

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Ram Lal Negi, Judicial Member**

ITA No. 338/Mum/2013
(Assessment Year: 2007-08)

M/s. Pravin Pharma 244/245, Govind Udyog Bhavan Bal Rajeshwar Road, Model Town Mulund (W), Mumbai 400080	Vs.	Income Tax Officer-23(3)(1) Bandra, Mumbai
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PAN – AAAFP6446K

Appellant

Respondent

Appellant by: None
Respondent by: Shri Abhishek Sharma

Date of Hearing: 25.01.2017
Date of Pronouncement: 31.01.2017

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-34, Mumbai dated 20.11.2012 for A.Y. 2007-08.

2. This appeal was fixed for hearing on many occasions. Whenever the Bench did not function, this appeal was adjourned through display as per Notice Board. On other days on which the hearings were fixed, either none was present for the assessee or adjournments were sought on the assessee's request. In the last two hearings, since none was present for the assessee, the Bench had directed service of notice on the assessee by RPAD; to which we find there was no response. On 25.01.2017, when the case was called for hearing, none was present for the assessee, but the learned D.R. for Revenue was present and ready to argue the matter. In these circumstances, as laid out above, we are of the view that the assessee is not serious about pursuing this appeal and therefore proceed to dispose off this appeal with the assistance of the learned D.R. and the material on record.

3. The grounds raised by the assessee in this appeal are as under: -

- “1) Your Appellant is a partnership Firm. It had filed its return of Income on 27th Oct, 2007, declaring a Net Taxable Loss of Rs. 2,31,533.
- 2) The case was selected under scrutiny and an order was passed U/S 143(3) of Income-Tax Act, 1961. Your Appellant have preferred an appeal against order U/S 143(3) of Income-Tax Act, 1961.
- 3) The case was heard by Learned Commissioner of Income-Tax (Appeal)-34. The case was partly allowed. Now Your appellant is pressing for a point on which he has approached your owner
- 4) The learned Commissioner of Income Tax -(Appeal) - 34 has not allowed U/S 43(b) Rs.27,903 on the ground that the documentary evidence is not to be provided. Your appellant have requested for providing some time to produce the evidence same is not provided hence the same is added to income.
- 5) Addition u/s. 68 of Income Tax Act. Your Appellant has a cash of Rs.388000/- one of the partner the amount was require for making a payment of custom Duty and retiring the import document. The evidence in relation to such payments and the causes for receipt in cash, before Hon able CIT (Appeal). The Honorable CIT (Appeal) copy of bank statement of partner for which your appellant has requested for some time. The same is not provided and hence an addition was upheld.

Your appellant starts that as per rule 6DD of I T, Rule 1961, an payment in cash and receipt of cash is allowed under unforeseen circumstances.

Your appellant states that the learned C.I.T. had overlooked the request for submission and in order to complete time barring case have added/ disallowed the expenses, payments and receipts.

Your appellant states that it is evident from the records that such addition is Bad in Law and should not have been done. Your appellant request your honor to set aside such addition & provide a justice.”

4. **Grounds 1 to 3**

4.1 These grounds (supra) are general statements and do not call for any adjudication thereon. The same are accordingly dismissed as infructuous.

5. **Ground No. 4 – Disallowance under section 43(b) – ₹27,903/-**

5.1 In this ground the assessee contends that the learned CIT(A) has upheld the disallowance of ₹27,903/- under section 43(b) of the Income

Tax Act, 1961 (in short 'the Act') on the ground that documentary evidence was not provided inspite of the assessee seeking time to produce the same.

5.2.1 We have heard the learned D.R. for Revenue and perused and carefully considered the material on record. In para 2.7 of the impugned order the learned CIT(A) has, inter alia, dismissed the assessee's appeal on this ground; holding as under: -

“2.7 During the course of assessment proceedings, the AR of the appellant informed that the above grounds are not pressed and hence these grounds of appeal are dismissed as not pressed.”

5.2.2 Nowhere in the impugned order is it recorded, as contended by the assessee, that either the learned CIT(A) has confirmed the disallowance under section 43(b) of the Act for want of production of evidence in this regard or that the assessee had sought additional time for filing these details. The contentions raised by the assessee in this ground are factually incorrect, since the assessee's appeal on this issue was dismissed by the learned CIT(A) as the ground raised in this regard was not pressed. Even otherwise, no documentary evidence has been brought on record to contravene the finding of the learned CIT(A) on this issue. Finding no merit in the assessee's ground No. 2, we dismiss the same.

6. Ground No. 5- Addition under section 68 of the Act- ₹3,88,321/-

6.1 In this ground, the assessee contends that the learned CIT(A) had upheld this addition since it was not able to furnish copy of bank statement, etc. The addition of ₹3,88,000/- was made under section 68 of the Act; which was in respect of an amount taken from one of the partners for payment of customs duty. It is contended that the assessee had sought time to file the details/documentary evidence which was not allowed by the learned CIT(A).

6.2.1 We have heard the learned D.R. for Revenue and perused and carefully considered the material on record. The learned CIT(A) has considered and adjudicated this issue as under at paras 2.15 to 2.17 of the impugned order: -

“2.15 The Assessing Officer had analyzed the capital account of partners and found that Rs.3,88,321/- was introduced by cash from

Shri Vianchi A Shah. Since the appellant could not furnish any explanation, the Assessing Officer was not satisfied with the introduction of the above credit and hence added the same u/s 68 of the IT Act, 1961.

2.16 The submissions of the appellant before me is as under:

"During the year under review, the firm have accepted a cash amounting to Rs.3,88,000/- from one of the partner Shri Viranchi A Shah. Shri Viranchi A Shah is basically an Engineer and working with multinational company. Recently he had jointed M/s. Pravin Pharma as partner. He had a bank account with other bank. The firm had to pay the custom duty and had to retire L.C. drawn on M/s. Sichuan Jiuxin Trade Co. Ltd., China. In order to avoid penalty & Demurrage, etc. Shri Viranchi A Shah had withdrawn an amount from his account and deposited the same in the firm's Bank account. After depositing cash in bank of firm, the L.C. and custom payment cleared on the same day."

*2.17 I have carefully considered the above submission. During the course of appellate proceedings also, the appellant failed to furnish any evidence that cash of Rs.3,88,321/- was received from Shri Viranchi A Shah. The AR of the appellant though mentioned that withdrawal from bank account of Shri Viranchi A Shah was given to the partner, but he failed to furnish any evidence to show that there were withdrawals really from the bank account. In view of this, **the addition made by the Assessing Officer is hereby sustained. This ground of appeal is dismissed.**"*

6.2.2 The averment of the assessee that the aforesaid addition under section 68 of the Act was made inspite of the assessee seeking further time to file additional evidence in this regard is not borne out from a perusal of the impugned order (supra). Except for raising this ground, we find that the assessee has failed to bring on record any documentary evidence to contravene the finding of the learned CIT(A) in the impugned order. Finding no merit in this ground No. 3 raised by the assessee, we dismiss the same.

7. In the result, the assessee's appeal for A.Y. 2007-08 is dismissed.

Order pronounced in the open court on 31st January, 2017.

Sd/-
(Ram Lal Negi)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 31st January, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -34, Mumbai*
4. *The CIT - 23, Mumbai*
5. *The DR, "C" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.