आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.492/PUN/2015
निर्धारण वर्ष / Assessment Year : 2008-09

Ashok Motilal Katariya,
S. No. 861, Ashoka House,
Ashoka Marg, Wadala,
Nashik – 422011

PAN : ABDPK1068N

.......अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Central Circle – 1, Nashik

......प्रत्यर्थी / Respondent

Assessee by	: Shri Pramod Shingte
Revenue by	: Smt. Nirupama Kotru

सुनवाई की तारीख / Date of Hearing	: 27-02-2018
घोषणा की तारीख / Date of Pronouncement	: 23-05-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, Pune dated 27-02-2015 for the assessment year 2008-09.

2. The brief facts of the case as emanating from records are : A search and seizure action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted on Ashoka Group on 20-04-2010. The assessee is the Managing Director of Ashoka Group hence, was covered under the search action. In response to notice u/s. 153A the assessee filed return of income on 17-10-2011 declaring total income of Rs.78,91,530/- and agricultural income of Rs.38,780/-. An AIR information was received by the Department in respect of cash deposits to the tune of Rs.70,01,100/- in the Axis Bank Account No. 115010100329972 in the joint names of assessee and Shri Madanlal Ramchandra Chandak. Not satisfied with the explanation furnished by the assessee in respect of cash deposits in the bank account, the Assessing Officer made addition of aforesaid amount in the hands of assessee.

2.1 Further, on the basis of documents seized during search action from the office premises of M/s. Ashoka Buildcon Ltd., the Assessing Officer made addition of Rs.3,00,000/- on account of investment made in land comprising in Gat Nos. 685, 686 and 688 at Mauje Gonde, Sinnar.

Aggrieved by the assessment order dated 08-03-2013 passed u/s. 143(3) r.w.s. 153A of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) rejected the contentions of assessee and confirmed the additions on both the counts. Now, the assessee is in second appeal before the Tribunal.

3. The assessee has assailed the findings of Commissioner of Income Tax (Appeals) by raising following grounds.

> *"Wherever context so require, the following grounds of appeal & prayers are without prejudice to one another and in alternative –*

In view of the facts of the case and in law-

1. *The learned CIT(Appeals) erred in confirming the addition of Rs.70 lakhs, on account of cash deposits in Axis Bank Account No.115010100329272, without properly appreciating the facts of the matter and evidences on record. Therefore, it is prayed to cancel the addition made of Rs.70 lakhs.*

2. *In any event, the learned CIT(A) erred in refusing to allow the setoff of prior cash withdrawal of Rs.40 lakhs for subsequent redeposit of Rs.30 lakhs. Therefore, it is prayed to cancel the addition made for the redeposit of Rs.30 lakhs.*

3. *The learned CIT(Appeals) erred confirming the addition of RS.3 lakhs on account of alleged payment of Rs.3 Lakhs to Mr. Fakira Babji Darade and Mr. Sukhdeo Eknath Bodake on the Consent Letter dated 14.12.2007 and that too after holding that there is no evidence supporting the alleged payment of Rs.3,00,000/- by the assessee. Further, in any event the learned CIT(A) erred in not giving the benefit of telescoping. Hence, it is prayed to cancel the addition of Rs.3,00,000/-.*

4. *Appellant craves leave to add / amend / alter any grounds of appeal and / or prayers before or at the time of hearing."*

4. Shri Pramod Shingte appearing on behalf of the assessee submitted that M/s. Viva Infrastructure Pvt. Ltd. one of the concerns of M/s. Ashoka Group had entered into an agreement with Loya family constituting of 26 co-owners for purchase of land comprising in Survey Nos. 211, 212 and 257 at Talegaon, Taluka Igatpuri. Earlier, Loya family had entered into an agreement qua same land with Shri Devnarayan Ghosh in the year 1995. Shri Ghosh had paid Rs.30 lakhs for the purchase of aforesaid land. Shri Ghosh passed away before the deal could finally materialized. The land owners i.e. the Loya family and M/s. Viva Infrastructure Private Limited mutually decided to settle the claim of Ghosh family by paying Rs.40 lakhs. The amount paid to Ghosh family was part of total consideration of land. This amount of Rs.40 lakhs was handed over to the assessee for safekeeping. A bank account jointly in the name of assessee and Shri Chandak was opened in the Axis Bank. The amount of Rs.40 lakhs was

deposited by way of cash in five equal transactions of Rs.8 lakhs each. The entire cash amount was deposited on 10-08-2007. Thereafter, negotiation was carried out with Ghosh family and the amount of Rs.40 lakhs withdrawn on 13-08-2007 to settle their claim. However, after long negotiations the deal could not materialize and the amount of Rs.30 lakhs from Rs.40 lakhs earlier withdrawn was redeposited in the bank account on 17-11-2007. Subsequently, the assessee was able to convince the legal heirs of Shri Ghosh and Memorandum of Understanding (MOU) was entered into between M/s. Viva Infrastructure Private Limited, the owners of the land and the legal heirs of Shri Ghosh. The assessee issued five cheques aggregating to Rs.30 lakhs in the names of Debani Devnarayan (Rs.1 lakh), Reba Devnarayan (Rs.28 lakhs) and Debshis Devnarayan (Rs.1 lakh), all legal heirs of Shri Ghosh. The ld. AR referred to paras 1 and 5 of the MOU entered into between the three parties to show the amount agreed by all the parties to be paid to the legal heirs of Shri Ghosh. The ld. AR submitted that the assessee was holding the amount in fiduciary capacity. Ultimately, Rs.30 lakhs were paid to Ghosh family by way of cheques. The ld. AR further referred to confirmations from Loya family at pages 79 and 80 of the paper book.

4.1 The ld. AR submitted that the authorities below have erred in not believing the submissions of assessee that Rs.30 lakhs subsequently deposited on 17-11-2007 was part of withdrawals of Rs.40 lakhs on 13-08-2007. The ld. AR pointed that similar addition of Rs.70 lakhs was made in the hands of Shri Chandak. The Commissioner of Income Tax (Appeals) deleted the addition. The matter travelled up to the Tribunal. The Tribunal in appeal filed by the Department in ITA No. 987/PN/2011 decided on 29-10-2012 upheld the findings of Commissioner of Income Tax (Appeals) in deleting the addition.

4.2 In respect of ground No. 3 relating to addition of Rs.3 lakhs on account of payments made for investment in land to Shri Fakira Babji Darade and Shri Sukhdeo Eknath Bodake, the ld. AR submitted that this amount was disclosed by the assessee in application filed by M/s. Ashoka Buildcon Ltd. before the Settlement Commission. The ld. AR further submitted that there was no actual payment of Rs.3 lakhs by the assessee. The assessee has not purchased any property. There is nothing on record to show that the investment has been made by the assessee.

5. On the other hand Smt. Nirupama Kotru representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals) in confirming the additions. The ld. DR submitted that the assessee has not been able to show the source of cash deposits of Rs.40 lakhs in the bank account. The assessee neither furnished any document before the lower authorities nor any document has been filed before the Tribunal to show the source of deposit of Rs.40 lakhs in the bank account. The ld. DR asserted that the Commissioner of Income Tax (Appeals) has given a categoric finding regarding further deposit of Rs.30 lakhs. The assessee has not produced any document to show that Rs.40 lakhs withdrawn from the bank account on 13-08-2007 were entered in the cash book of the company. If the contentions of the assessee are to be believed, no reason whatsoever has been given by the assessee to hold cash Rs.40 lakhs for the period of over 3 months in personal possession. The assessee has failed to explain the reason for delay in deposit of Rs.30 lakhs back in the bank account if the talks between the parties for settling the claim of Ghosh family did not fructify.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also

considered the documents on which the ld. AR of the assessee has placed reliance in support of his contentions. It is an undisputed fact that Rs.40 lakhs were deposited in cash in the bank account jointly owned by the assessee and Shri Chandak. A perusal of documents on record failed to throw any light on source of deposit of Rs.40 lakhs in cash. The ld. AR has also not been able to show the source of deposit of Rs.40 lakhs cash in the bank account jointly owned by the assessee and Shri Chandak. In so far as utilization of funds in the bank is concerned the assessee has been able to show that Rs.30 lakhs has been paid to Ghosh family as per MOU. The cheque details given in para 5 of the MOU reconcile with the bank statement at page 73 of the paper book.

7. A perusal of bank statement shows that the assessee has withdrawn Rs.40 lakhs on 13-08-2007 and thereafter deposited Rs.30 lakhs in cash on 17-11-2007. The contention of the assessee is that the amount has been withdrawn as the discussion between the owners of the land, Ghosh family and M/s. Viva Infrastructure Pvt. Ltd. were in advanced stage of settlement. However, the deal could not mature and the assessee had to redeposit the amount in the bank. We find substance in the explanation furnished by the assessee in so far as withdrawal of Rs.40 lakhs and redeposit of Rs.30 lakhs from the same amount. There is nothing on record to show that the assessee invested Rs.40 lakhs or has incurred expenditure of the said amount elsewhere. Therefore, making addition of Rs.30 lakhs subsequently deposited in the Bank account after withdrawal of Rs.40 lakhs in our considered opinion is not justified.

8. One of the contention of the assessee is that the sum out of Rs.70 lakhs was added in the hands of Shri Chandak, as well. The Tribunal deleted the additions in the hands of Shri Chandak, therefore, the present

addition made in the hands of assessee should also be deleted. Undisputedly, the addition of Rs.70 lakhs in the hands of Shri Chandak was deleted by the Tribunal in ITA No. 987/PN/2011 (supra). We find that the addition of Rs.70 lakhs in the hands of Shri Chandak was made on protective basis. Shri Chandak was the joint holder of Bank account with the assessee. Since, the entire addition has been deleted in the hands of Shri Chandak, the addition in the hands of assessee cannot be deleted for the similar reasons. The case of the assessee is not at par with that of Shri Chandak.

9. Taking into consideration the entire facts of the case, we restrict the addition to Rs.40 lakhs i.e. initial cash deposit made in the bank account. Accordingly, the ground No. 1 raised in the appeal is dismissed and ground No. 2 raised in the appeal is allowed.

10. In ground No. 3 of the appeal the assessee has assailed addition of Rs.3 lakhs on account of alleged payment made to Shri Fakira Babji Darade and Shri Sukhdeo Eknath Bodake for making investment in land comprising in Gat Nos. 685, 686 and 688 at Mauje Gonde, Sinnar. The addition has been made on the basis of consent letter dated 14-12-2007 found during search. As per assessee this transaction of Rs.3 lakhs was never carried out and in any case this amount cannot be added in the hands of assessee as the transaction was in respect of M/s. Ashoka Buildcon Ltd. and not the assessee. The ld. AR of the assessee has pointed that the company M/s. Ashoka Buildcon Ltd. has included this amount of Rs.3 lakhs in settlement application. However, nothing has been brought on record to show that Rs.3 lakhs was part of settlement application made by M/s. Ashoka Buildcon and at the same time the Revenue has also failed to rebut the contentions of the assessee. Thus, in our considered view this

issue needs revisit to the file of Assessing Officer for limited purpose of verification. The assessee is directed to furnish the relevant documents indicating that Rs.3 lakhs was part of application made to the Settlement Commission. If the assessee is able to demonstrate that Rs.3 lakhs was part of application made to Settlement Commission, the Assessing Officer is directed to delete the addition in the hands of assessee. Accordingly, ground No. 3 raised in the appeal by the assessee is allowed for statistical purpose.

11. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Wednesday, the 23rd day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23rd May, 2018
RK

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-12, Pune
4. आयकर आयुक्त / The CIT(Central), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune