



IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.3648/Mum./2015
(Assessment Year : 2011-12)

Income Tax Officer
Ward-21(3)(5), Mumbai

..... Appellant

v/s

Shri Yaseer Abdul Hafiz Reshamwala
3-18, Motibai Street, Agripada
Mumbai 400 011 - AGGPR7784L

..... Respondent

Revenue by : Shri Rajat Mittal
Assessee by : Shri Ajay R. Singh

Date of Hearing - 08.11.2017

Date of Order - 04.12.2017

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the Revenue is directed against order dated 13th March 2015, passed by the learned Commissioner (Appeals)-32, Mumbai, for the assessment year 2011-12. The effective grounds raised by the Revenue relating to the common issue of deletion of addition made of ₹ 42,82,010, read as under:-

"1. That On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in deleting the addition of ₹ 42,86,010 made by the Assessing Officer on account of cash deposited in the bank account without appreciating that

the assessee had not disclosed the bank account and also not explained the source of cash deposit in the Bank account.

2. That on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in directing the Assessing Officer to compute income of the assessee under the head "Business or Profession" by applying the provisions of section 44AD of the Act in spite of the fact that the assessee had not disclosed any business income and instead had offered to tax income under the head Income from other Sources."

2. Brief facts are, the assessee an individual is engaged in the business of cosmetics and general merchandise. For the assessment year under dispute, the assessee filed his return of income on 29th July 2011, declaring total income of ₹ 3,80,500. In the course of assessment proceedings, the Assessing Officer found that as per AIR information available on record, the assessee had deposited cash of ₹ 35,05,700 in a savings bank account with Kotak Mahindra Bank in the relevant previous year which was not disclosed in the return of income. Therefore, the Assessing Officer called upon the assessee to explain the source of cash deposits and furnish copy of the bank statement and supporting evidence. In response, the assessee vide letter dated 12th December 2013, submitted that proceeds from the business of cosmetic and general merchandise amounting to ₹ 42,68,810, were deposited in the bank account and, since, the turnover is less than ₹ 60 lakh applying the provisions of section 44AD, the assessee has computed his income, though, inadvertently he has offered the income under the head income from other sources. The

Assessing Officer, however, was not convinced with the explanation of the assessee. He observed, the assessee has filed his e-return of income in ITR-2, wherein, there is no provision for declaring business income under section 44AD. He also observed, the assessee has not declared in the return of income in the bank account wherein cash was deposited. Accordingly, the Assessing Officer treated the cash deposit of ₹ 42,86,010 in the bank account as unexplained investment and added back to the income of the assessee. Being aggrieved of the addition made, assessee preferred appeal before the first appellate authority.

3. The learned Commissioner (Appeals) after considering the submissions of the assessee deleted the addition by observing as under:—

"4.5. I have carefully considered the facts and circumstances of the case. The appellant has opted for presumptive taxation u/s 44AD of the Act as his turnover is less than Rs.60 lakhs. However, the A.O. has rejected the same in view of the fact that in ITR-2 filed on 29.07.20 1 1 there is no provision for opting for Section 44AD. I am of the view that the Form ITR-2 filed on 29.07.201 1 cannot be rejected on such a technical ground, The A.O. has completed the scrutiny assessment proceedings of the appellant for earlier assessment years. In fact in AY 2010-11, the A.O. has specifically mentioned in the order that appellant has deposited cash towards amount received from sale of cosmetics. Hence, the bonafides of the appellant are proved and there is no reason for rejecting the -return of the appellant merely on the ground that the option for Section 44AD is not present in Form ITR-2. Applying the presumptive rate of tax of 8% on cash deposited bank account of Rs.42,68,010/-, the income of the appellant u/s 44AD amounts to Rs.3,4,504I-. Thus

the returned income is higher at Rs.3,80,500, the same is accepted as total income. Hence, the addition made by the A.O. of Rs.42,68,010/- u/s 69 of the Act is hereby deleted. Therefore, the ground no.1-5 of the appeal are allowed accordingly."

4. We have heard rival contentions and perused the material available on record. As could be seen, the Assessing Officer has treated the cash deposits in the bank account as the unexplained investment of the assessee basically for the reason that the assessee has filed his return of income in ITR-2 wherein there is no option for offering income under section 44AD. Further reason for rejecting assessee's claim is, assessee offered his income under the head income from other sources. However, on a perusal of the facts on record as well as from the finding of the first appellate authority it is evident that the cash deposits in the bank account are from his cosmetic and merchandise business. In fact, the Assessing Officer in the preceding assessment year i.e., 2010-11, has accepted the aforesaid claim of the assessee. Therefore, we do not find any reason to interfere with the order of the learned Commissioner (Appeals). However, we make it clear that this decision of ours is on the basis of facts involved in the impugned assessment year, hence, cannot be considered as a precedence. Further, we may observe, the assessee should not take advantage of his ignorance by repeatedly committing the same mistake. If he intends to avail the benefit of the presumptive

tax under section 44AD he has to comply to the requirement of the relevant statutory provisions. With the aforesaid observations, grounds raised are dismissed.

5. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 04.12.2017

**Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 04.12.2017

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