

IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 6895/Mum/2019  
(Assessment Year 2008-09)

Umesh Shetty F.No.1301, Shree Sumukh Heights, Anand Nagar, Oshiwara, Jogishwari(W), Mumbai-400 102  PAN : ALTPS6390M (Appellant)	Vs.	ITO-25(1)(5) Room No.229, 2 <sup>nd</sup> Floor Kautilya Bhavan, BKC, Bandra(E) Mumbai-400 051  (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	12.10.2021
Date of Pronouncement	09 .12.2021

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-37 dated 16.08.2019 and pertains to assessment year 2008-09.

2. Grounds of appeal read as under:-

1. Learned Commissioner of Income Tax (Appeals) erred in partly confirming the order of Learned Assessing Officer sustaining additions u/s 68 of the Act of Rs. 3,16,715/- on the plea that the same is unexplained cash credit out of original additions of Rs. 34,60,500/-made by Learned Assessing Officer.
2. Appellant submits that in view of the facts and circumstances of the case as well as in law, the said additions of Rs. 3,16,715/- by Learned Assessing Officer confirmed by Learned CIT (Appeals) is bad in law and deserves to be deleted.

3. Brief facts of the case are that the appellant was engaged in the catering business under the proprietorship of M/s. Sai Durga Caterers and there was information available with the department that Appellant had deposited cash in the Bharat Co-operative Bank of Rs. 16,85,500/- and with Vijaya Bank of Rs. 17,75,000/-. The assessment of Appellant was completed under best judgment u/s 144 of the Act since no details were filed by the appellant even after several opportunities being granted by the ITO. In the said assessment, a sum of Rs. 34,60,500/- (Rs. 16,85,500 + 17,75,000/-) being cash deposited in the banks was added to the total income of the appellant on the plea that he does not have any valid and sufficient evidence to show the source of cash deposits.

4. The assessee made submissions before the Id.CIT(A) and he obtained remand report from the AO also, Ld.CIT(A) granted substantial relief by holding as under:-

“I have considered the AO’s order, the Remand Report and the submissions made by the appellant’s AR. It is clear that Appellant was engaged in the Business of Catering from the premises of ACC Ltd and had revenues both in cash & cheque and that appellant had made purchases required for the purpose of said Catering Business which is substantiated by the confirmations from the Vendors as filled by the Appellant from time to time. Total additions made by AO in his Assessment Order is Rs. 34,60,500/- of which Appellant had pointed out an error in the Assessment Order u/s 144 of the Act in mentioning cash deposits in Vijaya Bank at Rs. 17,75,000/- as against correct figure of Rs. 11,90,250/- which is also accepted by AO in his Remand Report and thus additions of Rs. 5,84,750/-, on account of excess cash deposit wrongly assessed, is deleted.

Appellant has explained source of Rs. 28,75,750/- by way of submitting a detailed month-wise, date-wise cash summary and annual cash book in the form of Receipts and Payment account. The tabular representation of detailed analysis of AO's enquiries with vendors of Appellant made during the course of Remand Proceedings, submitted by the Appellant during the course of Appellate Proceedings, it is clear that out of total purchases of 32.76 lacs, Rs. 22.52 lacs are confirmed by the vendors of the Appellant. The balance 10.24 lacs remain unconfirmed.

I find merit in Appellant's submission that the amounts remaining unconfirmed is due to the fact that there is a huge lapse of time between the date of transaction and proceedings of Income Tax. Not all vendors will be functioning from the same premises over such a long span of time. It is also possible that parties are engaged in retail cash sales and since the

amount of transactions entered into by appellant is very small, they have not maintained ledger of appellant.

Appellant relied on High Court of Calcutta judgement in case of CIT vs. Manish Enterprises (2015) 276 CTR (cal) 89 wherein it was held that "*Merely because after 2-3 years, the parties were not available at the given addresses, the AO could not presume and make the addition by observing that the Assessee has purchased goods by making cash payments.*":

Reliance was placed on following further judicial pronouncements: -

- a) CIT vs. Down Town Hospital (P) ltd. (HC Gauhati) (2004) 267 ITR 0439
- b) Ganpatraj A Sanghavi vs. Asst. Commissioner of Income Tax (2014) 41 CCH 0247 MumTrib
- c) CIT vs. Misra Preservers (P) Ltd. (2013) 350 ITR 0222 (HC All.)
- d) CIT vs. Smt. Shakuntala Devi (2009) 316 ITR 0046

From the above facts, observations and judicial pronouncements, I hold that of 25% %f those amounts remaining unconfirmed i.e. 2,56,124/- (being 25% of Rs. 10,24,497/-) from the purchases claimed, ought to be disallowed in the interest of equity and natural justice.

GP Margin on purchases of Appellant's business has been worked out as under from the Profit and Loss Account submitted by him:

Sales	38,76,061	
Closing Stock	2,26,330	41,02,391
Purchases	32,76,929	
Opening Stock	50,250	33,27,179
G.P.		7,75,212
G.P. % on purchases		23.66%

Adding GP Margin of 23.66% to disallowed purchases, cash sales to the tune of Rs.3,16,715/-, as claimed by the Appellant must be held to be not from catering business and accordingly, said amount of Rs. 3,16,715/- deposited in the bank stands unexplained.

Out of balance cash deposits of Rs. 28,75,750/- a sum of Rs. 25,59,035/- is considered as satisfactorily explained out of catering business. However, an addition

of Rs. 3,16,715/- is confirmed u/s 68 of the Act being unexplained cash credit. Accordingly, this Ground of Appeal is considered as partly allowed.

5. Against the above order, assessee is in appeal before the ITAT.
6. I have heard the Ld. DR and perused the records. None appeared on behalf of the assessee despite notice. I find that on the facts and circumstances of the case Ld.CIT(A) has granted substantial relief to the assessee as against the addition of unexplained deposit of Rs. 34,60,500/-. In assessment order, the Ld.CIT(A) finally sustained an addition of Rs. 3,16,715/-. As evident, even in the remand report also certain amount were found to have remained unconfirmed. The inference drawn by the Ld.CIT(A) on the unconfirmed/unexplained deposit is reasonable. Hence, I do not find any infirmity in the order of the Ld.CIT(A). Accordingly, I uphold the same.
7. In the result, this appeal by the assessee stands dismissed.

Pronounced in the open court on 09.12.2021

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 09/12/2021

*Thirumalesh, Sr.PS*

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//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai