



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.2490/Mum./2019
(Assessment Year : 2014-15)

Pranay Ridhyanand Halder
19 Number Building, Ground Floor
Room no.11, Panchayat Wadi
Bhuleshwar, Mumbai 400 002
PAN – ACXPH9393N

..... Appellant

v/s

Income Tax Officer
Word-18(2)(5), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Sanjay J. Sethi

Date of Hearing – 24.11.2020

Date of Order – 08.12.2020

ORDER

Captioned appeal has been filed by the assessee challenging the order dated 31st January 2019, passed by the learned Commissioner of Income Tax (Appeals)-29, Mumbai, for the assessment year 2014-15.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, I proceed to dispose off the appeal ex-parte qua the assessee after

hearing the learned Departmental Representative and on the basis of material available on record.

3. The dispute in the present appeal is confined to the addition of an amount of ₹ 9,08,713, as unexplained cash credit under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

4. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 4th February 2016, declaring total income of ₹ 2,28,200. During the assessment proceedings, the Assessing Officer found from the material on record that the assessee has deposited cash into his savings bank account which is more than the turnover disclosed. Therefore, he called upon the assessee to submit the bank pass book and also explain the source of cash deposit. In reply, it was submitted by the assessee that actually he had a turnover of ₹ 27,04,185, which was inadvertently mentioned as ₹ 7,04,185 in the return of income. Further, it was submitted that as against the gross receipts of ₹ 27,04,185, the assessee had made cash deposit of ₹ 26,74,000. Explaining further, it was submitted that the assessee works as a goldsmith on job work basis. For this purpose, he has to deposit and withdraw cash in the bank account for buying gold and incurring other expenses. It was further submitted that due to loss accruing in the

business, he has closed down the business and gone back to his native place in West Bengal for farming work. The Assessing Officer, however, was not convinced with the submissions of the assessee. Working out the peak of deposits made in the bank account, he treated an amount of ₹ 9,08,713, as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. Learned Commissioner (Appeals) also sustained the addition while deciding assessee's appeal.

5. I have considered the submissions of learned Departmental Representative and perused the material on record. As I find, the primary reason for selection of assessee's case under scrutiny is because cash deposits in the bank account were found to be more than the gross receipts disclosed in the return of income. However, in the course of assessment proceedings, the assessee had explained that the gross receipt has been inadvertently mentioned as ₹ 7,04,185, instead of ₹ 27,04,185. To justify the aforesaid claim, the assessee had also submitted that the business income shown by the assessee is computed as per the provisions of section 44AD of the Act by estimating @ 8% of gross receipts. From the facts on record, I find the aforesaid submissions of the assessee having some truth. The Assessing Officer himself has admitted that the assessee has shown income from business and profession at ₹ 2,51,211. It is highly

improbable for the assessee to offer such business income if his gross receipt was only ₹ 7,04,185. Rather, from the business income shown by the assessee, the contention that actually he has computed the profit in terms of section 44AD of the Act on the gross receipts of ₹ 27,04,185, appears to be believable. Further, the fact that the assessee has closed down his business and gone back to his native place has not been found to be false. Considering the fact that the assessee was doing job work, his contention that the withdrawals and deposits in the bank account were for the purpose of his business can be accepted. More so, when the turnover of the assessee is to the tune of ₹ 27 lakh.

6. Further, there is one more aspect to the issue. On a reading of section 68 of the Act it becomes clear that the provision comes into play if the assessee fails to explain any amount is found credited to the books maintained by him. It is a fact on record that the assessee has not maintained any books of account. The issue which arises for consideration is, whether provisions of section 68 of the Act can, at all, be applied by relying upon the entries made in the bank pass book. The Hon'ble Jurisdictional High Court in CIT Vs. Bhaichand N Gandhi (141 ITR 67) has held that the bank pass book cannot be considered as books of account maintained by the assessee.

7. Thus, on overall consideration, I hold that the addition made under section 68 of the Act is unsustainable. Accordingly, I delete the addition. Grounds raised by the assessee are allowed.

8. In the result, appeal is allowed.

Order pronounced in the open court on 08.12.2020

Sd
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 08.12.2020

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

Assistant Registrar
ITAT, Mumbai