention to not to offer Rs.15,02,020/- to tax. However before the completion of assessment proceedings he made the retraction showing less amount of surrender in the return of income to the amount agreed during the course of search.

9. Now whether such type of retraction made by way of offering lower amount of income than the income surrendered during the course of search by way of disclosing it in the return of income along with necessary evidence and explanation thereof should be accepted by the revenue authorities and whether the onus to prove the burden shifts on to the revenue needs to be examined in the light of judicial precedence.

10. We find that the Co-ordinate Bench Pune in the case of *Moreshwar Mahadev Bhondve v/s ACIT (2014) 50 Taxmann.com 453* has held that:-

“Even if the retraction is made after a long gap, it should be rejected by cogent reasoning. The- same was possible by demonstrating the stand of the assessee taken by way of books of account prepared and produced at assessment stage as well as appellate stage. According to the Assessing Officer, sufficient documents were not filed in this regard. While in appeal, the Commissioner (Appeal) observed that the expenses found genuine were allowed by the Assessing Officer while he expenses not supported by evidence were disallowed by the Assessing Officer. This shows that the details of expenses as reflected in books of account prepared could not be brushed aside. The reasoning of retraction should not be rejected at the strength of admission by assessee but retraction based on prepared books of account should be rejected by cogent reasoning only. Material put forward on behalf of assessee has been rejected in ad hoc manner, which is not justified.”

11. Examining the facts in light of above decision, we find that the assessee had made retraction before the completion of assessment proceedings with documentary evidence and relevant explanation and therefore the onus to prove the burden shifted on to the revenue. The assessee during the assessment proceedings also submitted the details of cash in hand as on 31.3.2016 in the hands of the firm M/s Daya Properties & Finance, its partners and wife of the partner. The same are summarized in the following table:-

Name of the assessee	Date of filing	Balance Sheet Date	Cash in hand
Daya Properties	18.02.2017	31.03.2016	10,58,464
Mr.Amit Tharani	31.03.2017	31.03.2016	2,68,507
Mr. Ghanshyam Tharani	31.03.2017	31.03.2016	1,88,693
Mrs. Tulsi Tharani	08.08.2016	31.03.2016	1,34,696
Total			16,50,360

12. We further find that subsequent to the search and in response to the notice u/s 153A of the Act assessee had filed the return of income for which partnership firm and other individuals for Assessment Year 2014-15 to Assessment Year 2017-18. The instant appeal relates to Assessment Year 2017-18 and the issue before us is that whether the assessee had sufficient source of cash to explain the sum of Rs.15,02,020/- found at the time of search conducted on 30.8.2016.

13. We find that the Income Tax Returns of the firm M/s Daya Properties & Finance and other individuals for Assessment Year 2016-17 were very much before the Ld. A.O. They have been scrutinized during the assessment proceedings and the assessment

was completed u/s 143(3) of the Act and no addition have been made. If the Ld. A.O was not satisfied with the cash in hand shown by the assessee and individuals as on 31.3.2016 he should have taken necessary action during Assessment Year 2016-17 but in absence there of it has to be presumed that the Ld. A.O has accepted the position of cash in hand as on 31.3.2016 shown by the assessee firm and its partners and wife of the partner which stood at Rs.16,50,360/-. So as on 1.4.2016 assessee had cash in hand in its business concern and other individuals referred above at Rs.16,50,360/- which is sufficient enough to cover up the shortfall in surrender of income of Rs.15,02,020/- found during the course of search as on 30.8.2016.

14. We therefore in the given facts and circumstances of the case are of the considered view that since the assessee had explained the source of cash to the extent of Rs.15,02,020/- as on the date of search, it had rightly reduced the surrender of income from Rs.37,02,020/- to Rs. 22,00,000/-. We therefore are of the view that the Ld. A.O was not justified in making the addition of

Rs.15,02,020/-. We accordingly set aside the finding of Ld. CIT(A) and allow Ground No. 1 to 4 raised by the assessee.

15. Ground No.5 is general in nature which needs no adjudication.

16. In the result appeal of the assessee is allowed.

Order was pronounced in the open court on 25.03.2021.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 25th March , 2021

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Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar, Indore