

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA no.2597Mum./2013
(Assessment Year : 2008-09)

Abbas Abdul Patel,
MQ Quarters R.No.1, Unit No.9,
Aarey Milk, Mumbai 400 062
PAN AKNPP0930F

..... Appellant

v/s

ITO No. 24(3)(1)
Aayakar Bhavan,
Mumbai 400 020

..... Respondent

Assessee by : Shri. Vishwas Mehandale
Revenue by : Shri. Rajesh Kumar Yadav

Date of Hearing -27.02.2017

Date of Order - 28.02.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of Ld. CIT-A dated 28.01.2013 and pertains to assessment year 2008-09.

2. The grounds of appeal read as under:

i) *On the facts and circumstances of the case and in law.*

Hon'ble CIT-A-34, has erred in confirming the addition of

Rs.19,46,000/- as unexplained cash credit overlooking the fact that, the source of the funds was properly explained during the Remand Proceedings and also before the Hon. CIT-A.

ii) Appellant craves leave to add, amend. Modify, alter and/or withdraw the grounds of appeal at the time of hearing.

3. Brief facts of the case are as under:

There was an AIR information received that the appellant had deposited Rs.19.46 lacs in his SB. Account maintained with Development Credit Bank, Goregaon Branch. Since there was no response for the notices issued u/s.142(1), the Assessing Officer had issued notice u/s.133(6) to the Manager, Development Credit Bank and obtained the statement of account for the period 1.4.2007 to 31.3.2008. In the absence of response from the appellant, the Assessing Officer had analysed the P & L A/c. and balance sheet filed along with the return of income. Based on the material available on record, the Assessing Officer construed that the cash deposit amounting to Rs.19.46 lacs does not form part of sale of milk by the appellant hence concluded that the cash credit remains unestablished and hence treated the same as unexplained cash credit u/s.68.

4. Upon assessee appeal Ld. CIT-A noted that assessee has submitted additional evidences. The same was sent by the Ld. CIT-A to the assessing officer for remand report. Ld. CIT-A noted that assessee had not appeared

before the assessing officer in the remand proceedings also. Ld. CIT-A confirmed the AO's action holding as under:

i) As brought out by the Assessing Officer in the remand report, the purchases as per the P & L A/c. and as per the purchase register did not tally. Similarly, the sundry debtors appearing in the balance sheet and as per the monthly summary ledger did not tally. The appellant was directed to give details of milk given by each buffalo per day and the Assessing Officer found that the details filed did not match with the cash book details towards the sales. The appellant was trying to explain part of the sources for the credit out of agricultural income earned. It was the claim of the appellant that Rs.1,17,100/-was received as agricultural income in support of which Bill No.213 dated 20.03.2008 was furnished. However, the agricultural income shown in the return of income was Rs.1,13,5101. The Assessing Officer had examined the extract of the cash book and found that the agricultural income by way of cash was received in the month of March2008 which got deposited only in April & May, 2008- The Assessing Officer had brought out in the remand report the various inconsistencies and finally concluded that the alleged agricultural receipts were bogus and they were fabricated.

ii) The Assessing Officer had examined the credit appearing in the capital account. The appellant was not in a position to give a detailed explanation towards the sources for the credit. As brought out in the remand report inspite of giving sufficient opportunities, the

Authorized Representatives was not bothered to explain the queries raised during the remand proceedings. The failure of the appellant to clarify these queries had led to a conclusion that the books of accounts are not reliable and needs to be rejected. In the absence of compliance, the Assessing Officer had no option but to conclude the report based on the materials available on record. I find that the Assessing Officer had given a reasonable opportunity of being heard to the appellant which was not utilized even during the remand proceedings. The Authorized Representative of the appellant in the rejoinder had once again filed the same evidences which were already considered by the Assessing Officer in the remand proceedings. In the absence of any correlation between the sale of milk and the actual credit appearing in the bank account, the explanation of the appellant cannot be accepted. In view of this, the addition made by the Assessing Officer is hereby sustained and these grounds of appeal are dismissed.

5. Against the above order assessee's in appeal before us. We have heard the both the counsel and perused the records.

6. Ld. Counsel of the assessee submitted that three different counsel have represented the assessee so far before different authorities. He submitted that assessee's case has not been properly canvassed. Ld. Counsel for the assessee sought to file additional evidences in support of various claims by the assessee purported to be the reconciliation of sales proceeds to amount deposited in bank. Ld. Counsel prayed that this

additional evidences may be admitted an assessee may be given a chance to properly canvass the case.

7. Upon careful consideration we find that in the assessment proceeding order in this case as well as remand proceedings assessee has remained unrepresented. Now the assessee's counsel for submitted additional evidences and is praying that an opportunity may be granted to the assessee to properly canvass the case. upon careful consideration we find that interest of justice will be served if the assessee is granted an opportunity to properly canvass the case. Accordingly, we remit the issue to the file of the assessing officer. The assessing officer shall consider the issue afresh after giving the assessee proper opportunity of being heard. The assessee is also directed to appear before the assessing officer suo moto within two months of the receipt of these orders to canvass the case.

In the result this appeal by the assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 28.02.2017

Sd/-

**RAVISH SOOD
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 28.02.2017

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.*

Nishant Verma
Sr. Private Secretary

By Order

(Dy./Asstt.Registrar)
ITAT, Mumbai