IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

Before Shri R.K. Panda, Accountant Member

ITA No.130/PN/2011
(Assessment Year 2005-06)

Vijaykumar Shreemal Munot,
C/o. Ashok S. Gandhi, Advocate,
102, Rahul Apartment, Burudgaon Road,
Ahmednagar-414001
PAN No. AQRPM 4486H .. Appellant

Vs.

Income Tax Officer,
Ware-2, Panvel .. Respondent

Assessee by	:	Sri K. Srinivasan
Department by	:	Sri S.K. Singh & Smt. Vinita Menon
Date of Hearing	:	25 -10-2012
Date of Pronouncement	:	25 -10-2012

ORDER

PER R.K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 29-10-2010 of the CIT(A), Thane relating to Assessment Year 2005-06.

2. Facts of the case, in brief, are that on the basis of information received from the transactions reported in AIR furnished u/s.285BA of the Income Tax Act the AO noted that the assessee has deposited cash of Rs.13,33,580/- in Savings Bank Account. In response to the notice issued by the AO the assessee filed his return of income. During the course of assessment proceedings the AO noted from the Bank Account No.3366 maintained with Jan Kalyan Sahakari Bank, Panvel that the assessee has deposited an amount of Rs.13,33,580/- and also withdrawn cash of Rs.10,30,000/- on different dates. On being questioned by the AO, the assessee explained that part of the money deposited is out of the money withdrawn during the year from the bank. However, the AO noted that there are excess cash deposits than the cash available with the assessee on various dates totalling to Rs.6,33,355/.

On being confronted by the AO the assessee explained the availability of cash which is as under :

1.	*Opening cash balance*	*Rs. 1,09,033/-*
2.	*NSC matured*	*Rs. 39,123/-*
3.	*KVP matured*	*Rs. 80,000/-*
4.	*Return of loans and advances given*	*Rs.1,50,000/-*
5.	*Loan received from relatives*	*Rs.2,47,500/-*
6.	*Accounting charges received*	*Rs. 66,000/-*
	Total	*Rs.6,91,656/-*

3. Since the assessee was 62 years old during the relevant period and was not assessed to tax so far the AO did not accept the contention of the assessee fully. Since the assessee was not filing any return of income nor any balance sheet, therefore, the AO rejected the explanation relating to opening cash balance of Rs.1,09,033/-, NSC matured Rs.39,123/- and KVP matured Rs.80,000/-. So far as the return of loans and advances given at Rs.1,50,000/- and loan received from relatives at Rs.2,47,500/- the AO noted from the loan confirmations that the following persons are not having any PAN numbers :

1.	*Shri Balasaheb Gatade*	*Rs. 7,500/-*
2.	*Shri Mahesh Juge*	*Rs. 30,000/-*
3.	*Smt. Yogita Choughule*	*Rs. 40,000/-*
4.	*Smt. Pushpa Munot*	*Rs. 20,000/-*
	Total	*Rs. 97,500/-*

He therefore directed the assessee to produce the above persons on 31-12-2007. The assessee sought time to produce these persons. Since the assessment was getting time barred on 31-12-2007 the AO rejected the time sought by the assessee and made addition of Rs.97,500/-. Thus, out of the cash of Rs.6,33,355/- the AO disallowed an amount of Rs.3,25,656/- which are as under :

1.	*Opening cash balance*	*Rs. 1,09,033/-*
2.	*NSC matured*	*Rs. 39,123/-*
3.	*KVP matured*	*Rs. 80,000/-*
4.	*Return of loan& advances given* *Loan received from relatives*	*Rs. 97,500/-*
	Total	*Rs.3,25,656/-*

4. In appeal the learned CIT(A) was not convinced by the oral arguments given by the assessee. In absence of any evidence that the assessee had any opening cash balance, maturity of NSC and KVP and the loans obtained from the 4 persons the learned CIT(A) dismissed the appeal of the assessee and upheld the order of the AO.

4.1 Aggrieved with such order of the CIT(A) the assessee is in appeal before the Tribunal with the following grounds :

> *"1. The Hon'ble Commissioner of Income Tax Appeals-I erred in confirming the total addition of Rs.3,25,626/- as assessee's income from undisclosed income.*
>
> *2. The Hon'ble Commissioner of Income Tax Appeals-I erred in confirming the addition of repayment of loan received by the assessee amounting to Rs.97,500/-.*
>
> *3. The Hon'ble Commissioner of Income Tax Appeals-I erred in confirming the addition of Rs.39,123/- received on maturity of National Saving Certificate and Rs.80,000/- received on maturity of Kisan Vikas Patra.*
>
> *4. The opening Balance of cash at hand amounting to Rs.1,09,033/- was wrongly rejected without any logical and rational reason.*
>
> *5. The order passed by the Hon'ble Commissioner of Income Tax Appeals-I Thane confirming the addition on account of opening cash amount received on maturity of National Saving Certificate and Kisan Vikas Patra and amount received as loan repayment of the assessee may please be set-aside".*

5. The learned counsel for the assessee also raised an additional ground which is as under :

> *"On the facts and circumstances of the case both AO and CIT(A) failed to give adequate opportunities to the assessee to explain his case violating principles of natural justice and the assessment may be held as bad in law"*

5.1. After hearing both the sides the additional ground raised by the assessee is allowed.

6. The learned counsel for the assessee made an application for admission of additional evidence in the form of conformity letters with PAN numbers in respect of 3 persons namely Sri Mahesh Juge, Smt. Yogita Choughule and Smt. Pushpa Munot. He submitted that due to very little time given by the AO the loan

confirmation letters bearing PAN numbers could not be produced before the lower authorities. Therefore, the same may be admitted.

6.1 After hearing the learned DR and considering the prayer of the assessee for admission of additional evidences, the additional evidences are admitted.

7. The learned counsel for the assessee submitted that due to very little time given by the AO the assessee was not in a position to produce the loan creditors or furnish their PAN numbers. He submitted that since the assessment was getting time barred the AO did not allow any time to the assessee either to produce the loan creditors or furnish their PAN numbers. So far as the other additions are concerned he submitted that given one more opportunity the assessee can explain the maturity of NSC, KVP and the opening cash balance. Referring to the decision of the Chennai Bench of the Tribunal in the case of ACIT Vs. Smt. N. Sasikala reported in 92 TTJ 1196 he submitted that opening balance of cash could not be treated as unexplained in the relevant year. He submitted that in the interest of justice the matter may be restored to the file of the AO with a direction to give one more opportunity to the assessee to explain the source of cash deposits.

8. The learned DR on the other hand while supporting the order of the CIT(A) submitted that he has no objection if the matter is restored to the file of the AO for fresh adjudication. He further submitted that the assessee be directed to cooperate in the assessment proceedings and not to seek adjournment.

9. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the Paper Book filed on behalf of the assessee. I have also considered the decision cited before me. I find from the order of the AO that at the time of hearing on 28-12-2007 the AO asked the assessee to produce the 4 persons on 31-12-2007. Since the assessee asked for some time to produce the above persons the AO did not entertain the request of the

assessee on the ground that the assessment was getting time barred on 31-12-2007. He, therefore, rejected the claim of loan of Rs. 97,500/-. Similarly he also rejected the opening cash balance of Rs.1,09,033/-, NSC matured Rs.39,123/- and KVP matured Rs.80,000/- for want of any evidence. It is the submission of the learned counsel for the assessee that since the assessment was getting time barred the AO hurriedly completed the assessment without giving adequate opportunity of being heard to the assessee. I find some force in the above submission of the learned counsel for the assessee. Considering the totality of the facts of the case and in the interest of justice and keeping in mind the additional evidences filed by the assessee before the Tribunal, I deem it proper to restore the issue to the file of the AO with a direction to give one more opportunity to the assessee to explain the source of availability of cash. The AO shall decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court at the time of hearing itself, i.e. on 25-10-2012

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Pune Dated: the 25th October 2012
satish

Copy of the order forwarded to :

1. Assessee
2. Department
3. CIT(A)-Thane
4. The D.R, SMC Bench, Pune
5. Guard File

By order

// True Copy //

Senior Private Secretary
ITAT, Pune Benches, Pune