

## **Cash deposited by partner in saving account couldn't be held as unexplained when it was cash sales of firm**

**Summary – The Delhi ITAT in a recent case of Vinod Chadha, (the Assessee) held that where cash deposited in assessee's savings bank account was sales of partnership firm in which assessee was partner and same was duly accounted for by said firm, said amount could not be treated as undisclosed income of assessee**

### **Facts**

- The assessee had deposited certain cash in his saving bank account. In reply to the notice sent for verification of financial transaction, the assessee accepted the cash as belonging to his partnership firm.
- The Assessing Officer held that claim of the assessee could not be verified in absence of any supporting evidence and made addition on account of unexplained deposit in bank account.
- On appeal, the Commissioner (Appeals) deleted addition on ground that the amount deposited in bank was duly accounted for by partnership firm.
- On the revenue's appeal:

### **Held**

- As far as source of the cash deposited in the saving bank account of the assessee is concerned, it is explained as the cash sales of the partnership firm, in which the assessee is one of the partners. The objection of the revenue is, however, that section 19(2) of the Partnership Act, 1932 prohibits opening of an account by a partner in his own name on behalf of the firm. It is also objected by the revenue that opening of the account in the name of partner was not in accordance with the terms of the partnership deed of the firm. According to the section 19(2)(b), in absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to open a bank account on behalf of the firm in his own name. The implied authority of the partner binds the firm against the acts of the firm. This restriction on the implied authority of the partner is subject to the usage or custom of the trade and, therefore, in absence of evidences of usage or custom of the trade, it cannot be said that there was any violation of section 19(2). What is important is that in deposit of trading receipts of the firm in the bank account of the partner, the assessee has not violated any of the provisions of the Act, even though it may be a violation of section 19(2) of the Indian Partnership Act, 1932, and further, there is no dispute that the money belonged to the partnership firm and after deposit, the money was transferred to the partnership firm. In such circumstances, no addition is called for in the case of partner of the firm.
- In view of the above, there was no infirmity in the order of the Commissioner (Appeals).