

आयकर अपीलीय अधिकरण “एक-सदस्य मामला ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री संजय अरोड़ा, लेखा सदस्य के समक्ष
BEFORE SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 7360/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2007-08)

Ritesh Hasmukhlal Jain 93/115, 2 nd Floor, Raut Estate, Koliwada, Fanaswadi, Mumbai-400 002	बनाम/ Vs.	ITO, Ward 14(1)(4), 2 nd Floor, Earnest House, Nariman Point, Mumbai-400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ADDPJ 8427 C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri M. N. Vaishnav
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vishwas Jadhav

सुनवाई की तारीख / Date of Hearing	:	02.12.2015
घोषणा की तारीख / Date of Pronouncement	:	29.01.2016

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-25, Mumbai ('CIT(A)' for short) dated 30.09.2014, dismissing the Assessee's appeal contesting its assessment u/s.143(3) r/w s. 250 of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2008-09 vide order dated 29.10.2013.

2. The assessee, an individual, in the business of sale of imitation jewellery, was found on the basis of AIR information to be maintaining a savings bank account with IDBI Bank, Kalbadevi, Mumbai branch, bearing cash deposits during the year for an aggregate of Rs.11,15,550/-, which account was not disclosed to the Revenue and, accordingly, his return of income for the year selected for being subject to the verification procedure under the Act. This is a second round before the Tribunal; it restoring the assessment – made u/s. 143(3) on 27.12.2010 by adding the impugned sum of Rs.11.16 lacs u/s. 69/69A, back to the file of the Assessing Officer (A.O.) in-as-much as it found that he had completed the assessment without granting proper hearing in the matter. The assessee's case in the set aside proceedings, however, remains the same, i.e., that the cash deposits in the said saving bank account, omitted to be disclosed to the Revenue, represent the sale proceeds of the imitation jewellery, effected by door to door selling of the bangles through different sales persons spread out in other states. This business was separate from his retail business (of imitation jewellery), which was from his shop (at Mumbai), the sale proceeds of which were routed through the current account, duly disclosed, with Syndicate Bank, Kalbadevi, Mumbai branch. As such, only the profit element of the turnover (offered at 5% u/s.44AF of the Act), would warrant being added to the returned income u/s. 28. The same find did not favour with the Revenue, which considered the only explanation as to the nature of the transactions as an after-thought, without any substance. The purchase bills of bangles – which pertain to Bhiwandi, furnished in evidence, did not inspire confidence, being cash memos not bearing the assessee's name as the purchaser. Even the alternate plea of the assessment of peak amount was considered not acceptable, relying on the decisions in the case of *Surendra M. Khandhar v. CIT* [2010] 76 ITD 121 (Bom) and *CIT vs. Vijay Agricultural Industries* [2007] 294 ITR 610 (All). The assessee's case having been dismissed thus, he is in second appeal.

3. The parties were heard at length, and the case record perused.

The first issue arising for determination is whether the cash deposits represent, as claimed, the sale proceeds of bangles or other imitation jewellery, or not. The cash withdrawals from the saving bank account, as found by the Revenue, did not match with or correspond to the purchases, so as to be considered as toward the same, with the purchase bills also not inspiring confidence as genuine bills, being only in cash and without any description of the bangles. The aspect utilization of the cash withdrawals assumes significance as, if the credits in the bank account are in respect of sale of artificial jewellery, representing the sale proceeds thereof, the withdrawals would ordinarily, if not necessarily, be toward funding the purchases. The assessee has, apart from cash purchase memos (PB pgs. 23-53), also *furnished certificates* by three persons, sale bills from whom have been furnished, specifying their PAN as well as the total amount of sales to the assessee for the year, as under (PB pgs. 54-56):

Name	PAN	Sale Amount (in Rs.)
Indira Immitations, Bhiwandi	ACSPJ4027C	1,69,692
Nitu Munna Sing, Bhiwandi	BSKPS9643C	75,764
Rekhaben Rajendra Mundot, Bhiwandi	AINPM9015G	76,908

The Revenue has not impugned the said certificate/s, which indicate the issuers to be assesseees and maintaining books of account, in any manner. Also, it cannot but be noted that the cash deposits in the saving bank account (PB pgs. 6-22), which are in round figures, ranging from Rs.10,000 to Rs.45,000, are from different stations, viz. Bareilly, Varanasi, Nagpur, Jamshedpur, Ranchi, Dhanbad, Kolkata, with some entries also bearing the name of the depositor, viz. Chandra Shekhar. The same, despite being emphasized by the assessee both before the assessing as well as the first appellate authority, has not been taken cognizance or note of by the Revenue, much less subjecting it to verification. How could, then, the assessee's explanation be castigated or dismissed as a mere make-believe or cooked up story? Surely, the assessee could

have, or rather ought to have, furnished more details, viz. the names and addresses of the salesmen; the exact *modus operandi* adopted, etc. Again, the failure to disclose the saving bank account to the Revenue, which has also weighed with it, is definitely not an omission, as sought to be projected by the assessee, but deliberate. The same forms an important segment of his business, so that there is no basis for an omission. That apart, the said account was opened prior to the current year, and was not disclosed to the Revenue for any preceding year as well.

That, however, would not entitle the Revenue to ignore the facts emanating from or borne out of the record. Again, the assessee's story is not without blemish, and cannot be said to be completely true. The purchase (from three persons) total to a sum of Rs.3.22 lacs, far below the 'sale' figure of Rs.11.16 lacs. Other than the three persons afore-mentioned, cash memos (nine in number) from one another, Lalit C. Jain, aggregating to Rs.1,51,675/-, have also been furnished. Considering the same, the total purchase (at Rs.4.74 lacs) still falls woefully short of the 'sale' amount, stated to be at Rs.11.16 lacs. The cash deposit of Rs.11.16 lacs includes that from Mumbai itself, and toward which no explanation has been rendered at any stage, including before the tribunal. Surely, the withdrawal of cash deposited on the same date (at the same amount, as on 24.10.2007 for Rs.10,000/-) stands explained (as out of the withdrawal and, accordingly, would require being excluded). The total deposit cannot, therefore, be considered as a part of the turnover; there are in fact several withdrawals in small sums, ranging from as low as Rs.577/- to Rs.5,000/-, which cannot be towards purchase, transactions *qua* which range from Rs.15,000/- to Rs.20,000/-. The same further includes withdrawals in odd figures, suggesting them to be for personal purposes, with there being several in round figures, ranging from Rs.2,000/- to Rs.10,000/-, also indicative of being toward personal purposes, representing withdrawal of profit (of the said business) or of other sums deposited.

Continuing further, there is no basis to hold that the turnover is in respect of retail business. The assessee's goods are not, and neither purport to be, of any established brand, much less at a national level, which inspires customer confidence or with which they can be said to be familiar. The assessee is in retail trade from his shop, a permanent establishment, carrying goodwill, has yet been able to manage an annual turnover of only Rs.11 plus lacs. The sale, as it appears, is thus only to retail establishments, like the assessee runs and maintains at Mumbai, entailing a continuing business relationship through the channel of the sales persons. It has already been indicated that there is nothing to exhibit a retail business, with the sales persons being engaged therein seeming unfeasible and, in any case, implausible and far-fetched. The cash deposits from outside Mumbai would, thus, in my view, stand to be considered as a part of the sale turnover of the assessee's business of trading in imitation jewellery. The profit on such sales would require being estimated. The assessee has not led any evidence toward the same, merely stating of it being - in view of section 44AF of the Act, adopted at 5% on account of it being retail sales, without bringing on record any material to exhibit the same (i.e., retail sales), and which has been found not acceptable. The matter has already travelled back from the stage of the tribunal once, so that it would not be advisable to do so again in the facts and circumstances of the case. In my view, an estimate of profit at 10% shall serve the ends of justice, representing a balance between the opposing claims.

Then, again, is the inventory of goods of the business, admittedly purchased in cash, with the salesmen, and which would stand to be recouped on their visit to Mumbai. The ld. AR, on being so asked during hearing, conceded to the same in principle, though was unable to provide any satisfactory explanation as to the exclusion of its' value from assessment of income, much less specifying a holding period in its respect. A periodicity or regularity of one month would in my view be reasonable. Accordingly, the purchase cost (reckoned at 90% of the annual turnover) for one month (i.e., divided by 12), would stand to be assessed u/s. 69A toward the

inventory of goods, valued at cost, with the salesmen. The third component would be the cash (bank) balance to be maintained. Toward this, the opening balance in the savings bank account, which would even otherwise stand to be assessed u/s. 69A, represents, in my view, a reasonable estimate of the cash/bank balance required to be maintained for the undisclosed business.

This leaves the cash deposits in the savings bank account during the year at Mumbai, which have not been considered as part of the turnover. No explanation whatsoever toward the same stands furnished, besides being inconsistent with the assessee's explanation of it being sales proceeds deposited from out-station salesmen. The same are, in fact, from Kalbadevi, Mumbai. The same, accordingly, would stand to be upheld for an addition u/s. 69A.

Coming to the assessee's reliance on case law, the matter, as shall be apparent from the foregoing, is purely factual, and has accordingly been determined, issuing, upon an examination of the entirety of the facts along with the relevant evidences, definite findings of fact. The deposits to the extent consistent with the assessee's explanation, have been accepted as part of his turnover, as contended, in the absence of any factual examination by the Revenue, making a reasonable estimate toward profit. The other additions, i.e., toward inventory of goods (with salesmen) and bank balance, arise only in consequence to the acceptance of the assessee's explanation and, further, only upon duly confronting the assessee's counsel therewith. Only the deposit/s for which no explanation stands furnished, being rather inconsistent with the assessee's explanation, is confirmed for addition u/s. 69A in terms of clear mandate of law, toward which the AO has in fact relied on the decisions in *Surendra M. Khandhar* (supra), since confirmed by the Hon'ble jurisdictional High Court (reported at [2010] 321 ITR 254 (Bom)), and *Vijay Agricultural Industries* (supra).

I decide accordingly, and the assessee gets part relief.

4. In the result, the assessee's appeal is partly allowed.
परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on January 29, 2016

Sd/-

(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 29.01.2016

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai