

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI RAHUL CHAUDHARY, JM

ITA No. 2009/Mum/2020
(Assessment Year 2013-14)

Amit Lalit Kapoor B-701, Supreme -19, Lokhandwala, 3 rd Cross Lane, Andheri (W), Mumbai-400 061 (Appellant)	Vs.	The Income Tax officer, Ward-16(1)(1), Aayakar Bhavan, M.K. road, Mumbai-400 020 (Respondent)
PAN No. APQPK1601N		

Assessee by	:	Shri Ashvini Kumar, AR
Revenue by	:	Shri Vinod Bhaskaran, DR

Date of hearing:	05.04.2022
Date of pronouncement :	23.04.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Mr. Amit Lalit Kapoor [Appellant/ Assessee] against the order passed by the learned Commissioner of Income tax (Appeals)-4, Mumbai [the learned CIT (A)] on 28 February 2020 for Assessment Year 2013-14.
02. Assessee has raised following grounds of appeal.

"1. That the order passed by the Ld. CIT (A) u/s 250(6) was incorrect, bad in law and have been passed without considering the submissions of the appellant.



2. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3) r.w.s147 of the Act and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

3. That the reasons recorded by Ld. AO for issuance of notice u/s 148 read with S. 147. has not been supplied to the assessee with the notice u/s 148 as well as subsequently which is totally against the settled proposition of law and Ld. CIT (A) erred in upholding the same.

4. That the Ld. AO has erred in following the procedures laid down for issuance of notice u/s 148 of the Act, i.e. recording of reasons before issuance of notice, sanction appropriate authority and application of mind which is against the settled position of law laid down by the Apex Court. The Ld. CIT (A) erred in upholding the same.

5. That, the Ld. AO has erred in making a disallowance of expenditure of Rs. 47,85,384/- without considering the submissions of the appellant that the TDS were deducted wherever required. Also details of receipts of cash on various occasions were provided and Ld. CIT (A) has erred in upholding the same.

6. That the Ld.AO has erred in making a double addition Rs. 30,63,900/- as he failed to appreciate the fact that the turnover of the assessee included cash receipts of Rs. 30,63,900/- while booking the above expenditure Rs. 47,85,384/-. The Ld. CIT (A) erred in confirming the addition.



7. That the Ld. AO has erred in making an addition of Rs. 75,00,000/- as unexplained cash credit u/s 68 of the Act in light of the fact that the assessee was not maintaining books of account and Ld. CIT (A) erred in confirming the addition also where the token money of Rs. 75,00,000/- was received pursuant to an agreement for which the required details were filed before him.

8. That the Ld. AO has erred in making an addition of Rs. 30,63,900/- as unexplained cash credit u/s 68 of the Act in light of the fact that the assessee was not maintaining books of account and Ld. CIT (A) erred in confirming the addition.

9. That the Ld. AO has erred in making an addition of Rs. 2,00,000/- as unexplained cash credit u/s 68 of the Act in light of the fact that the assessee was not maintaining books of account and Ld. CIT (A) erred in confirming the addition.

10. That, the Ld AO has grossly erred in charging interest u/s 234A, 234B and 234C of the IT Act, 1961 on wholly illegal, erroneous and untenable grounds.

11. That in view of facts and circumstances of the case and in law, the AO has erred in initiating penalty u/s 271(1) (c) of the Income Tax Act, 1961 and Ld. CIT (A) erred in upholding the same."

03. Brief fact of the case shows that assessee is an individual and running business by two property concerns i.e. Cynosure Networks and Silent Noise Productions. Assessee has not filed his return of income. The Assessing Officer came into possession of certain information that cash of ₹96,95,000/- is deposited in his bank account in the name of property concern Cynosure Networks.



Accordingly, notice under section 148 of the income-tax Act, 1961 (the Act) was issued on 21 March 2018. The assessee in response to the notice stated that he has already filed his return of income on 28th September, 2018 declaring total income of ₹4,48,890/-. The Assessing Officer issued notice under section 133(6) of the Act to DCB bank, Mumbai and ICICI Bank, Mumbai for calling certain details. The learned Assessing Officer on examination of the return noted that assessee has shown a turnover of ₹52,45,940/- on account of professional receipts and miscellaneous income. Assessee has also shown cash on hand and bank balance of ₹58,95,562/-, but cash deposit of ₹96,95,000/- could not be traced either in the turnover of the assessee or in the balance sheet. The Assessing Officer further examined the gross turnover of the assessee of ₹52,45,940/-. The Assessing Officer also examined that assessee has also shown expenditure of ₹51,15,384/- and net income was shown at ₹1,30,556/-. It was also noted that assessee has deposited cash of ₹30,73,900/- in DCB bank account. The assessee explained that the above cash deposited was from the books of accounts, it was stated that the above amount is covered in the gross receipts of ₹52,45,940/-, the claim of the assessee is that assessee has received professional fees of ₹46,45,940/- in cash which has been deposited in the bank account. The learned Assessing Officer did not accept the same. Further, the expense details were also called for and assessee submitted that all these expenses have been incurred in cash and are in nature of legal fees, printing and stationary, office rent and Miscellaneous expenditure. The learned Assessing Officer noted that there are certain payments made through banking channel but the details of individuals to whom payments is made is mentioned in bank statement but nature of expenses remains unexplained. Therefore, he doubted the genuineness of these expenditures. The learned Assessing Officer called the assessee personally, where there was an agreement between them to disallow 40% of the expenditure of ₹28,15,161/- amounting to



₹14,07,580/-. This was agreed by both the parties. The order sheet entry dated 19 December 2018, was also reproduced at page no. 6 of the order to this effect. However, subsequently, the learned Assessing Officer was of the view that the entire expenditure is bogus and 100% disallowance amounting to ₹51,15,384/- deserves to be made. The requisite notice was issued on 26th December 2018, asking the assessee to show cause why the total expenditure of ₹51,15,384/- should not be disallowed. The learned Assessing Officer also directed the assessee to produce the details of payment of office rent to Shri Rajesh D. Shah and Smt. Ashrumati D. Shah. In response to this assessee furnished the ledger accounts of all the expenditure. The learned Assessing Officer verified the return of the assessee for Assessment Year 2012-13 and stated that TDS should have been deducted by the assessee on rent payment. Ultimately, he held that no tax has been deducted on office rent and it is disallowable. In the end, he disallowed expenditure of ₹47,85,384/- out of expenditure of ₹5,15,384/-.

04. He further found that assessee has deposited cash of ₹1,05,14,000/- in the DCB bank account of Cynozure Networkz (account no. 3414), DCB bank account of Cynozure Networkz of ₹30,73,900/-(account no. 9999) and with ICICI Bank account in his individual account of ₹ 2 lacs. The assessee was asked to explain these cash deposits. With respect to the sum of ₹75 lacs in a DCB account, Assessee submitted that the above sum was received in terms of agreement dated 19 July 2012, between assessee and Mr. Gurdeep Singh Chadha. He submitted copy of agreement as well as confirmation of Mr. Chadha. He also gave the address of the person, who paid of ₹75 lacs, which is a cash advance. The learned Assessing Officer rejected the same stating that stamp paper which is purchased on 30th April, 2012, was used for agreement dated 19th July, 2012, is not in the name of either of the parties. Therefore, he rejected that it is an afterthought. Learned Assessing Officer refused to believe it and

made a Google search to found that Mr. Gurdeep Singh Chadha had died on 17 November 2012, and therefore, the agreement could not have been entered on 19 July 2012. He also alleged that Mr. Gurdeep Singh Chadha is known as Ponti Chadha. He further noted that cash advances were given to the assessee after the death of Mr. Gurdeep Singh Chadha and a confirmation letter dated 1 April 2013 was given after his death. Thus, Id AO held that the cash deposit of Rs 75 lakhs allegedly received from Mr. Chaddha is a concocted story. Therefore, he made an addition of ₹ 75 lacs.

05. With respect to the amount of cash deposited of ₹30,63,800/- in DCB bank account in account no. (9999), was stated to be out of the books of accounts of the assessee and forming part of income already shown. LD AO disbelieved it and added to the total income. The amount of cash deposited of ₹2 lacs in individual bank account of the assessee was also added u/s 68 of the act. Accordingly, the total income of the assessee was assessed at ₹1,59,98,170/- by assessment order dated 28th December, 2018 making following additions:-

- i. Disallowance of unexplained expenditure debited to the profit and loss account ₹47,85,384/-.
- ii. Unexplained cash deposit received from Gurdeep Singh Chadha as advance money of ₹ 75 lacs u/s 68 of the Act
- iii. Unexplained cash deposit of ₹38,63,900/- in Cynozure Networkz account u/s 68 of the Act.
- iv. Addition of ₹2 lacs being cash deposited in the bank account of assessee's individual account u/s 68 of the Act.

06. Assessee aggrieved with that order preferred appeal before the learned CIT (A), who dismissed the appeal of the assessee as per paragraph no. 4.3 as under:-

"4.3 I have carefully gone through the assessment order as well as the written submission of the Appellant. The cash deposit of 75,00,000/- is claimed to be coming from Mr. Gurdeep Singh Chadha, Prop. of Wave Films. It has been stated by the Appellant that there was an agreement between Mr. Gurdeep Singh Chadha and the Appellant, according to which the Appellant was to receive 75,00,000/- in cash. It is the contention of the Appellant that it is the same amount which has been deposited in the bank account of the Appellant maintained in DCB Bank. However, there are many inconsistencies in the argument of the Appellant on this issue. Some of these inconsistencies have been clearly pointed out by the AO in the assessment order and are discussed below:

(1) The agreement which has been referred to has been made on 19.07.2012 on the stamp paper of ₹ 100/- which has been issued in the name of one Mr. D.S. Dave. The stamp paper has not been purchased in the name of either the Appellant or Mr. Gurdeep Singh Chadha. The A.O has quoted Sec 134 of the Bombay Stamp Act which says that if an Instrument does not bear the name of either of the parties, then such Instrument cannot be admitted in evidence for any purpose. Thus, there is merit in the argument of the A.O that agreement seems to be made as an after thought

(2) The agreement has been executed on 19.07.2017 whereas cash totaling up to 75 lakhs

has been deposited between 07.01.2013 and 04.02.2013. On this issue, there seems to be merit in the argument of the A.O that it is improbable that cash received as advance on the occasion of signing of contract will be kept by the assessee with him for six months without depositing the same immediately.

(3) A confirmation letter dated 01.04.2013 is being referred to by the Appellant. This confirmation is allegedly signed by Mr. Gurdeep Singh Chadha and the date of this letter is 01.04.2013. However, the A.O has clearly demonstrated in the assessment order that Mr. Gurdeep Singh Chadha alias Ponty Chadha had died on 17.11.2012.

4.4 On the basis of above facts, it can be seen that the A.O has given a point by point rebuttal of all the arguments made before him regarding the cash deposit of ₹ 75,00,000/- The A.O has demonstrated by his inquiry and analysis that the Appellant has no explanation regarding the nature and source of this cash deposits. I, therefore, see no reason to interfere with the order of the A.O on this issue and accordingly, 4.8 The next issue is addition of 30.03.900/- This amount also represent cash deposit in a bank account in DCB Bank The Appellant has tried to explain this cash deposit both before the AO and during appeal that this cash deposit has been shown as business receipt and the cash deposit of 30,03,900/- should be considered to be included in the gross receipt of the Appellant. However, as stated in Para 3.3 above, the very basis of gross receipt of the assessee is itself doubtful and therefore, the same cannot be used to explain any cash deposit because there is no nexus between the gross

receipt and the cash deposit. No supporting document has been filed either before the A.O or during the appeal which could establish that the same cash which is allegedly received as business proceeds have been deposited. It has been held by Hon'ble Punjab and Haryana High Court in the case of Sudhir Kumar Sharma, HUF V/s CIT 13. Ludhiana 224 Taxman 178 that in case where cash has been deposited in the bank account of the assessee, onus is upon the assessee to explain the nature and source of such deposits. It is important to mention here that SLP filed against this case has been dismissed by the Hon'ble Supreme Court 239 Taxman 264 (SC). After considering the totality of the facts and the position of the law, addition of ₹30,63,900/ is, sustained.

4.6 The Appellant has given the same arguments to explain the cash deposit of 2,00,000/- in the bank account in ICICI Bank. The Appellant has tried to explain this cash deposit both before the A.O and during appeal that this cash deposit has been shown as business receipt and the cash deposit of 2,00,000/- should be considered to be included in the gross receipt of the Appellant. However, as stated in Para 4.3 above, the very basis of gross receipt of the assessee is itself doubtful and therefore, the same cannot be used to explain any cash deposit because there is no nexus between the gross receipt and the cash deposit. No supporting document has been filed either before the A.O or during the appeal which could establish that the same cash which is allegedly received as business proceeds have been deposited. It has been held by Hon'ble Punjab and Haryana High Court in the case of Sudhir Kumar Sharma, HUF V/S CIT 3, Ludhiana 224 Taxman 178 that in case where cash has been deposited



in the bank account of the assessee, onus is upon the assessee to explain the nature and source of such deposits. It is important to mention here that SLP filed against this case has been dismissed by the Hon'ble Supreme Court 239 Taxman 264 (SC). After considering the totality of the facts and the position of the law, addition of 2,00,000/- is, sustained."

07. Assessee is aggrieved with that order and has preferred this appeal.
08. The learned Authorized Representative and the learned Departmental Representative were heard extensively on these issues. The learned Departmental Representative vehemently supported the order of the learned lower authorities, however, the learned Authorized Representative submitted that
- a. Addition of ₹ 75 lacs is unwarranted when the confirmation was provided. He submitted that the business of the Wave Films is continuing and therefore the confirmation as well as the transaction is genuine. He further submitted that merely because Mr. Gurdeep Singh Chadha has passed away, the business of that person has not stopped.
 - b. Additions of corresponding sales and cash deposit in the proprietary concern's account, if both added / disallowed, it results into double addition.
 - c. When the assessee agreed for 40% of disallowance as per direction of the learned Assessing Officer what prompted the learned Assessing Officer to disallow the whole expenditure without any reason.
 - d. Assessee explained before the learned CIT (A) that the confirmation was given by Wave Films in the name of Late Shri Gurdeep Singh Chadha and admittedly, it should have been

through legal heirs. Further, he stated that the transaction is genuine and the learned Assessing Officer failed to look into the merits of the case. He further submitted that the issue of stamp paper as well as death of Gurdeep Singh Chadha could not make the transaction non-genuine. He submitted that advances were received in part and some of them after the death of Mr. Chaddha. Therefore, these transactions are genuine and could have been verified by the LD AO independently.

- e. Learned Assessing Officer has made the addition under section 68 of the Act on cash deposit in the bank account. When the sum is not credited in the books of account of the assessee, the provision of section 68 of the Act do not apply.
- f. Learned Assessing Officer may have examined the transaction with M/s Wave Films independently.
- g. Deposit of ₹30,63,900/- and Rs 2,00,000/- is far less than turnover shown by the assessee and therefore, the addition could not made have been made.

09. We have carefully considered the rival contentions and perused the orders of the lower authorities.

010. We first reject arguments of LD AR that provision of section 68 could not have been applied in case where cash is deposited in the bank accounts. We find that assessee is maintaining books of accounts undoubtedly. Addition is made on account of cash deposited in three bank accounts which could not be explained to the satisfaction of the Id AO. We do not find any infirmity in application section 68 on such sums in view of the decision of Honourable Bombay high court in case of Arunkumar J Muchalla V CIT [399 ITR 256] where in the decision of CIT v. Bhaichand H. Gandhi [1983] 141 ITR 67 (Bom) is considered at para no 7 of the order.



011. Firstly, we find that the learned Assessing Officer has disallowed the expenditure of ₹47,85,384/- out of the total expenditure of ₹51,15,384/-. In the order itself, the learned Assessing Officer earlier agreed with the assessee that only 40% of such expenditure is disallowable. Order sheet has been reproduced by the learned Assessing Officer at page no. 6 of the assessment order. When the assessee agreed for 40% disallowance, the learned Assessing Officer made the volte face and disallowed almost 100% of such expenses. In support of that expenditure, assessee has produced the names of the person to whom the payments have been made and the copy of the bank account from which the payments are made. It is also substantiated by the ledger accounts where narration of such expenditure is provided. Only reason for disallowance is that the names of persons, which mentioned in the bank statements and their identity, could not be verified.
012. Further, with respect to the amount of gross income shown by assessee of ₹52,45,940/-, the learned Assessing Officer has disbelieved gross receipt. The gross receipts have been stated to be higher than the cash deposit of ₹30,63,900/- and ₹ 2 lacs. These two items are also separately added by the learned Assessing Officer. Naturally, the gross receipts i.e. Income as well as the expenditure both have been added into the hands of the assessee. Even otherwise, the learned Assessing Officer should have verified independently whether the cash deposit of ₹30,63,900/- is a sum received by the assessee as professional fees or not. Further, when the amount is deposited in bank account is emanating from books of accounts, further addition of cash deposit amounts to double addition. Ld AO did not carry out this examination.
013. With respect to the advance received of ₹ 75 lacs, the learned Assessing Officer could have asked the assessee to produce details by producing the nature of work carried out by the assessee and continuation of business of Wave Films. IT also needs to be



examined when the assessee has offered this as income, if in this year it is advance. However, LD AO preferred to make Google search. Instead of making Google search, the learned Assessing Officer should have made independent inquiry of the above sum paid by Wave Films as advance to the assessee in cash to correct position of the above transactions. It is more pertinent when the assessee claimed that business of wave films continued. Merely, because some infirmity is noted in stamp paper, it could not have resulted into stating that whole transaction is bogus. The payment of advances even after the death of Gurdeep Singh Chadha by Wave Films clearly shows that business of Wave Films might have continued. For this, the assessee has also submitted the Permanent Account Number of the payee and confirmation. Ld AO could have enquired about the persons who gave confirmation and on what basis. If assessee fails to show that, in those circumstances, addition could have been possibly made. Therefore, on this facts and circumstances, we are not in a position to comment on the genuineness of the above transaction, unless the detailed inquiry is carried out by the learned Assessing Office. The LD AO may direct assessee to produce the relevant information/ persons who paid cash and treatment of this sum in the books of wave films to substantiate the veracity of the above agreement.

014. In view of this, we set aside the issue back to the file of the learned Assessing Officer with a direction to the assessee to substantiate the transaction of ₹ 75 lacs of advance received and also to show that the amount of cash deposit of ₹33,63,900/- as well as ₹2 lac deposited in the bank account in cash are covered by gross receipts of the profession shown by the assessee. The assessee is also directed to show the nature of expenditure incurred with adequate evidences. Thereafter Id AO may decide issues afresh on merits after giving assessee proper opportunity of hearing. In view of this, ground no. 5 to 9 of the appeals are allowed with above direction



015. With respect to ground no. 1 to 4 and ground no. 10 to 11 no arguments are advanced, therefore, same are dismissed.

016. In the result, appeal filed by the assessee is allowed for statistical purposes as per above direction.

Order pronounced in the open court on 23.05.2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 23.05.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai