IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.273/CTK/2018
Assessment Year : 2015-2016

Sri Ajay More, Flat No.108, Harapriya Apartment, Vivekananda Marg, Bhubaneswar.	Vs.	ITO, Ward -3(1), Aayakar Bhavan, Bhubaneswar.
PAN/GIR No.AQXPM 4072 F		
(Appellant)	..	(**Respondent**)

Assessee by : Shri D.Parida/C. Parida, AR
Revenue by : Shri Subhendu Datta, DR

Date of Hearing : 04/09/ 2018
Date of Pronouncement : 12/09/ 2018

O R D E R

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar dated 8.5.2018 for the assessment year 2015-2016.

2. The sole issue involved in this appeal is that the CIT(A) erred in sustaining the addition of Rs.6,89,000/- being cash deposited in the bank account.

3. The brief facts of the case are that the Assessing Officer observed that the assessee has deposited cash of Rs.11,89,000/-

in S.B. account No. maintained with State Bank of India, Forest Park, Bhubaneswar. In reply to show cause notice, the assessee submitted that the cash deposited in SBI Account No. 30374416512 was out of the previous year's withdrawals from the assessee's bank account and cash loan repayment by the following persons on different dates, who had taken the loans from the assessee:

Sl. No.	Name of the person	Date	Loan amount taken	Loan amount repaid
1.	Raunak More	7.11.2014	1,20,000	
		7.11.2014		1,20,000
2.	Yasodadevi Mara	2.6.2014	1,50,000	
		11.11.2014		1,50,000
3.	Sunli More	12.12.2014	80,000	
		1.2.2015		80,000
4.	Rekha More	1.2.2015	1,50,000	
		2.2.2015		1,50,000

The confirmation of following persons who has repaid loan below Rs.20,000/- was as under:

Sl. No.	Name of the person	Date	Amount (rs.)
1.	Raju Agarwal	4.6.2014	19,700
2.	Sudarshan Behera	18.6.2014	17,500
3.	Kedar Sahoo	7.7.2014	16,000
4.	Srikant Behera	4.6.2014	17,000
5.	Gangadhar Ray	4.8.2014	19,000
6.	Pramod Kr Barik	8.8.2014	19,500
7.	Jyoti Ranjan padhi	4.9.2014	19,000
8.	Prashant Kr Rout	4.9.2014	19,000

9.	Vijay Razak	10.10.2014	18,500
10.	Manoj Samantray	10.10.2014	18,500
11.	Rajendra mali	11.11.2014	18,00
12.	Dilip Barik	1.1.2015	19,800
13.	Amiya Nayak	2.2.2015	19,000
14.	Rashmi Ranjan Patnaik	3.2.2015	19,500
		Total:	2,60,000

4. The assessee filed before the Assessing Officer confirmation of the persons from whom the amount of loan given in earlier year was received back with address and pan Numbers. The Assessing Officer in order to verify the correctness of the confirmations filed issued notice u/s.133(6) of the Act to the following persons and obtained confirmations:

1. Raunak More
2. Yasodadevi More
3. Sunil More
4. Rekha More

5. The Assessing Officer being satisfied after receiving the replies from four persons from whom, the assessee claimed to have received Rs.5 lakhs in cash and deposited the same in the bank account, accepted the same as genuine.

6. With regard to 14 persons from whom, the assessee received loan below Rs.20,000/- aggregating to Rs.2,60,000/-,

the Assessing Officer made addition on the ground that the assessee did not file confirmation with complete addresses. Further, the Assessing Officer also did not accept the explanation of the assessee that balance amount of Rs.4,29,000/- deposited in the bank account where the assessee claimed that they were deposits out of earlier year's withdrawals made from the bank on the ground that it was an afterthought to adjust the undisclosed income from other sources. The assessee produced cash book before the Assessing Officer to explain the source of deposit in the bank account and the same was also rejected as an afterthought. Hence, out of total deposit of Rs.11,89,000/- in the bank account in cash, he accepted Rs.5 lakhs and added Rs.6,89,000/- to the income of the assessee under the head " undisclosed income from other sources".

7. On appeal before the CIT(A), the assessee filed letters of confirmations from 14 persons. The assessee has given loan in earlier years aggregating to Rs.2,60,000/-, which was received back during the year in cash and was the source of deposit in the bank account.

8. The CIT(A) rejected the same observing that this was additional evidence and the assessee has not made any

application under Rule 46A of I.T.Rules, 1962 for admission of the same. He also observed that no reasons have been cited as to why these letters of confirmations were not filed before the Assessing Officer. He observed that the letters of confirmation are dated 1.4.2015 and the assessment was completed vide order dated 28.12.2017. Hence, if the letters of confirmation were available with the assessee on 1.4.2015, then there was no reason for the appellant not to submit these letters of confirmation before the Assessing Officer. Hence, he rejected the same.

9. With regard to balance cash deposit of Rs.4,29,000/- claimed to be out of earlier years was not accepted on the ground that the assessee during the year, the cash deposit of Rs.4,29,000/- is an afterthought and that there was no evidence for entries in the cash book and that the assessee has not given reasons as to why the cash was withdrawn in the first place and that the assessee has not explained his family expenses for household expenses. Thus, he confirmed the order of the Assessing Officer making the addition of Rs.6,89,000/.

10. Before us, ld A.R. reiterated the submissions which were made before the lower authorities. He filed statement together with bank statement of SBI, showing deposit and withdrawals of

cash in the bank account and submitted that it can be seen that the amount deposited in the bank account of Rs.4,29,000/- was out of earlier withdrawals and hence, he submitted that same should be accepted and addition should be deleted. He submitted that this information has been culled out from the cash book of the assessee which were produced before the Assessing Officer and the CIT(A) and was rejected as an afterthought. He submitted that with regard to amount of Rs.2,60,000/- claimed to have received back from 14 persons, it was submitted that during the course of hearing, the Assessing did not ask for confirmation of Rs.2,60,000/- from 14 persons. Therefore, without verifying the same, he cannot make the addition alleging that no confirmations and address of the persons was filed. Hence, he prayed that the addition of Rs.6,89,000/- should be deleted.

11. On the other hand, ld D.R. supported the orders of lower authorities.

12. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer observed that the assessee has deposited Rs.11,89,000/- in S.B. Account No.30374416512 maintained with State Bank of India, Forest Park Branch,

Bhubaneswar. The Assessing Officer was satisfied with regard to the explanation of the assessee for the source of deposit of Rs.5,00,000/- and accepted the same. With regard to balance amount of Rs.6,89,000/-, the Assessing Officer was not satisfied with the explanation of the assessee regarding the source of deposit, which was explained to be Rs.4,29,000/- out of earlier withdrawals from the bank account and Rs.2,60,000/- being loan advanced in earlier years to 14 persons, which was received back in cash.

13. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

14. Being aggrieved by this order of the CIT(A), the assessee is in appeal before us.

15. Ld A.R. of the assessee submitted that the assessee has withdrawn Rs.5,30,000/- in cash during the year out of which Rs.4,29,000/- was deposited back in the bank account. The Assessing Officer as well as the CIT(A) were of the view that if the entire withdrawals were deposited back in the bank account, then the assessee did not have sufficient amount left with him for his household expenses. Hence, the explanation of the assessee was not accepted. Ld A.R. of the assessee submitted before us that

the assessee is aged about 46 years and has been filing his returns of income for the last 10 years. He submitted that the assessee has filed returns showing income for earlier assessment years as under:

2010-2011	:	Rs.1,87,153/-
2011-2012	:	Rs.2,71,309/-
2012-2013	:	Rs.4,37,571/-
2013-2014	:	Rs.5,48,491/-
2014-2015	;	Rs.6,84,148/-

Hence, it was his submission that the assessee had sufficient funds available out of income earned in the earlier previous years for making deposit in the bank account. Therefore, the addition made was not justified and should be deleted.

16. Ld D.R. relied on the orders of lower authorities.

17. We find force in the submissions made by ld A.R. of the assessee. The assessee has shown sufficient income in the earlier years prior to the year under appeal. The explanation of the assessee is quite justified that the assessee had available with him sufficient amount out of savings in the earlier years 2010-2011 to 2014-2015, which was the source of making deposit in cash of Rs.4,29,000/- in the bank account. This has not been controverted by ld D.R. Hence, in our considered view, the

explanation of the assessee that Rs.4,29,000/- deposited in the bank account was explained out of withdrawals of the current year as well as savings of past years is accepted and, therefore, we set aside the orders of lower authorities and delete the addition of Rs.4,29,000/.

18. With regard to balance amount of Rs.2,60,000/- explained to be out of receiving back of loans advanced to 14 persons, which were advanced below Rs.20,000/-, we find that the Assessing Officer has observed that no confirmation or details were filed before him during the course of assessment proceedings.

19. On appeal before the CIT(A), the assessee filed confirmations of the said 14 persons which were not accepted by the CIT(A) on the ground that they are additional evidences filed before him and the assessee could not explain why they were not filed before the Assessing Officer when the assessment order is dated 28.12.2017 and the confirmations filed before him were all dated 1.4.2015. We also find that the assessee explained that he has filed cash book before the Assessing Officer as well as the CIT(A) which was not accepted by stating the same to be afterthought. In our considered view, the Assessing Officer as

well as the CIT(A) after examining the cash book of the assessee, wherein, the source of deposit of money in the bank account was explained has not brought any material on record to show that the assessee could not have the amount of Rs.2,60,000/- with him to deposit the same in the bank account. It is a settled position of law that a plausible explanation of the assessee cannot be rejected by the Assessing Officer without examining the same and bringing any material on record to show that why the said explanation was not acceptable. After considering the entire facts and circumstances of the case, in our considered view, the addition of Rs.2,60,000/- on account of deposit in the bank made by the Assessing Officer and confirmed by the CIT(A) cannot be sustained in law. We, accordingly, set aside the orders of lower authorities and delete the addition of Rs.2,60,000/-. Thus, the total addition of Rs.6,89,000/- is deleted.

20. In the result, appeal filed by the assessee is allowed.

Order pronounced on 12 /09/2018.

Sd/- sd/-

(**Pavan Kumar Gadale)** **(N.S Saini)**
JUDICIALMEMBER **ACCOUNTANT MEMBER**

Cuttack; Dated 12 /09/2018
B.K.Parida, SPS

<u>Copy of the Order forwarded to</u> :

1. The Appellant : Sri Ajay More, Flat No.108, Harapriya Apartment, Vivekananda Marg, Bhubaneswar
2. The Respondent. ITO, Ward -3(1), Aayakar Bhavan, Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

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By order

Sr. Pvt. Secretary,
ITAT, Cuttack