

THE INCOME TAX APPELLATE TRIBUNAL  
"C" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 3059/Mum/2015 (Assessment Year 2009-10)

Mr. Prabhat M. Chamriya Baba Ramdev Society Building No. 7, Room No. 404, Pratiksha Nagar Sion, Mumbai-400 022.  PAN : AFAPC2233C (Appellant)	Vs.	ITO-22(3)(3) Mumbai  (Respondent)
--	-----	--

Assessee by	Shri Nilesh Joshi
Department by	Shri Vodral Raj Singh
Date of Hearing	20.10.2020
Date of Pronouncement	07.12.2020

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 23.9.2014 and pertains to assessment year 2009-10.

2. The grounds of appeal read as under :-

1. Learned CIT(A) failed in confirming action of Assessing Officer taxing deposit of Rs. 27,10,812/- as unexplained cash credit u/s. 68 of the I.T. Act, 1961.
2. Learned CIT(A) failed to appreciate that source of deposit in bank account were related to business transaction.
3. Learned CIT(A) failed to appreciate that deposit in bank account were from business receipts, out of opening cash balance and out of cash withdrawal from bank account and same was shown in cash statement.

3. This appeal was earlier disposed of by this Tribunal vide order dated 5.5.2017 in ex-parte order. Thereafter in a miscellaneous application order dated 24.9.2019 the same was recalled. Pursuant thereto this appeal has been heard by us.

4. Brief facts of the case are that the assessee had not filed regular return of income. Assessment in this case was reopened. In response to notice under section 148 of the Income Tax Act (hereinafter 'of the Act'), the assessee filed return of income disclosing turnover of Rs. 17,36,556/- and profit of Rs. 1,33,444/-. The assessing officer observed that and authorised representative of the assessee attended to the notice. However the value insisted the assessee to be personally present. He noted that in absence thereof and due to non-compliance of notices he was constrained to make best judgement assessment. He noted that the assessee claimed that the deposits in bank were out of the sale proceeds of business and the sale proceeds of the business were much more than the amount deposited in the bank. However assessing officer noted that assessee has not supplied any supporting in this regard. He also took adverse inference that assessee was not present subsequent to the notices. Hence he was of the opinion that best judgement assessment should be done. He did not make any comment whatsoever on the return of income filed in the revenue and profit shown. He also did not apply any estimated rate of profit. He proceeded to assess the deposits in bank amounting to Rs.27,10,812/- as unexplained trade under section 68 of the Act. In the assessment order assessing officer has noted following credits appearing in assessee's bank accounts :-

S.No.	Name of the bank	Account No.	Credits (cash)	Credits (others)	Total credits
1	M/s. Cosmos Bank, Vashi	CA No. 029100104831	Nil	6,00,000	6,00,000
2	M/s. ICICI Bank, Khar(W) Mumbai	SB A/c No. 003801515998	16,24,237	10,86,575	27,10,812
				Total	33,10,812

5. Upon assessee's appeal learned CIT(A) found that since there were no books of accounts maintained, addition of section 68 of the Act is not sustainable. However he treated the return of income filed and the submission of the assessee that assessee has filed return of income under section 44AF of the Act and that deposits in bank were much less than the sale proceeds as an

afterthought. However he held that the deposits in bank account was to be added under section 69A of the Act as unexplained investment. He directed that a sum of ₹ 24, 38, 819 should be added under section 69A of the Act. From where he got this figure was not mentioned in the order.

6. Against the above order assessee is in appeal before us. We have heard both the Counsel and perused the records. Learned counsel of the assessee submitted that assessee has duly submitted the return of income pursuant to the notice received from the assessing officer. He submitted that assessee has duly filed return showing sale proceeds and income. That the assessee has supplied details including the bank statement that assessing officer has not commented anything upon the same and has treated the income shown in the return is nil. He further submitted that deposits in bank account cannot be treated as unexplained deposits. He submitted that assessee has already shown sufficient sale proceeds and the deposit is out of the sale proceeds. He further submitted that learned CIT(A) without any notice to the assessee has deleted the addition of section 68 of the Act but has enhanced the same under section 69A of the Act. He submitted that this is quite contrary to the provisions of section 251(2) of the Act, which mandates that if the learned CIT(A) proposes any enhancement due notice to the assessee has to be given. He further submitted that the bank account also had opening balances and it was running account. That there were debit entries also, which were totally disregarded.

7. Per contra learned departmental representative submitted that undisclosed deposits were found in the assessee's bank account and hence they have been rightly assessed as undisclosed income of the assessee.

8. Upon careful consideration we find that pursuant to the notice received under section 148 of the Act assessee has duly filed the return of income. The assessing officer has not made any assessment whatsoever based upon the return of income filed. The assessee has shown sale proceeds of Rs.

17,36,556/- and income of Rs. 1,33,444/-. There is no comment whatsoever of the authorities below on this issue. No reason has been attributed as to why the deposits in bank account cannot be treated as part of the sale proceeds. There is no analysis whatsoever of the debits and credits in the bank account. In this regard is the claim of learned counsel of the assessee that assessee has sufficient opening balance in the bank account and the addition of deposits in bank account amounts to double addition. We further note that addition under section 68 of the Act of the deposits in bank account simplicitor when no books of account are maintained is not sustainable on the touchstone of honourable Bombay High Court decision in the case of CIT Vs. Bhaichand H. Gandhi (141 ITR 67). Furthermore the assessing officer has added a sum of Rs. 27,10,812 which represents the deposits in the ICICI Bank account. The assessing officer has not added the deposits in Cosmos Bank. This clearly implies that assessing officer has accepted that the same represents assessee's business turnover. In such circumstances how the deposits in the other bank account can be treated as undisclosed/unexplained credit is not mentioned in the assessment order. This makes it clear that the Assessing Officer's partly accepting the deposits in bank as out of the turnover of the assessee in one bank account and taking the deposits in other bank account as explained credit without any reason is not sustainable.

9. Learned CIT(A) has deleted the addition by the assessing officer the section 68 of the Act. But he is of the opinion that these are unexplained investment. Without any examination of the opening balance and the return of income filed by the assessee in our considered opinion and CIT(A) has also erred in deleting the addition of section 68 of the Act but enhancing the resultant assessment by retaining the addition made by the assessing officer under section 69A of the Act and that also without any notice to the assessee in clear contravention of provisions of section 251(2) of the Act.

10. In the background of aforesaid discussion and precedent in our considered opinion the assessee having filed the return of income pursuant to

the notice issued to the assessee has discharged the onus. The assessment made by the assessing officer by not commenting anything of the return of income filed but adding the random figure out of the bank deposit under section 68 of the Act is not sustainable. It is settled law that when assessing officer is rejecting the books of account and return of income filed by the assessee the best judgement assessment has to be based upon some reasonable criteria. The same has to be on the basis of rates applicable for earlier income shown by the assessee in the past or that operating in the concerned business. By not adopting any fair rate or estimate of income and adding the bank deposits partly only as undisclosed income or investment is not at all sustainable. The learned CIT(A) has further erred in making the addition under section 69A of the Act without giving the assessee any opportunity being heard. Moreover learned CIT(A) has also quoted a random figure of Rs. 24,38,819/- and held that the same should be treated as undisclosed investment. From the figures of deposits noted by the assessing officer hereinabove it is not discernible as to how this figure has arisen. This shows that authorities below have not applied their mind and considered random figures for addition. Moreover learned CIT(A) has erred in considering the entire submissions of the assessee as an afterthought and summarily rejecting the same.

11. Accordingly in the background of aforesaid discussion and precedent we set aside the orders of authorities below and delete the addition.

12. In the result this appeal by the assessee stands allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 07.12.2020.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 07/12/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai