



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.8767/Mum./2011
(Assessment Year : 2008-09)

Dilkush D. Jain
S-126, Plot no.8
M/s. Anmol Jewellers
Gate no.5, Malwani
Malad (W), Mumbai 400 095
PAN – ABJPC5851B

..... Appellant

v/s

Income Tax Officer
Ward-25(3)(2), Mumbai

..... Respondent

Assessee by : Shri H.D. Save
Revenue by : Shri B.S. Bist

Date of Hearing – 21.04.2016

Date of Order – 29.04.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal of the assessee is directed against order dated 27th October 2011, passed by the learned Commissioner (Appeals)-35, Mumbai, for the assessment year 2008-09.

2. The Assessing Officer, though, while completing the assessment, made a number of additions, for the sake of brevity, we prefer to discuss the fact relating to the additions / disallowances disputed before us by the assessee in the present appeal.

3. Brief facts are, assessee an individual is engaged in the business of manufacturing and re-selling of gold ornament. For the assessment year under consideration, the assessee filed his return of income on 29th September 2008, declaring total income of ₹ 1,66,700. In the course of assessment proceedings, the Assessing Officer while verifying the return of income noticed that the assessee has shown agricultural income of ₹ 55,210, whereas no agricultural land appears in Balance Sheet. The Assessing Officer, therefore, called upon the assessee to furnish details of land, sale bills for expenses, etc. As alleged by the Assessing Officer, in spite of repeated opportunities being given, the assessee did not produce any details. Accordingly, the Assessing Officer treated the agricultural income shown of ₹ 55,210, as unexplained cash credit. Further, the Assessing Officer, on verification of the confirmation furnished by the assessee, found that the assessee had purchased jewellery from Mumbadevi Jewellers by paying in cash which has exceeded the amount of ₹ 20,000 per day. The aggregate of such purchases made by the assessee was quantified at ₹ 9,81,762. He, therefore, called upon the assessee to explain why cash payment of ₹ 9,81,762, should not be disallowed under section 40A(3). Stating that the assessee failed to prove that his case is covered by any of the exceptions provided under income tax rules, the Assessing Officer disallowed the amount of ₹ 9,81,762. Further, he disallowed another sum of ₹ 50,000, paid to Mumbadevi Jewellery in cash allegedly out of the books, by invoking the provisions of section 40A(3) of the Act. Further, on verification of bank accounts, the Assessing Officer having found certain deposits and withdrawal called upon the assessee to explain the same. In response, it was submitted by the assessee, deposits and withdrawal from the bank accounts related to loan transactions with certain persons. The Assessing Officer after verifying

the information furnished by the assessee, found that the entire loan of ₹ 2,38,500, was taken in cash and the assessee did not furnish the details like full name of creditors, their address, PAN and confirmation. Accordingly, the Assessing Officer opining that the loan transaction has not been proved by the assessee, the amount shown has to be treated as unexplained cash credit and added back to the income of the assessee. Further, the Assessing Officer found that the assessee during the year had given cash loan to certain persons aggregating to ₹ 2,67,950. Alleging that the assessee could not explain the source of such cash loan, treated the same as unexplained investment under section 69 and added back to the income of the assessee. Being aggrieved of such additions, assessee preferred appeal before the learned Commissioner (Appeals).

4. As it appears, in the course of hearing of appeal, the assessee submitted certain documentary evidences to justify its claim of agricultural income as well as contesting the other disallowance / additions made by the Assessing Officer under sections 40A(3), 68 and 69 of the Act. The learned Commissioner (Appeals), however, refused to accept / consider the documentary evidences submitted by the assessee and proceeded to dispose off the appeal by confirming the order of the Assessing Officer on the issues disputed by the assessee.

5. Learned Authorised Representative submitted before us that the assessee, though, before the first appellate authority, had produced documentary evidence to justify its claim but learned Commissioner (Appeals) without valid reasons has rejected the same and confirmed the additions made by the Assessing Officer. He, submitted, as the documentary evidences produced by the assessee are crucial for determining the issue in dispute, they should be admitted and the

issues raised by the assessee should be decided after taking cognizance of the documentary evidences submitted.

6. Learned Departmental Representative, however, contesting the claim of the assessee submitted, in spite of sufficient opportunity given, the assessee did not produce any evidence before the Assessing Officer. He submitted, though, before the learned Commissioner (Appeals), assessee produced certain documentary evidences as they were not accompanied by a petition explaining the reason for not furnishing them before the Assessing Officer, such documentary evidence could not have been considered. He, therefore submitted, the learned Commissioner (Appeals) was justified in rejecting the claim of the assessee.

7. We have considered the submissions of the parties and perused the material available on record. As could be seen from the assessment order, the Assessing Officer did not accept assessee's claim of agricultural income for the reason that the assessee did not produce any details to justify its claim. Similarly, the addition made under section 40A(3) in respect of purchases made from Mumbadevi Jewellery, as well as the addition made on account of unexplained cash credit under section 68 and unexplained investment under section 69 were basically for the reason that assessee failed to produce supporting evidence to substantiate its claim. However, it is evident, before the first appellate authority the assessee did produce certain documentary evidences to justify its claim of agricultural income as well as contesting other additions made by the Assessing Officer. However, learned Commissioner (Appeals) refused to accept such documentary evidence, firstly, for the reason that assessee did not produce them before the Assessing Officer and secondly, in terms of

rule 46A, assessee did not file a petition explaining the reason for acceptance of additional evidences. Though, it may be a fact that the assessee produced certain documentary evidences for the first time before the first appellate authority and furnishing of such evidences was not strictly in terms of the procedure laid down under rule 46A, however, in our view, if the documentary evidence produced by the assessee have a crucial bearing on the issues raised by the assessee, the same is required to be considered in the interest of fair play and justice and the assessee should not be deprived of an opportunity to prove his case by tying him down with technicalities of procedures. Thus, as the learned Commissioner (Appeals) has not considered the documentary evidences submitted by the assessee and rejected them at the threshold without examining the bearing / impact, they have on the issues disputed by the assessee, in the interest of fair play and justice, we are inclined to set aside the impugned order of the learned Commissioner (Appeals) and restore the matter back to the file of the Assessing Officer to decide all the issues raised by the assessee in the present appeal after considering the documentary evidences produced on record by the assessee and only after due opportunity of being heard to the assessee.

8. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 29.04.2016

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.04.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai