

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA NO. 5472/MUM/2018 : **A.Y : 2012-13**

Nilofer Reshad Rustomji
42, Shangrilla Woodhouse Road,
Colaba, Mumbai 400 005.
PAN : AAEP0329R (Appellant)

Vs. ITO, Ward 17(2)(4),
Mumbai (Respondent)

Appellant by : **Shri Rajesh B. Gupte**
Respondent by : **Ms. Samatha Mullamudi**

Date of Hearing : **15/10/2019**

Date of Pronouncement : **11/11/2019**

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of CIT(A) dated 15.06.2018 pertaining to assessment year 2012-13.

2. The grounds of appeal read as under :-

"1. On the facts and in the circumstance of the case and in law the Ld. CIT(A)-28 erred in confirming the addition of Rs.9,61,000/- on account of cash expenditure U/s 40A(3).

2. On the facts and in the circumstance of the case and in law the Ld. CIT(A)-28 erred in not accepting the fact that the payment made of Rs.9,61,000/- was not towards any expenditure whereby the provision of section 40A(3) are attracted.

3. *On the facts and in the circumstance of the case and in law the Ld. CIT(A)-28 erred in treating a sum of Rs.3,31,377/- as excessively credited in cash book thereby treating it as unexplained cash credit u/s 68 of the I.T. Act 1961.*

4. *On the facts and in the circumstance of the case and in law the Ld. CIT(A)-28 erred in confirming the addition of Rs.2,02,504/- towards property tax paid by not accepting the fact that the assessee was under obligation to pay property tax as per the terms of lease.*

5. *On the facts and in the circumstances of the case and in law the Ld CIT(A)-28 erred in making adhoc addition of 10% towards business promotion expense on a sum of Rs.2,56,726/-."*

3. At the outset, the learned counsel for the assessee submitted that he is not pressing ground no. 5 relating to *ad-hoc* addition towards business promotion expenses. Hence, the said ground is dismissed as not pressed.

4. Apropos the issue of disallowance under Section 40A of the Act. On this issue the Assessing Officer noted that assessee had made purchases of manufactured furniture from one of the parties, M/s. Restoration Workshop. The Assessing Officer referred to the ledger account of the said party and proceeded to disallow a sum of Rs.9,61,000/- under Section 40A(3) of the Act on the ground that the same were cash payments not covered under any of the exceptions. Before the learned CIT(A), assessee submitted that the transactions with the said party are business transactions of composite nature. The said party is a proprietorship concern owned by assessee's husband. The said operation required cash to meet the expenditure. The learned CIT(A) did not accept the *bona fide* reason and he confirmed the order of the Assessing Officer. Against the said order, assessee is in appeal before us.

5. Upon careful consideration, we find that assessee had made the impugned purchases from her husband. The plea of the assessee is that there was urgent cash requirement, and under these circumstances, due to *bona fide* reason, assessee had to make cash payments which were not for purchases. Therefore, the assessee contended that the amount disallowed under Section 40A(3) of the Act in this regard is uncalled for. Furthermore, it has been contended that the impugned amounts are composite business transactions and they are, in fact, amount lent in the course of business, hence, there is no question of invoking the provisions of Section 40A(3) of the Act.

6. Upon careful consideration, we find that the Assessing Officer has made the disallowance under Section 40A(3) of the Act without even bothering to examine the cash book and finding the nature of transactions. He has referred to the ledger account and made the disallowance though the cash book was before him. In this regard, assessee's contention that these are composite transactions and all of them are not purchase transactions, that they are amounts given for meeting urgent need have not been examined by the authorities below. In this view of the matter, we are of the opinion that the disallowance has been made without proper examination on conjectures and hence, they are not liable to be sustained. Accordingly, we set-side the order of the authorities below and delete the disallowance.

7. Apropos ground no. 3 – excessive credit in cash book. On this issue, the Assessing Officer on examination of the cash book noted that as on 26.03.2012, there was a shortage of cash of Rs.3,31,377/-. Finding the said shortage to be unexplained, the Assessing Officer added the same under Section 68 of the Act. On this issue, before the learned CIT(A), assessee

contended that the Assessing Officer's conclusion is not based on facts, that assessee had necessary cash with her and the entry was passed at the year end. A copy of such cash summary was submitted. It was also submitted that no addition under Section 68 of the Act can be done as all credit transactions in the books were duly explained. However, the learned CIT(A) was not convinced. He held that the debit balance means cash has been spent from unrecorded sources. He held that negative cash balance is not allowable and proceeded to confirm the addition under Section 68 of the Act. Against this order, assessee is in appeal before us.

8. Upon careful consideration, we find that the Assessing Officer has not identified any credit entry whatsoever in the books of account of the assessee which has not been explained under the provisions of Section 68 of the Act. Without identification of any entry whatsoever, no addition under Section 68 of the Act is permissible. Assessee's explanation that assessee always had cash with her and these entries were made in a summary manner at the year end has not at all been examined by the authorities below. Since the disallowance has been made by the authorities below under Section 68 of the Act without bringing out how and for which entry the identity, creditworthiness and genuineness has not been explained, the additions are liable to be deleted. We direct accordingly.

9. Apropos ground no. 4 – addition of Rs.2,02,504/- towards property tax. On this issue, the Assessing Officer upon examination of the record was of the opinion that the property tax paid by the assessee under agreement on the rented premises is a prior period expenditure. The Assessing Officer rejected the assessee's reliance upon clause (8) of the Leave & Licence Agreement,

which provided that assessee had to pay the Municipal Tax on behalf of the Licensor. Hence, the Assessing Officer disallowed the payment. The learned CIT(A) confirmed the action of the Assessing Officer. Against this order, assessee is in appeal before us.

10. Having heard both the counsels and perused the record, we find that it is not disputed that the said payment has been made by the assessee, it is not disputed that the said payment is not bogus, it is also not disputed that it is paid with respect to the rented premises for which the Leave & Licence Agreement provided that assessee shall pay the Municipal Tax on behalf of the Licensor. The authorities below have disallowed it on the ground that it relates to an earlier period. We find that the reasoning of disallowance is totally unsustainable. Assessee instead of choosing to fight with the landlord/licensor about the payment of Municipal Tax, which the assessee was called upon to pay by the Municipal authorities, cannot be again punished by disallowing the payment holding the same to be prior period expenditure. In our considered opinion, the said payment was very much genuine. Hence, we delete the said disallowance in this regard.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 11th November, 2019.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 11th November, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai