

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.2717/Mum/2023
(Assessment Year:2021-22)**

DCIT CC 2(2) R.No.806, 8 th Floor Old CGO Annex Building, Pratishtha Bhawan M.K. Road Maharashtra-400 020	Vs.	M/s. Planet Hollywood India Private Limited A/203, Universal Business Park Chandivali Farm Road Opp Saki Vihar Road Andheri (East) Maharashtra-400 072
PAN/GIR No.AAICP5512F		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajiv Khandelwal
Revenue by	Shri H.M. Bhatt
Date of Hearing	26/06/2024
Date of Pronouncement	29/07/2024

आदेश / O R D E R

PER B.R. BASKARAN (A.M):

The revenue has filed this appeal challenging the order passed by Ld CIT(A)-48, Mumbai and it relates to the assessment year 2021-22. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of Rs.1.68 crores made by the AO.

2. The facts relating to the case are discussed in brief. The assessee is running a recreation club, which consisted of bar,

restaurant, banquet hall etc. It admits members on payment of membership fees, renewal fess, maintenance charges etc. It also charges members for the services utilized in bar, restaurant, banquet hall etc. The assessee is a part of JMJ group. The above said group was subjected to search operations u/s 132 of the Act on 08-02-2021. Consequent thereto, a survey operation was conducted u/s 133A of the Act in one of the group companies named M/s Bhishma Agro Food Products P Ltd, Gurugram. During the course of survey operations, it was noticed from some document that a sum of Rs.1.68 crores was found deposited by way of cash in the bank accounts of the assessee. In connection there with, a statement was recorded from a person named Shri Mahesh Kumar, who is the H R Manager of M/s Bhishma Agro Food Products P Ltd. In that statement, he mentioned that the cash belong to the assessee herein and it was deposited into the bank account of the assessee. However, he could not give complete details of the same. Subsequently, statements were taken from the employees of the assessee, who also could not give replies to the satisfaction of tax authorities. Before the AO, the assessee submitted that the impugned cash is generated out of cash sales made by the club and the deposit of cash has been duly accounted for in the books of accounts. However, the AO placed reliance on the statements taken from Shri Mahesh Kumar and other employees and accordingly concluded that the assessee has not properly explained the sources of cash of Rs.1.68 crores deposited into the bank account of the assessee. Accordingly, he added the same to the total income of the assessee.

3. The Ld CIT(A) deleted the addition and hence the revenue has filed this appeal.

4. The Ld D.R submitted that the assessee has failed to properly explain the sources of deposits and hence the addition made by the AO was justified. On the contrary, the Ld A.R submitted that the impugned deposit has been made out of cash balance available with the assessee in the books of accounts. Further, the said cash balance was generated out of the cash sales effected by the assessee, which has been offered to tax. Accordingly, the Ld A.R submitted that the impugned cash would stand properly explained and there is no reason for treating the same as unexplained cash. Accordingly he contended the Ld CIT(A) was justified in deleting the addition. The Ld A.R further submitted that the AO had placed reliance on the statement taken from some of the employees of the assessee and also the employee of a group concern, who is not aware of the activities of the assessee. He submitted that the Ld CIT(A) has rightly held that the AO could not have placed reliance on those statements, when the books of accounts of the assessee explains the sources of cash deposit.

5. We have heard rival contentions and perused the record. We notice that the ld CIT(A) has properly analysed the facts of the present case and has concluded as under:-

“6.1 After carefully considering the statements of Shri Mahesh Kumar, Shri Abhishek Sharma and Ms. Divya Sharma, I find that although the A.O. has gainfully utilised the statements of these persons; however, the statements have not been considered in totality. **At the same time, it is observed that ample evidences are brought on record by the appellant to establish that the source of cash was out of**

Membership fee/Renewal fee from the club members, subscription/maintenance charges and cash sales from bar, restaurant and banquet hall during F.Y. 2020-21. Such evidences are even found during the course of survey proceedings which were impounded too by the survey team. There is no comment by the A.O. about the evidentiary value of the impounded material. In this regard, the Ld. A.R., during the appellate proceedings, has contended that the A.O. has overlooked the fact that the cash of Rs.1.68 crore deposited in the bank account is part of the regular turnover. Moreover, the bank book and other books of accounts have not been rejected during the assessment proceedings. All these aspects are further discussed in the following paragraphs.

6.2 During the course of appellate proceedings, the Ld. A.R. has submitted that the appellant deposited cash of Rs.1,68,00,000/- received towards cash sales/membership renewal fee, subscription/maintenance charges in its disclosed bank account, as per its normal business practice. These sales/receipts against which cash was received, was duly reflected in its books of accounts and offered as turnover/income in its income tax return as well as GST returns. The regular books of accounts, cash book, bank book etc. were also produced before the A.O. as well as submitted during the appellate proceedings for verification. No lacuna in such details are found by the A.O. It is also claimed that regular cash sales as well as other sales are undertaken in earlier years too, which have not been doubted by the A.O. The sales summary of past three years, as submitted, is as under -

Sales Summary

Year	Cash Sales	Other Sales	Total Sales
2018-10	1,64,40,703	2,40,61,912	4,05,02,615
2019-20	1,51,53,954	2,18,57,262	3,70,11,216
2020-21 (till 31.01.2021)	2,18,07,129	1,05,26,593	3,23,33,722

In my considered view, when such details are produced before the A.O., it is incumbent on the part of the A.O. to examine these documents and either reject it or accept it with reasons. In the present case, the A.O. has simply ignored these documents in order to arrive at his conclusion. Unless and until some defects or lacuna are found in the regular books of accounts, or other

documents submitted, the same cannot be simply brushed aside. In this regard, the reliance of the Ld. A.R. on the judgment of Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT (1059) 37 .1:1"R. 288 (SC) is in order where it is held that when the assessee maintained books of accounts according to the mercantile system and there was sufficient cash balance in the cash book and the books of account of the assessee, were not challenged by the Assessing Officer, no addition as unexplained cash credits/unexplained income should be made.”

6. Before us, the revenue could not controvert the findings of the Ld CIT(A) that the impugned cash has been deposited into the bank account of the assessee out of the cash balance available in the books of account and further, these cash balance was generated from out of cash sales effected by the assessee to its members. Another important aspect is that the books of accounts have not been rejected by the assessing officer. In that case, there is no reason to reject the explanations so given by the assessee. When the evidences in the form of books of accounts are available, it is necessary for the AO to address the same and prove that the books of accounts are not reliable. Admittedly, the AO did not do the same. Hence, we are of the view that the AO has fell into error in relying upon the statements given by the employees of the assessee and the employee of another concern, who were not aware of the entire business activities of the assessee and the said fact has been clearly expressed by them in their respective statements. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the addition of Rs.1.68 crores. Accordingly we uphold the order passed by Ld CIT(A).

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced on 29/07/2024 by way of proper mentioning in the notice board.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated 29/07/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai