

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"H" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 3262/MUM/2018 (A.Y: 2011-12)

M/s. Kady Mercantile Pvt. Ltd., 8 th Floor, New Harileela House 34-38, e-mint Road, Mumbai PAN: AACCT8454G	v.	Income Tax Officer – 1(3)(4) Mumbai
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Ms. Neha Thakur
Date of Hearing	:	31.03.2022
Date of Pronouncement	:	31.03.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income-tax (Appeals)-3, Mumbai [hereinafter for short "Ld. CIT(A)] dated 13.08.2015 for the A.Y. 2011-12.

2. Assessee has raised following grounds in its appeal: -

"The learned CIT (A) erred in confirming the addition of Rs. 1,70,36,086/and thereby charging tax of Rs. 56,58,963/and interest u/s 234B of Rs. 21,68,844/and raising a demand of Rs.78,27,810/-.

GROUND NO. 1

The learned Ld. CIT (A) erred in confirming the assessment order made u/s 143(3) in total contravention of mandatory requirement of Section 144 and, therefore, the order so made by him confirming AO's action is a nullity in law and therefore deserves to be annulled/quashed.

GROUND NO. 2

The learned CIT (A) has erred in confirming the addition of Rs.1,70,36,086/-, which includes the sum of Rs.80 lakhs seized by the police, by erroneously invoking Section 68, without there being any entries in the regular books of account maintained by the assessee and duly audited, and hence the addition so made deserves to be deleted.

GROUND NO.3

On the facts and in the circumstances of the case, the findings of the AO regarding Rs.80 lakhs seized by the police, (included in the addition of Rs.1,70,36,086/-) confirmed by Ld. CIT (A), stands reversed/contradicted by the Hon'ble Bombay High Court vide judgments in (1) Writ Petition No. 973 of 2015 with Criminal Application No.257 of 2017 in Writ Petition No. 973 of 2015, dated 25th September, 2017, and (2) Criminal Application No. 539 of 2017 in Writ Petition No.973 of 2015, dated 9th March, 2018, wherein the Hon. High Court has held that the said seized sum, belong to the following persons and cannot be termed as unaccounted, and thus such addition deserves to be deleted:

<i>M/s Kady Mercantile Pvt. Ltd.:</i>	<i>Rs.22.50 lakhs (withdrawn from Bank and source explained)</i>
<i>Kenley Merantile Pvt. Ltd.,:</i>	<i>Rs.60,000 - (included here)</i>
<i>Kum. Roshni Kapila :</i>	<i>Rs.62.50 lakhs - (included here)</i>
<i>Shri Ashish Kapila :</i>	<i>Rs.4.90 lakhs - (included here)</i>
<i>Mrs. Binafer Kapila</i>	<i>Rs.3.50 lakhs - (included here)</i>

GROUND NO. 4

The learned CIT (A) failed to appreciate that there has been double addition of Rs.80 lakhs seized by the police, both in the case of this assessee and also in the assessment order of Shri Ashish R. Kapila, Managing Director of the appellant herein, framed u/s 147.

GROUND NO.5 (A)

The learned CIT (A) failed to appreciate that the diaries and loose papers seized at the time of survey belonged to four different entities having their offices in the same premises and has even failed to reconcile the figures referred to by the AO from the respective diaries which are still in the possession of the Department.

GROUND NO.5 B

The learned CIT (A) has failed to appreciate that the AO has neither examined the author of the diaries and loose papers nor the ownership of the diaries and loose papers and thereby there has been total non-compliance of principles of natural justice and therefore the assessment order so framed deserves to be annulled, both for wrong application of Section 68 and for non compliance of principles of natural justice.

GROUND NO. 6

The learned CIT (A) erred in confirming the levy of interest u/s 234B of Rs. 21,68,844/-.

The appellant craves leave to add, alter or amend any of the aforementioned grounds at the time of the hearing.

3. At the time of hearing, none appeared on behalf of the assessee and from the record we observed that the appeal was filed by the assessee on 16.05.2018 and subsequently hearing was fixed on several occasions and none appeared on behalf of the assessee till 07.02.2022. Heard the matter in order to dismiss the appeal for non prosecution of the appeal. However, at the time of dictation, the Bench observed that the appeal of the assessee is time barred by 896 days and there are criminal proceedings going on against the managing director. Subsequently, further notices were issued and we observed that none represented the

case till the present date. Since assessee has not interested to prosecute the case and several RPAD Notices were returned unserved and we deem it fit and proper to dismiss the appeal for non prosecution.

4. Further on merit of the case, we observed from the record that the hearing was posted since 16.05.2018, none appeared on behalf of the assessee till today. The hearing was posted 30 times and none appeared. We deem it fit and proper to proceed to dispose off this appeal as it is pending from 2018. The notice sent to the assessee has been duly served as is evident from the acknowledgement available on record. Since the assessee has not appeared in spite of the several notices, it seems that the assessee is not interested in prosecuting the appeal. Therefore, we decided to dispose off this appeal on merits after hearing the Ld.DR and examining the material on record.

5. Ld. DR briefly explained the facts and supported the orders of the lower authorities.

6. Heard Ld. DR and perused the material placed on record, orders of the authorities below. On perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with

reference to the submissions of the assessee and the averments in the Assessment Order and sustained the addition made by the Assessing Officer. While holding so, the Ld.CIT(A) observed as under: -

"3.1 During the course of appellate Proceedings, the appellant was asked to justify its claim relating to Peak Credit Theory. The same is not applicable in the appellant's case, as the appellant has failed to establish the incoming and outgoing cash flow. The AO has discharged his duties of passing the order u/s 143(3) of the IT Act on the basis of material impounded. The assessment order so passed is regular and in accordance with the provisions of Income-tax Act. Therefore, this ground of appeal is dismissed.

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4..3. I have considered the facts of the matter. The appellant in its ground submitted that there is a totaling mistake in the assessment order. But, perusal of the assessment order shows no discrepancy in the calculations. I hereby confirm the disallowance of Rs 1,70,36,086/- u/s 68 of the IT Act. Therefore, as I find no mistake in the total of cash credit, this ground of appeal is dismissed.

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5.1. During the course of appellate proceedings, the appellant was asked to explain its side. The appellant has failed to establish about the withdrawal of Rs 22,50,000/- from Barclays Bank LLC. The same has been also shown in the cash book; and entries were found in the books of accounts impounded during the survey. Therefore, no credit on this withdrawal can be given: hence, this ground is dismissed.

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6.1. It may be noted that interest chargeable u/s 234B of the Act is mandatory and consequential in nature. Respectfully following the decision of Hon'ble Supreme Court in the case of Anjum M Ghaswala [252 ITR 1] (SC), the same is dismissed.

6.2. Further, the sum seized is being deposited in the PD A/c of the concerned CIT and cannot be treated as advance payment of tax. However, the AO is directed to get the tax demand adjusted, against the seized amount, by following the due process/prescribed procedure. The grounds 4 and 5 are dismissed for statistical purposes."

7. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any reason to interfere especially when there is no material to controvert the findings of the First Appellate Authority. Accordingly, appeal filed by the assessee is dismissed.

8. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 31.03.2022

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER
Mumbai / Dated 31/03/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum