

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

I.T.A. No. 535/Mum/2021  
(Assessment Year 2013-14)

Sayed Ahmed Abbas Naqvi 705-II Sea Crest J.P.Road, 7 bungalows Andheri(W) Mumbai-400 061  PAN : ABVPN7551K (Appellant)	Vs.	ACIT,CC-1(2) Pratishta Bhawan M.K.Road Mumbai-400 020  (Respondent)
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Assessee by	Shri Rajiv Khandelwal
Department by	Shri T.Sankar, Sr.AR
Date of Hearing	06.01.2022
Date of Pronouncement	22 .03.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-47 dated 28.02.2020 and pertain to assessment year 2013-14. The issue raised is that ld.CIT(A) erred in making an addition of a sum of Rs. 8,00,000/-, being unexplained cash deposit in assessee's bank account.

2. Brief facts of the case are that assessee is engaged in business as Civil contractor for repairs of commercial and residential premises. For the year under consideration, assessee has declared gross receipts of Rs. 9,10,736/- and after accounting for expenses declared net profit of Rs. 6,58,225/-. The AO noted that as per AIR information, assessee has made cash deposits of Rs. 12 lacs in his bank account on

various dates. However, AO noted that assessee has not showed this income. Accordingly, AO added sum of Rs. 12 lac as unexplained cash deposits.

3. Upon assessee's appeal, Id.CIT(A) noted as under:-

“During the course of appellate proceedings, the assessee has not denied the deposit of Rs. 12 lakhs has been made in cash in the said bank account. The assessee has however argued vide submissions filed in this office on 26.09.2017 that these deposits had been made out of opening cash in hand of Rs. 5,60,4497-and gross sale receipts of Rs. 9,10,7367- made by the assessee during the year. The assessee has also mentioned that he was showing income in respect of gross turnover at the rate of 8%, u/s 44AD of the Income Tax Act. In support of his claim assessee has also filed his Income Tax Returns filed over last 3 years, copies of assessment orders and copies of balance sheets and Profit & Loss Accounts showing incomes and cash in hand over last 3 years. From the details submitted by the assessee the following facts can be produced:-

A.Y.	Income returned/income assessed (Rs.)	Turnover of the business (Rs.)	Cash in hand as per the balance sheet (Rs.)
2010-11	1,36,330	17,43,302.30	30,870.60
2011-12	4,57,300	45,73,000	1,99,520.00
2012-13	6,01,200	10,45.929.00	5,60,449.00
2013-14	5,43,230	9,10,736	5,60,449.00

4. Ld.CIT(A) held as under granting part relief:-

“From the above details it can be concluded that the assessee was showing reasonable income in the return of income ranging from 5 to 6 lakhs in the last 2 years. From the balance sheet it also appears that there was cash in hand of Rs. 5,60,449/- as on 31.03.2012, immediately before these amounts were deposited in the bank account of the assessee. Evidently, the assessee is working as interior decorator and names and addresses of various parties with whom he worked have also been given in support of the claim. However, the Balance sheets given by the assessee are not audited. Regarding this the assessee submits that since his turnover was below auditable limit,

he was not required to get his accounts audited. When he was asked to furnish the bank statement, he mentioned that he was not to a position to furnish a copy of bank statement as the account is under seizure. It has been further mentioned that profit was assessed u/s 44AD of Income Tax Act, at the rate of 8%.

I have considered the facts, in the assessment order, the AO has not discussed this issue in detail and has only very briefly stated that the assessee failed to explain the sources of cash deposits in the bank account. However, during the course of appellate proceedings the assessee has submitted copies of letter dated 27.06.2015, the copies of balance sheets and profit & loss account which were furnished before the AO, along with computation of income etc. Another letter filed by the assessee before the AO on 04.03.2016 reads as under: -

"With reference to the above and as per our earlier discussion and under the instructions of our above named client, we submit the following details as required by you,

1. The cash deposit in the Axis Bank constitutes the opening cash in hand of Rs. 5,60,449/- and Gross receipts of Rs. 9,10,736/- as disclosed in the Profit and Loss account for the year under consideration.
2. The letter of authority is already provided via letter dated 14.10.2014.
3. The copy of LIC paid is annexed for your kind perusal,
4. The breakup of Gross receipts is annexed for your kind perusal
5. Last year's assessment order copies are duly annexed. Hope the above suffices your requirement and any further details required will be duly submitted."

Therefore, it cannot be said that the assessee had failed to furnish any explanation before the AO regarding the cash deposits. In reply filed on 04.03.2016 which is duly received in the office of the AO it has been mentioned that cash deposits has come from the opening cash in hand of Rs. 5,60,449/- and gross receipts of Rs. 9,10,736/-. The AO should have examined such an issue and should have concluded his finding in this regard. As such merely showing that the assessee had failed to explain the sources of income, does not address the issue. However, even after considering the above expenditure it cannot be said that source of Rs. 12 lakhs cash stands explained, explanation by the assessee gross receipts of Rs. 9,10,736/- may not be treated as net income of the assessee which could have been deposited in the bank account. In assessee's own words his income from such receipts could be about 8% and therefore such income and cash in hand put together does not add up to the cash deposits of Rs. 12 lakhs made during the year. However, on the other hand cash in hand of Rs. 5,60,449/- and income earned by the assessee during the year shows that the assessee had some sources for making some deposits in the bank account during the year. The assessee also had cash availability of Rs. 5,60,449/- as per the balance sheet as on 31.03.2012 the date of deposits in the month of July and August 2013. Therefore denying even some benefit on this account may be unfair, to the assessee.

Therefore considering the overall facts of the case I am of the view that out of total deposits Rs. 12 lakhs made by the assessee, a sum of Rs. 4 lakhs is treated as

explained. The amount of Rs. 8 lakhs is confirmed in the hands of the assessee. Therefore, out of total addition of Rs. 12 lakhs, Rs. 8 lakhs is therefore confirmed and balance is directed to be deleted. This ground is accordingly partly allowed.”

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

6. I have heard both the parties and perused the records. I find that with regard to the cash deposit of Rs. 12 lacs, assessee has submitted that assessee's turnover during the year was Rs. 9,10,736/- and there was opening balance of Rs. 5,60,449/-. Assessee has furnished the details of profit and loss account and balance sheets of past years. The Id.CIT(A) has also noted that assessee has submitted that profit was assessed u/s. 44AD of the I.T.Act, Id.CIT(A) has duly noted as above that assessee has shown sufficient turnover and has adequate cash balance. Id.CIT(A) has proceeded to pass an order in which he has treated Rs. 8 lacs as unexplained and Rs. 4 lacs as explained. There is no basis whatsoever for the above self contradictory order of Id.CIT(A). The assessee has duly shown the details and furnished return u/s. 44AD of the Act at the profit @8%. That assessee has shown considerable turnover in the earlier years. Assessee had also shown considerable cash balance in earlier years. Without doubting the same or pointing out infirmity therein, adhoc disallowance is not at all sustainable. Hence, I hold that the disallowance is made on surmise and conjuncture not sustainable in law. Hence, I set aside the orders of the authorities below and delete the addition.

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

Pronounced in the open court on 22 .03.2022

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 22 .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