

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

I.T.A. No. 2227/Mum/2019
(Assessment Year 2014-15)

Ramesh Gupta Sutarpada, Sutarpada at Talasari Talasari-401 606 PAN : AQMPG3667P (Appellant)	Vs.	ITO, Ward-3 Aaykar Bhawan, BIDCO Road Palghar-401 404 (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)-3 dated 01.01.2019 and pertains to assessment year 2014-15.

2. Grounds of appeal read as under:-

1 . In the facts and the circumstances of law, the Assessing Officer erred in passing order u/s 144 by overlooking the fact that the Appellant is staying in interior adivasi tribal area where digital facilities are not available and the notices were therefore not served properly.

2. In the facts and the circumstances of law, the Assessing Officer erred in adding Rs. 14,15,162/-

a. By overlooking the nature of business of the Appellant viz. Money Transfer. b. By overlooking the fact that entry in the pass book does not constitute books of accounts and therefore, wrongly invoking section 68 which does not apply to bank pass book. "

c. By overlooking the fact that the Appellant was in the business of petty Electrical Labour charges.

3. In the facts and the circumstances of law, the Commissioner of Income Tax(A) erred in confirming the addition of Rs. 14,15,162/- without any discussion on merits and simply relying upon the order of the AO

4. In the facts and the circumstances of law, the Assessing Officer erred in wrongly charging interest u/s 234A, B & C and has wrongly initiated penalty u/s 274 r w s

3. Brief facts of the case are that return of income was e-filed on 06.12.2014 declaring total income of Rs.2,17,590/-. The appellant is in business of Electrical Labour and Money transfer payments like bill payments on commission basis .The case was selected for scrutiny under CASS to verify 'cash deposits in saving bank account(s) is more than the turnover. Accordingly the notice u/s 143(2) was issued and served through affixture on the appellant and various other statutory notices were issued and served on the appellant. During the entire assessment proceedings, neither appellant nor his AR attended nor filed any written submission, A show-cause letter dated 17.11.2016 was also sent but none attended. After perusing the AIR data, the AO found that the appellant having bank Account No. 30999802200 with the SBI, had made a cash deposits of Rs, 66,31,200/- from a period between 01/04/2013 to 31/03/2014 but after the information received from the related bank, it was found to extent of only Rs. 22,10,400/- instead of Rs. 66,31,200/- as per AIR data. Since, the appellant has already disclosed gross receipts of Rs.7,95,238/- the AO added back the balance cash deposits which works out to Rs. 14,15,162/- (i.eRs.22,10,400/- minus Rs.7,95,238/-) to the total income of the appellant u/s. 68 of the act as unexplained cash credit.

4. Upon assessee's appeal, Ld.CIT(A) reproduced the extract from the assessment order. He also reproduced the assessee's submission in appellant proceedings. The Ld.CIT(A) proceeded to pass a very laconic order without adverting to the any of the submissions of the assessee in the submission before the Ld.CIT(A) as under:-

“In this regard, as per AIR information, the total cash deposits was Rs.66,31,200/-, however, the AO, on perusal of the bank statement of State Bank of India, Talasari, the total cash deposit works out to Rs.22,10,400/-. During the course of the assessment proceedings, the appellant has failed to explain the source of cash deposit and therefore, the AO has made addition of Rs.14,15,162/- i.e.[22,10,400 - 7,95,238(already disclosed as gross receipt)] out of Rs.22,10,400/-i.e. as unexplained cash credit since the appellant has failed to explain the cash deposits. At the time of appellate proceedings, the appellant has produced annual bank statement and has not furnished any other documentary evidence to prove that the cash deposits are pertaining to the accounted capital retail business of the appellant.

In view of the above stated facts and since the appellant has failed to explain the source of cash deposits, the addition made by the AO is sustained and the appeal of the appellant is dismissed.”

5. Against the above order, assessee is in appeal before the ITAT.
6. I have heard the Ld. DR and perused the records. It may be gainful to referred to the assessee's submissions reproduced by the Ld.CIT(A) is as under:-

“Sir, me is staying in interior adivasi tribal area of Talasari town on national Highway no.8

Me was in business of electronic items repairing apart from this I was done new business of online money transfers agent of various companies like oxizen from which I was done money transfer from my saving account towards light bill telephone bills, mobile recharge, dish tv recharge and money transfers by labours at their home town .Due to lack of knowledge me was done business of all recharges, mobile recharges, electricity bill recharges and money transfer from my saving account instead of opening and using current account

Our town is surrounded by many small tribal villages at interior sides. So, people came here to pay light bills, telephone bills, dish tv recharges online to my shop . Also few labours were working at various places on highway was came to transfer the amount to their native place.

The said cash deposits in my saving account against all types of recharges are mostly used immediately for respected bill payments and at the end no excess balance in saving account by day end.

The general practice was they gave me cash which me was deposited in my saving account with state bank of India and was transfers towards various bill payments and money transfers. Sir if you going through bank statements you can easily find it out. Sir me have no other income other than electronics items repairing work and on line recharge in the financial year 2013-14,

Sir me not well educated person and my local consultant was field my income tax return putting his email id in return. Sir, me was really not aware about online notices send by income tax department so not able to attend the hearing with ITO to put my stand. Also my accountant was not informed me regarding. It was resulted to ex party order issued by ITO. Sir so me was done appeal to your good selves.

Sir attached herewith my profit and loss account, balance sheet with bank account in detail for the assessment year 2014-15 which clearly shows the said cash deposit and various actual transfers.

Kindly, considered my appeal and give me proper justice".

7. From the above, this apparent that the assessee has given elaborate explanation. It is also mentioned that assessee has submitted profit and loss account, balance sheet and bank account. However, none of these aspects are addressed in the order of Ld.CIT(A). Hence, the order of the Ld.CIT(A) is devoid a any application of mind. It is settled law that even administrative orders have to be consistent with the rule of natural justice. Since in the present case, the Ld.CIT(A) has passed an order without any application of mind, his appellate order is not sustainable in law. Accordingly, I set aside the order of Ld.CIT(A) and direct that the addition sustained by him is deleted.

8. In the result, appeal by the assessee stands allowed.

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