

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 5547/MUM/2019
Assessment Year: 2014-15**

Smt. Chandadevi K. Rathi,
B/502, Kailash Mansarovar,
Temba Road, Bhayandar (W),
Thane-401 101.

Vs. ITO Ward-18(1)(3),
Room No. 203, 2nd floor,
Earnest House,
Nariman Point,
Mumbai-400021.

**PAN No. ACZPR 2750 F
Appellant**

Respondent

Assessee by : Ms. Dinkle Hariya
Revenue by : Mr. Ajeya Kumar Ojha, DR

Date of Hearing : 30/06/2022
Date of pronouncement : 07/07/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the order dated 20.06.2019 passed by the Ld. Commissioner of Income-tax (Appeals)-53, Mumbai [in short 'the Ld. CIT(A)'], for assessment year 2014-15, raising following grounds:



1. NATURAL JUSTICE

1.1 *The Learned Commissioner of Income - tax (Appeals) - 53, Mumbai, [""Id.CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.*

1.2 *It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:*

(i)The same is framed in breach of the principles of natural justice; and

(ii)The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

WITHOUT PREJUDICE TO THE ABOVE

2. UNEXPLAINED INVESTMENT U/S. 69 [₹ 14,98,995/-]

2.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making addition, to the extent of Rs. 14,98,995/- out of Rs. 22,52,600/-, u/s. 69 of the Act on account of alleged unexplained cash deposits in the bank.*

2.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

2.3 *Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that*



the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.

2. The brief facts of the case are that in the case of the assessee in view of cash deposits, the Ld. Assessing Officer made addition of ₹22,52,600/- to the returned income *vide* his order dated 14.12.2016 in terms of section 143(3) of the Income-tax Act, 1961 (in short 'the Act'). On further appeal, the Ld. CIT(A) upheld the disallowance. The relevant finding of the Ld. CIT(A) is reproduced as under:

"4.1. The only ground of appeal is in respect of the addition made of Rs.22,52,600/- in respect of cash deposited in bank account treated by the AO as unexplained. The case was selected for limited scrutiny in respect of large cash deposited in the same bank account. The assessee was asked to furnish the details of all the bank accounts maintained by her and to furnish copy of bank statement, bank book and cash book for AY 2013-14 & 2014-15. All the details called for were not furnished. Further, even though the assessee had 5 bank accounts, bank statement of only 1 bank account i.e. Corporation Bank A/c No.130011 was furnished. This bank statement did not have any cash deposit reflected. Hence, notice u/s.133(6) was issued to the Corporation Bank, Yogi Nagar Branch, Mumbai to confirm whether any cash deposit of



Rs.13,60,500/- was appearing in the assessee's bank account. Corporation Bank informed in reply that the assessee had another bank a/c No.064800101015067 in which cash deposit of Rs.13,60,500/- have been made. In this backdrop, a show cause notice was issued to the assessee to explain the source of cash deposit in her bank account. The assessee then submitted the copy of bank statement of the earlier not disclosed bank a/c with Corporation Bank, account maintained with SBI Borivali Branch and account maintained with Bank of Baroda, Shimpoli Branch. The bank account with Bank of Baroda was not disclosed in the balance sheet filed by the assessee. The assessee did not file the copy of bank statement of ICICI Bank and Sangli Coop. Bank. Based on the bank statements furnished by the assessee, the position in respect of cash deposit was as follows :

Sr.No.	Name of the Bank	Account No.	Cash deposit made during FY 2013-14
1	Corporation Bank	064800301130011	2,10,100
2	Corporation Bank	064800101015067	13,60,500
3	SBI	33411589448	4,01,000
4	Bank of Baroda	20260100021170	1,76,000
		Total	21,47,600

As regards the source of deposit, the assessee submitted that the cash deposits are on account of recovery of advance given, outstanding amount receivables, rent of shop and accumulated cash balance. No cash book, bank book, name of the parties from whom money was received was furnished. The AO observed that the assessee had shown rent income of Rs.96,000/-, income from home made products of Rs.1,28,860/- and interest from bank deposits of Rs.2,27,786/-. In view of the persistent lack of



cooperation and furnishing of details called for, the AO concluded that the cash deposit in the bank account of Rs.22,52,600/- was treated as unexplained and addition was, made accordingly.

4.2. In the appellate proceedings, it was submitted that the appellant is carrying out business of homemade products. The cash deposits of Rs.22,52,600 was explained as out of cash balance of Rs.735,605/-, amount collected from debtors, Rs. 519,500 and refund of advances Rs. 7,07,000/ - which totaled up to Rs. 19,62.105/- The balance sheet and P & L account for AY 2014-15 and balance sheet of 31.3.2013 was filed. It was noted that cash on hand as on 31.3.2014 as per the Balance Sheet filed is Rs. 68,145/- The sales as per the P & L account is only Rs. 5.72 lakhs on which profit of Rs. 1.28 lakhs is shown. The returned income is Rs. 218,530/- and no tax is payable. It was claimed that cash on hand as on 31.3.2013 was Rs.7,53,605/-.

4.3. The learned AR was asked to file

(i) copy of bank statements of all the bank accounts held by the appellant, file copy of return of income, computation of income, balance sheet, capital a/c and receipts & payments account and trading a/c for AY 2010-11 to 2014-15.

(ii) Statement of receipt & payment of cash for AY 2014-15 clearly indicating the source of credit.

(iii) Index II and purchase agreement & Index II and Sale agreement for the flat sold during the year.

(iv) Source of purchase of the flat was also called for.



(v) Purchase agreement of the new property and also statement of investment of capital gains.

This was called for in the hearing held on 08-05-2019.

4.4. From further details filed it was noted that Return of income was Rs.186,610 for AY 2010-11, Rs. 108,868 for AY 2011-12, Rs. 179850 for AY 2012-13 and Rs. 194,390 for AY 2013-14. No tax was payable in any of these years as income was below taxable limit. The appellant had hardly any income in these years. Balance Sheet for each of the year was filed. It is not clear whether Balance Sheet was filed with the returns of income or whether they were prepared only at the time or after the assessment. No P & L account was filed. The cash book was a summarized one with no date wise details and no name of persons/parties to allow for verification. In many years gifts were claimed reflected in the balance sheet. There was reduction of investment in shares of Rs.15.16 lakhs as on 31.3.2011 to Rs. 7.64 lakhs as on 31.3.2012 but no capital gains or loss shown in the return for AY 2012-13. All in all the returns show a pattern of capital build up with utilization of basic exemption limit and no taxes payable. Hence appellant was asked to file P & L account for each of the AY and detailed cash book/statement for AY 2014-15 for verification. The same was not filed.

4.5. There are no details filed of debtors and advances claimed to be returned and the same remains unverified. In any case the volume of trade in home made products do not support such large debtors and advances. The balance sheet as on 31.3.2013 shows



cash on hand of Rs.7,53,605/- There is no explanation as to why large cash balance on hand was built up disproportionate to drawings or business. Further why the same was deposited in bank not at one go but later and spread out over the year. This is certainly doubtful. At best this can be considered as the source of cash deposits in bank. The addition is sustained at Rs.14,98,995/-. The grounds of appeal are partly allowed."

3. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record.

3.1 Before us, the assessee has filed an application for additional evidence containing copy of confirmation of the debtors along with their PAN cards. The Ld. counsel of the assessee submitted that the cash deposit was out of the realization of the opening amount of the debtors and income earned during the year under consideration. The Ld. counsel of the assessee gave an undertaking that if the matter is restored back to the Ld. CIT(A) or the Assessing Officer, the assessee would co-operate and produce all the parties i.e.



debtors before the authorities for confirmation of the realization of the amount from them.

3.2 We find that core issue in the dispute is whether the cash deposits are out of recovery of advance given/outstanding amount/accumulated cash balance etc. or not. The assessee in her application for admitting the additional evidence has submitted that evidence could not be furnished before the Ld. CIT(A) on same were collected after the proceeding before the Ld. CIT(A) and therefore same may be admitted.

3.3 Though the confirmation from the debtors have been collected subsequent to the order of Ld. CIT(A) but same are crucial to the determination of issue-in-dispute whether the cash deposits are out of debtors realized in the year under consideration. In view of the facts and circumstances of the case and interest of the substantial justice, we admit the additional evidence in the form of



confirmations of the debtors and their PAN cards filed as additional evidence in terms of Rule 29 of the ITAT Rules, 1963. The order of the Ld. CIT(A) on the issue-in-dispute is accordingly set aside and matter is restored back to the Ld. CIT(A) for deciding afresh, in the light of the additional evidence filed by the assessee. It is needless to mention that both the assessee and Assessing Officer shall be afforded adequate opportunity of being heard. The grounds raised by the assessee are accordingly allowed for statistical purposes.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Court on 07/07/2022.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 07/07/2022
Rahul Sharma, Sr. P.S.

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,
(Sr. Private Secretary)
ITAT, Mumbai