

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DEHRADUN BENCH : DEHRADUN]**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.4493/Del/2018
निर्धारणवर्ष/Assessment Year: 2009-10**

Income Tax Officer, Ward : 1 (2)(2), Dehradun.	बनाम Vs.	Shri Raman Kapoor, S/o. Shri Shyam Lal, R/o. 4-Chander Road, Dehradun.
		PAN No. AWBPK1191P
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	Shri B. S. Rawat, Advocate;
राजस्वकीओरसे / Department by :	Shri N. C. Upadhyaya, Sr. D.R.;

सुनवाईकीतारीख/ Date of hearing :	26/05/2022
उद्घोषणाकीतारीख/Pronouncement on :	26/05/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals) Dehradun [hereinafter referred to CIT (Appeals)] dated 12.04.2018 for assessment year 2009-10.

2. The Revenue in its appeal has raised the following grounds of appeal:-

“i. The Ld. CIT(A) has erred in law and facts in allowing the appeal of assessee and ignoring the fact that peak credit is not applicable in this case being ones amount exhausted it cannot raise the effect on bank deposits at a later stage.

ii. The Ld. CIT (A) has erred on facts in allowing the appeal of assessee and where assessee himself failed to explain the source of deposits holding that amount routed through bank account and registries existed in the name of M/s Vardhman Industrial Estate and its concern, proves the genuineness of transactions.

iii. The order of the Ld. CIT(A) be set aside and order of the AO be restored. “

3. Brief facts of the case are that the assessee filed his return of income on 29.03.2010 declaring income of Rs.1,44,000/-. Subsequently the assessment was reopened by issue of notice under Section 148 of the Income Tax Act, 1961 (the Act) dated 15.05.2014. The Assessing Officer noticed that the assessee deposited cash of Rs.1,04,99,400/- into his bank account with Axis Bank Ltd., Haridwar, during the financial year 2008-09 relevant to the assessment year 2009-10. During the course of assessment proceedings the assessee explained that he is in the business of real estate. He further explained that the cash deposit made into bank account were out of previous withdrawals from the bank on various dates and the capital contributed by the member of AOP as per the deed entered into. The assessee in the course of assessment proceedings also submitted the copy of deed before the Assessing Officer. However, the Assessing Officer disbelieved the version of the assessee and, therefore, the cash deposits of Rs.1,04,99,400/- as undisclosed income from other sources. The

Assessing Officer also treated Rs.76,50,000/- received by the assessee from M/s. Vardhman Industrial Estate, Haridwar, as income from other sources. Disbelieving the version of the assessee that he has acted as an agent and facilitated the purchase of land from farmers by M/s. Vardhman Industrial Estate. The Assessing Officer also treated Rs.10,50,000/- being the deposit made into bank account in the absence of any reply from the assessee.

4, Before the Id. CIT (Appeals) the assessee submitted various evidences to prove that the cash deposits made into bank account were from out of withdrawals made earlier from the bank and also produced various documents in respect of the addition of Rs.76,50,000/- which was given by M/s. Vardhman Industrial Estate to the assessee for the purchase of purchase of land on behalf of M/s. Vardhman Industrial Estate. The assessee furnished before the Id. CIT (Appeals) cash flow statement along with copies of bank statement, sale deed and other documents as these documents were not produced before the AO during the assessment proceedings. The Id. CIT (Appeals) forwarded all thewse documents to the Assessing Officer for his comments. The Assessing Officer sent a remand report dated 19.03.2018, copy of which was also provided to the assessee. After obtaining the comments of the assessee on remand report the Id. CIT (A) deleted the additions made by the Assessing Officer against which the revenue is in appeal before us.

5. The Id. DR strongly placed reliance on the orders of the Assessing Officer and whereas the Id. Counsel for the assessee placed reliance on the orders of the Id. CIT (Appeals).

6. We have heard the rival submissions, perused the orders of the authorities below. The Id. CIT (Appeals) considered the submissions furnished by the assessee and taking into consideration the remand report and the comments of the assessee on the remand report deleted the additions made by the Assessing Officer, observing as under:-

“19. I have gone through the assessment order, the submissions made by the appellant, the remand report submitted by the AO and appellant’s response to that.

20. From the facts as explained by the assessee during the course of appellate proceedings, it turns out that the assessee operates as a commission agent in the purchase and sale of land. In the year under consideration, the assessee claims that it was working as an agent for M/s Vardhman Industrial Estate. The duty of the appellant was to convince land holders to sell their land to M/s Vardhman Industrial Estate for development of industrial estate by these parties. The assessee claims that it received money from M/s Vardhman Industrial Estate and two its sister concern namely M/s Jain Realcom Pvt Ltd and M/s Texplas India Pvt Ltd. The appellant claims that it passed on this money to the land holders and get the land registered in the name of M/s Vardhman Industrial Estate and some small portion in the name of sister concerns of M/s Vardhman Industrial Estate.

21. The AO during the course of assessment proceedings found that the assessee has receive Rs. 87 lacs by cheque in two tranches one of Rs. 76,50,000/- and another Rs. 10,50,000/-. Apart from that the AO also noted that the assessee received cash deposit of Rs. 1,04,99,400/- in respect of which amount received by cheque. The AO has stated that the assessee was unable to provide any evidence of actually having received this amount from M/s Vardhman Industrial Estate or actually having registered any land in the name of M/s. Vardhman Industrial Estate. The AO also noted that he got the enquiry conducted by the ITI of his office which give rise to the finding that one Sh. Anil Malhotra, a close relative of assessee was engaged in property dealing business with the Directors of M/s Vardhman Industrial Estate. He signed purchase and sale deed on behalf of the said company. Based on all these findings, the AO added back the amount of Rs. 76,50,000/- and Rs. 10,50,000/- as undisclosed income of the assessee. During the course of appellate proceedings, the appellant submitted a certificate/confirmation from M/s

Vardhman Industrial Estate wherein it was admitted that Rs. 76,50,000/- was actually paid by M/s Vardhman Industrial Estate to the assessee. Another confirmation was provided wherein it was stated that a sum of Rs. 10,50,000/- was received from M/s Texplas India Pvt Ltd.

22. The assessee has also now provided copies of document which evidences transfer of land from farmers/landholders to M/s Vardhman Industrial Estate and a small portion to its sister concern.

23. This matter was remanded back to the AO who has only stated that this matter relating to amount received through cheque were not disclosed by the assessee during assessment proceeding.

24. I have considered this matter carefully and examined the evidence on record, I find it hard to dispute that the assessee has actually received this amount from M/s Vardhman Industrial Estate and a smaller part from its sister concern. The weight of evidence lies in favour of the conclusion that the appellant was acting as a commission agent on behalf of M/s Vardhman Industrial Estate for development of industrial estate. Apparently it actually conducted negotiation with the farmers on behalf of this entity and assisted in registration of land in favour of M/s Vardhman Industrial Estate and its sister concern for payment of service fee. The evidences that lies in favour of the assessee are :-

- i) Confirmation from Vardhman Industrial Estate and its sister concern that they have paid the assessee the monies.
- ii) That the amounts are routed through banking channel that is verifiable.
- iii) Documents that show that lands were registered in the name of Vardhman Industrial Estate.

25. Therefore, the addition made of Rs. 76,50,000/- and Rs. 10,50,000/- are hereby deleted.

26. The assessee also received an amount of Rs. 1,04,99,400/- as cash deposit in its bank account. The assessee has stated that this amount was also received as part of same activity. However, as in the case of amount received by cheque, the assessee has not been able to provide any tangible evidence for its claim. Further, it is seen that there are regular deposits and withdrawals in the bank account, the total deposit being Rs. 1,04,99,400/-. It would be unreasonable to add back the entire amount

since it appears to be proceeds of business that is on going. The assessee also claims that it had opening balance of Rs. 24,05,867/-. Under these circumstances, it is considered logical that the peak credit of this account be added as undisclosed income of the assessee. The peak credit has been worked out to be Rs.21,59,522/-.

27. In the remand report submitted by the Assessing Officer, the AO has simply stated that this cannot be accepted as the amount utilized in investment and utilization of further fresh funds cannot be stimulated together. However, as has been discussed earlier in this order making an addition of entire deposit would not be logical. Therefore, the AO is directed to bring the amount of Rs. 21,59,522/- to tax being peak credit of this account. ”

7. As could be observed from the above in so far as the additions of Rs.76,50,000/- and Rs.10,50,000/- are concerned, the Id. CIT (Appeals) deleted these additions based on the evidences furnished by the assessee in the form of confirmation from M/s. Vardhman Industrial Estate and its sister concern that they have paid the assessee these moneys. These moneys are routed through banking channels and they are verifiable. The finding of the Id. CIT (Appeals) that the documents show that lands were registered in the name of M/s. Vardhman Industrial Estate where the assessee acted only as an agent in facilitating the purchase of land from farmers on behalf of M/s. Vardhman Industrial Estate. It is observed that the Id. CIT (Appeals) deleted these additions based on these evidences where major portion of the lands were registered in the name of M/s. Vardhman Industrial Estate and a small portion to its sister concern.

8. In so far as addition of Rs.1,04,99,400/- being cash deposits into bank account is concerned, the Id. CIT (Appeals) held that there are regular deposits and withdrawals in the bank accounts

and the total deposit is of Rs.1,04,99,400/-. Therefore, the ld. CIT (Appeals) was of the view that it would be unreasonable to add the entire amount as these proceeds emanate from the business of the assessee which is on-going. The ld. CIT (Appeals) also observed that assessee had opening balance of Rs.24,05,867/-. Therefore, the ld. CIT (Appeals) considered the peak credit of this account as undisclosed income of the assessee and worked out the peak credit at Rs.21,59,522/-. The ld. CIT (Appeals) on appreciation of evidences furnished by the assessee deleted the additions of Rs.76,50,000/- and Rs.10,50,000/- and restricted the peak credit in respect of cash deposits into bank account at Rs.21,59,522/- which, in our opinion, is justified. Therefore, we see no good reason to interfere with the findings of the ld. CIT (Appeals). Thus, we sustain the order of the ld. CIT (Appeals) and reject the grounds raised by the Revenue.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on : 26/05/2022.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 26/05/2022.

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT

4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	26.05.2022
Date on which the typed draft is placed before the dictating member	26.05.2022
Date on which the typed draft is placed before the other member	26.05.2022
Date on which the approved draft comes to the Sr. PS/ PS	26.05.2022
Date on which the fair order is placed before the dictating member for pronouncement	26.05.2022
Date on which the fair order comes back to the Sr. PS/ PS	26.05.2022
Date on which the final order is uploaded on the website of ITAT	26.05.2022
Date on which the file goes to the Bench Clerk	26.05.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	