

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI AMAR JIT SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1157/M/2020
Assessment Year: 2013-14**

Shri Kishore Krishn Patki, 503, Ankita Apartment, Opp Gymkhana, Navghar Road, Mulund East, Mumbai – 81 PAN: ADCPP5754B	Vs.	DCIT, Cir 2(1)(2), 5 th Floor, R.No.561, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri M.S. Sheth, A.R.
Revenue by : Ms. Bharti Singh, Sr. A.R. CIT

Date of Hearing : 05.04.2022
Date of Pronouncement : 28.04.2022

ORDER

Per Amar Jit Singh, Judicial Member:

The assessee has filed the present appeal against the order dated 25.11.2019 passed by the Commissioner of Income Tax (Appeal), Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2013-14.

2. The assessee has raised the following grounds:-

"1. On facts and in circumstances of the case, the learned Commissioner of Income Tax (Appeal-4) Mumbai erred in confirming additions of Rs.46,18,800/- made by Dy. Commissioner of Income Tax, Circle 2(1)(2) Mumbai (herein after referred to as "the Learned AO")u/s 68 of the Income Tax Act, 1961 (herein after referred to as 'the Act')

2. On facts and in circumstances of the case, the learned Commissioner of Income Tax (Appeal-4) Mumbai erred in exercising co-terminus powers by

confirming additions of Rs:46,18,800/-u/s 69A of the Act as against additions made u/s 68 of the Act in assessment order passed by the learned AO.

The appellant craves leave to add, alter modify partly or fully, any of the above grounds of appeal during the course of hearing of the appeal.”

3. The brief facts of the case are that the assessee filed his return of income on 27.03.2014 declaring total income to the tune of Rs.12,64,850/- for the assessment year 2013-14. The assessee filed the revised return of income on 31.03.2015 declaring total income to the tune of Rs.23,47,581/-. The case was selected for scrutiny and notices under section 143(2) & 143(1) were issued and served upon the assessee. The assessee was the director in Equilink Capital Management Services Ltd. and during the year earned the income by the salary etc. The assessee was asked to specify the reason for the enhancement of his income in the revised return. The assessee explained that he received the commission income amounting to Rs.46,18,800/- out of which Rs.36,62,000/- was deposited in the bank and reflected in the return. The assessee claimed the various expenses and showed the net profit to the tune of Rs.10,82,735/-. After considering the reply, the submission of the assessee was not found justifiable. Therefore, an amount of Rs.46,18,800/- was added to the income of the assessee under section 68 of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the disallowance and confirmed the said amount under section 69A of the Act.

Ground Nos.1&2:-

4. We have heard the arguments advanced by the Ld. Representatives of both the parties and have perused the record. The assessee deposited an amount of Rs.36,62,000/- with HDFC Bank, Fort Branch. The assessee has shown the business receipts in the books of accounts. Since the documentary evidences were not on record, therefore the AO raised the addition of Rs.46,18,800/-

under section 68 of the Act. However, it is on record that the AO did not reject the books of accounts while disallowing the claim of the assessee. The assessee filed an appeal before the Ld. CIT(A) who confirmed the addition by deleting the addition under section 68 of the Act but confirmed the addition in view of the provisions under section 69A of the Act. The provisions of section 69A is hereby reproduced as under:

“Section 69A: Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of money, bullion jewellery or valuable article, or the explanation offered by him is not in the opinion of Assessing Officer, satisfactory, the money and the value of bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”

5. In the instant case the commission income to the tune of Rs.46,18,800/- has duly been reflected in the books of accounts, the same has been incorporated in the P&L Account submitted with the revised return of income. The addition is not liable to be sustainable in view of provisions of section 69A of the Act. In this regard, we also find support of the decision of co-ordinate Bench of Tribunal, Mumbai Bench in case of **DCIT, Circle-32, Mumbai vs. M/s. Kartik Construction Co.** Hence, we delete the same. Ground Nos.1 & 2 are accordingly decided in favour of the assessee and against the Revenue.

6. The assessee has also raised additional grounds of appeal which are reproduced as below:

“1. In the facts and circumstances of the case and in law, the learned Assessing Officer erred in not allowing deduction u/s 24 of Rs: 1,50,000/-

2. In the facts and circumstances of the case and in law, the learned Assessing Officer erred in not allowing deduction u/s 80C of Rs: 1,00,000/-”

Additional Ground Nos.1 &2 :

7. Since the main issue has already been adjudicated in favour of the assessee above, therefore adjudicating these additional grounds would only be academic in nature, hence, needs no requirement of adjudication.

8 In the result, appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 28.04.2022.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(AMAR JIT SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 28.04. 2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.