

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI MANOJ KUMAR AGGARWAL,
AM

ITA No. 2799/Mum/2012
(A Y: 2007-2008)

Shri Parag H. Patwa C-11, 6 th floor, Ishwar Mansion, Nana Chowk, Mumbai – 400 007.	Vs.	ITO – 16 (2)(4) Aaykar Bhavan, M.K. Road, Mumbai – 400 020.
PAN: AAKPP7948Q		
Appellant	..	Respondent
Revenue by	..	Ms. Nikita Aggarwal
Assessee by	..	Ms. Bharti Singh
Date of hearing		26-07-2016
Date of pronouncement		10-08-2016

ORDER

PER MANOJ KUMAR AGGARWAL (AM) :

The instant appeal has been filed by the assessee for A.Y. 2007-08 assailing the order of CIT(A)- 27, Mumbai dated 31.01.2012. The following Grounds of Appeal has been raised by the assessee:-

1. *The learned commissioner of Income – tax (Appeals) – 27, Mumbai (“ld. CIT(A)”) erred in confirming the action of the Income Tax Officer – 16(2)(4), Mumbai (“the AO”) to the extent Rs. 12,39,868/-, of making addition to the income of the Appellant u/s. 68 of the Income – tax Act, 1961 (“the Act”).*
2. *The ld. CIT(A) erred in directing the AO to disallowing the following expenditures:*
 - i. *Depreciation of motor car* Rs. 33,504/-
 - ii. *Motor car insurance* Rs. 8,985/-
 - iii. *Depreciation on refrigerator* Rs. 1,352/-
 - iv. *Depreciation of air conditioner* Rs. 1,073/-
 - v. *Demat charges* Rs. 726/-

2. Facts in brief, are that the assessee is a Resident individual who filed its return of income for A.Y. 2007-08 during December 2007 declaring total income at Rs. 85,174/-. The case was taken up for scrutiny assessment u/s 143(3) which was completed vide

Assessing Officer (in short 'AO') order dated 18/02/2009 reassessing the total income at Rs. 17,15,170/- after making addition of case credit u/s. 68.

3. The assessee is engaged in the business of wax items and share trading and do not maintain any books of accounts. Upon perusal of Annual Information Return (AIR), AO noted that assessee has deposited cash to the extent of Rs. 16,30,000/- in one of his saving bank account and as assessee could not provide the details of source of these cash deposits and accordingly the same were added as cash credit u/s. 68 to the income of the assessee.

4. Aggrieved, assessee preferred appeal before CIT(A) which was disposed off vide CIT(A) order dated 31.01.2012. Assessee tried to correlate cash deposits with his business/loan dealings and opening cash in hand held by him and pleaded that the assessee being in the unorganized sector, do not maintain books of Accounts. In support assessee filed some financial documents and cash flow statements before CIT(A) but CIT(A) concluded the same to be self contradictory and unreliable and allowed only partial relief to the assessee. Besides this, CIT(A) *suo-moto* disallowed certain expenses viz. depreciation on motor car /Air conditioner, demat charges, insurance, etc. claimed by the assessee under the head income from other sources which mainly comprised of interest income.

5. Aggrieved, the assessee is before us. The Learned counsel (AR) for the assessee contended that cash deposit in the saving account represent Business Receipts/ loan transaction and do not constitute income of the assessee. Assessee is not maintaining any books of accounts and addition u/s. 68 cannot be made in the absence of books of accounts and saving passbook do not constitute Books of Accounts. Further, AR sought to substantiate the claim by filing loan confirmation etc. The Learned counsel for the revenue, on the other hand, has contended the ample relief have already been allowed to assessee by CIT(A) and no interference is called for in the circumstances.

6. We have heard both the parties and perused material on record. The only dispute is with regard to nature of cash deposit in the savings bank accounts. The perusal of relevant bank statement shows that credit in the bank comprises both of cash deposits and bank transfer entries which AR tried to substantiate with the help of cash flow statement and loan confirmations etc. These materials were not available before the lower authorities.

7. In view of principles of natural justice and to provide a final opportunity to the assessee to substantiate his claim, we deem it fit to restore the matter back to the file of AO to evaluate additional evidences and to find out the true nature of cash deposit in the

saving bank account of the assessee. Accordingly, the matter is remitted back to AO for reassessment. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10th August, 2016.

Sd/-

**(MAHAVIR SINGH)
JUDICIAL MEMBER**

Sd/-

**(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

Mumbai, Dated: 10/08/2016

PS:- Pooja K.

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,

Assistant Registrar
ITAT, MUMBAI