

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

I.T.A. No. 7460/Mum/2019
(Assessment Year 2014-15)

Rajesh S. Bafna Shop No.7, Ground floor Mithalal Mantion Dr.D.B.Marg Grant Road(E) Mumbai-400 007 PAN : AACPB9324N (Appellant)	Vs.	ITO-19(3)(1) Matru Mandir Room No.202 Tardeo Road Mumbai-400 007 (Respondent)
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Assessee by	None
Department by	Shri Abhirama Karthikeyan
Date of Hearing	14.12.2021
Date of Pronouncement	01.03.2022

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)-4 dated 30.10.2019 and pertain to assessment year 2014-15.

2. Grounds of appeal read as under:-

- (1) The order of The Appellant Commissioner is bad and unjustified.
- (2) The learned Commissioner of Income Tax (Appeal) erred in Law confirming addition of 30,00,000/- Addition made by Assessing Officer is unjustified and bad in Law.
- (3) The learned Income Tax officer have erred in initiating penalty proceeding under section 271(1) (c).
- (4) The Learned Income Tax Officer erred in Law in Levying Interest under section 234 A, 234 B and 234 C of the Income Tax Act, 1961.

3. In this case, the brief facts and observation of AO read as under:-

“ During the course of assessment proceedings, it was observed from the AIR data that the assessee has deposited cash in the bank account of the Saraswat Co-operative bank (Rs.1,37,51,000) and Yes Bank Ltd. (Rs.15,98,500/-). The assessee was asked to produce the details of cash deposits in these bank accounts alongwith sources of the same. In response to the same, the AR of the assessee attended and . produce cash book and also details of sources of funds and deposits in the respective bank account. Further, the statement of*the assessee has also been recorded u/s 131 of the Income Tax Act, 1961. On going through the details and clarification filed by the assessee it is seen that there are three entries in the AIR data of Saraswat Bank which are repeated, i.e. Rs.9,00,000 dtd.19.06.2013, Rs.7,50,000 dtd.10.07.2013 and Rs.8,50,000 dtd.08.07.2013, the contention of the assessee in this regard has been accepted. Further, it has been observed that the was a cash deposits of Rs.30,00,000/-which has been received from Narshi Ramji Patel on various dates, The assessee further stated that he was having Rs.21,05.331/- as cash balance as on 31.03.2013 and the same has been used to deposits and cash withdrawal from the bank and also balance amount has been received from the Narshi Ramji Patel on various dates. When confronted with the facts the assessee submitted that he is unable to produce the said party for verification and also could not furnish any documentary evidences in support of the said entry as the matter is going on in City Civil Court, However, the assessee could not produce any documentary evidences which proves that the matter is in litigation before the City Civil Court and also the said amount are received from Shri Narohi Ramji Patel. Considering the same, a show cause was issue to the assessee on 20,12.2016 and was asked to produce all the details and supporting evidences in respect of all cash deposits. It was also brought to the kind notice of the assessee that in the absence of any details, the cash deposits will be treated as unexplained cash credits in the books of the assessee and accordingly will be added to the total income.

In response to the same, the assessee vide his letter dtd.29.12.2016 submitted that the details has already been submitted on 27.12.2016. Ongoing through the details of 27.12.2016, it is observed that the assessee stated that the assessee has filed return of income ,in Form No.4 stating that no accounts are maintained and now the assessee is submitting that the accounts are maintained and accordingly the profits has been declared. The contention of the assessee has been perused, however, the same is not acceptable. As the assessee could not produce details in respect of the cash deposit of Rs.30,00,000/- I have left with no alternative but to add the same as unexplained cash credits in the books of the assessee. Accordingly Rs.30,00,000/- are hereby added to the total income of the assessee u/s 68 of the Income Tax Act, 1961.”

4. Upon assessee's appeal, ld.CIT(A) confirmed the AO's order as under:-

“During the course of appellate proceedings, in spite of multiple opportunities granted, Appellant failed to prove the source of cash. In the absence of any satisfactory explanation regarding source of cash deposited by the Appellant in his

bank account, I have no reason to interfere with the finding given by the Ld. A.O. The Ld. A.O has treated the un-explained cash as cash credit u/s 68. Since the Appellant is claiming that cash was received from Narshi Ramji Patel, therefore, it was a cash credit entry in the name of Narshi Ramji Patel in the books of the assessee, therefore, it is a cash credit be assessed u/s 68 of the Act. Alternatively, if assessee is not maintaining any books of account, then it will be treated as unexplained cash u/s 69A of the Act. In the result, appeal is, dismissed.”

5. Against the above order, assessee is in appeal before ITAT.

6. I have heard the ld. DR and perused the records. I note that AO's order starts with AIR information of cash deposits in assessee's bank account of Rs. 1,37,51,000/- in Sarswat Co-op Bank and Rs. 15,98,500/- in Yes bank. Thereafter, the AO mentions about assessee's explanation and accepts three entries in the AIR data of deposits of Rs. 9,00,000, 7,50,000 and Rs. 8,50,000/-. Then the AO mentions about Rs. 30 lacs received from N.R.Patel on various dates. He further notes that assessee explained that assessee had an opening balance of Rs. 21,05,331/- and the balance amount was received from N.R.Patel. He also note that assessee had earlier said that no books are maintained. But, he refers to assessee's cash book produced. Then, he holds that assessee's submission of maintenance of books of account and return of income cannot be accepted. Then, he takes the income returned by the assessee and finally the AO adds Rs. 30 lacs under section 68. The ld.CIT(A) confirmed the same under section 68 on the reasoning that it is the cash credit entry and alternatively also confirmed the same under section 69.

7. I note that from the facts narrated above, it is amply clear that authorities below have not applied mind. AO has not at all detailed the examination carried out by him. Proper details of the explanation given by the assessee is on record. Ld.CIT(A) has also confirmed the order in a hypothetical manner without finding the correct fact. In this view of the matter, in my considered opinion, the issues needs to be examined by

the AO *de novo*. Hence, the issue is remitted to the file of AO. The AO shall examine the issue *de novo*.

8. In the result, this appeal by the assessee stands allowed for statistical purpose.

Pronounced in the open court on 01.03.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01.03.2022

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