

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No.3628/Mum/2015
(Assessment Year 2009-10)

Mr. Hitesh K. Thakkar,
B/29, Room No.6,
Deonar Municipal Colony,
Near Sai Baba Mandir,
Govandi, Mumbai 400 043
PAN: AATPT 8616G
Vs.

..... Appellant

The ITO 22(2)-1,
Mumbai

.... Respondent

Appellant by : Shri B.V.Jhaveri
Respondent by : Shri Sumit Kumar

Date of hearing : 15/09/2016
Date of pronouncement : 31/10/2016

ORDER

PER G.S.PANNU,A.M:

The captioned appeal filed by the assessee pertaining to assessment year 2009-10 is directed against an order passed by CIT(A)25 Mumbai dated 31/03/2015, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 01/03/2013.

2. In this appeal assessee has raised the following Grounds of appeal:-

“1. The Learned CIT (A)-25 passed the order on 31st, March 2015 on the basis of written submissions made on 2nd December 2013 without granting an opportunity afterwards to the assessee of a hearing to explain the submissions.

2. The Learned CIT (A)-25 erred in not deciding on the addition Of Rs.1,22,000/- made by the Income Tax Officer 22(2)- 1 and the addition made by the Income Tax Officer be deleted.

3. The Learned CIT (A)-25 erred in confirming addition of opening cash on hand of Rs. 4,83,500/- and the addition be deleted.

4. The Learned CIT(A)-25 in confirming addition of Rs.1,41,300/- of loans by family members and the addition be deleted.

5. The Learned CIT (A)-25 erred in confirming addition of Rs.7,00,000/-and the addition be deleted.”

3. At the time of hearing, the Ld. Representative for the assessee has taken me through the respective orders of the Assessing Officer as well as the CIT(A) and pointed out that certain pertinent errors and omissions have occurred, on the basis of which, his pertinent plea is that the matter may be set-aside to the file of the Assessing Officer to revisit the various issues.

4. In order to appreciate the plea of the appellant, the following discussion is relevant. The assessee before me is an agent of LIC of India and GIC of India earning commission income thereof. For the assessment year 2009-10, he filed the return of income declaring an income of Rs.2,93,670/- and by way of the impugned assessment finalized under section. 143 r.w.s. 148 of the Act dated 1/3/2013, the total income has been assessed at Rs.28,90,092/- by making various additions, namely:-

(a) Cheque deposit in bank treated as unexplained		Rs.1,22,000/-
(b) Unexplained cash deposits comprising of:-		
(i) Opening cash balance	Rs. 4,83,500/-	
(ii) Bank withdrawal	Rs. 9,07,200/-	
(iii) Cash loans from family members	<u>Rs. 1,41,300/-</u>	Rs.15,32,000/-
(c) Disallowance of expenditure		Rs. 90,327/-
(d) Loan from one Mr. Rohit H. Chavan		Rs. 7,00,000/-

5. Before me, it is submitted that the addition of Rs.1,22,000/- as cheque deposit is factually untenable as was explained by the assessee in its communication dated 15/02/2013 addressed to the Assessing Officer, copy of which has also been placed in the Paper Book before me, whereby it is explained that the said sum comprised of Rs.76,000/- on 12/06/2008 and Rs.42,000/- on 03/10/2008, which were deposited out of commission receipts and hand loan from members of the family and the balance of Rs.3,500/- is a totalling mistake by the Assessing Officer. The Ld. Representative for the assessee pointed out that the said position was also explained to the CIT(A) vide communication dated 27/10/2013 and the same has been totally overlooked. With regard to the cash balance as on 01/04/2008, assessee pointed out that the balance sheet for the earlier assessment year of 2008-09 was filed, which duly reflected the closing cash balance of Rs.4,83,500/-. Even with regard to the bank withdrawals of Rs.9,07,200/-, it was pointed out that assessee had submitted the respective pass book, etc. It was pointed out that even with respect to loan from Mr. Rohidas H. Chavan, assessee had filed the confirmation letter alongwith PAN copy of the creditor and that the CIT(A) relied upon the enquiry letter issued to the said creditor without confronting anything to the assessee. On other issues also, the Ld. Representative for the assessee pointed out that there was basic mistake made inasmuch as

Rs.90,327/- was disallowed by the Assessing Officer, whereas the expenses claimed by the assessee was only Rs.61,366/-. For all the above reasons, Ld. Representative for the assessee contended that the order of the CIT(A) be set-aside and the matter be restored back to the file of Assessing Officer for redoing the assessment on the aforesaid issues.

6. The Ld. Departmental Representative has not controverted the factual matrix brought out by the Ld. Representative for the assessee and has merely relied upon the orders of the authorities below.

7. I have carefully considered the rival submissions. For the reasons brought out by the appellant before me, which have been noted by me in sufficient detail in earlier paras, I find ample force in the plea of the assessee for setting-aside the matter back to the file of Assessing Officer for redoing the assessment on the above stated issues. Quite clearly, assessee has been consistently pointing out that the addition of Rs.1,22,000/- made on account of unexplained entry in the bank account is in fact cash deposits made on various dates but the same has been erroneously considered as cheque deposit. Be that as it may, even otherwise addition of Rs.15,32,000/- has been made by the Assessing Officer on account of unexplained deposits in bank accounts and under these circumstances, the efficacy of making addition of Rs.1,22,000/- as unexplained has to be examined as to whether it would amount to double addition or not. Even with respect to the explanation furnished by the assessee regarding the loan from Mr. Rohidas H. Chavan, there is absence of inappropriate determination of the issue and the addition has been sustained by the CIT(A) on a generalized basis. Thus, without going into the efficacy on individual items of addition, in deference to the preliminary plea of the assessee, the matter is remanded back to the file of Assessing Officer for

redoing the assessment on the aforesaid issues after allowing the assessee an appropriate opportunity of being heard, as per law.

8. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 31/10/2016

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 31/10/2016

Vm, Sr. PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai