

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 913/Mum/2020
(A.Y: 2009-10)

Shri Bimal.H.Kiri, Bimal Optics, 235/237, Ramansmruti Bldg, VP Road, Mumbai-400004.	Vs.	ITO, Circle – 19(1) Matru Mandir Bldg, 2 nd Floor, Tardeo Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AEBPK2298D		
Appellant	..	Respondent

Appellant by :	Shri Rajiv Khandelwal.AR
Respondent by :	Shri S.G.Mehta.DR

Date of Hearing	02.06.2022
Date of Pronouncement	22.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-27, Mumbai passed u/s 143(3) r.w.s 144 and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal.

- 1. On the facts and in the circumstances of the case, the learned CIT(A) Mumbai has erred in law to add a sum of RS 20,22,013/-as unexplained & Undisclosed as income.*

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2. *On the facts and in the circumstances of the case, the learned CIT(A), Mumbai has erred in law to add a sum of Rs 2,42,000/- as disallowance of expenditure on estimate basis.*
3. *On the facts and in the circumstances of the case, the learned CIT(A), Mumbai has erred in law to add a sum of Rs. 50,440/- /- as unexplained cash credits*
4. *On the facts and in the circumstances of the case, the learned CIT(A), Mumbai has erred in law to add a sum of Rs (17,41,065/- as unexplained cash credits*
5. *On the facts and in the circumstances of the case, the learned CIT(A), Mumbai has erred in making disallowance a claim of loss of Rs. 1,50,000/- from House Property*
6. *On the facts and in the circumstances of the case, the appellant craves leave to add, alter, amend, modify and /on correct the grounds of appeal at or before the time of hearing.*

2. The brief facts of the case are that, the assessee is engaged in the business and dealing in the optical glasses, spectacles in the name and style of M/s. Bimal Optics. The assessee has filed the return of income for the A.Y 2009-10 on 01.12.2009 disclosing a total income of Rs.3,19,380/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act were issued.

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In compliance the Ld. AR of the assessee appeared from time to time and submitted the details. Further the notice u/s 142(1) of the Act calling for the additional information is issued. The Assessing Officer (A.O) on perusal of the Balance sheet of the assessee as on 31.03.2009 found that the assessee is maintaining three bank accounts being (i) Punjab National Bank (ii) ICICI Bank and (iii) Standard Chartered Bank. The A.O based on the AIR information found that an aggregate amount of Rs.21,96,700/- was deposited in Standard Chartered bank. The assessee was called to explain the cash deposits in the bank account but no explanations were filed.

3.(i)Whereas the total cash deposits in all the three bank accounts aggregated to Rs. 48,30,100/- and after adjusting the cash sales based on the sales register of Rs.28,08,087/- an amount of Rs. 20,22,013/- is treated as undisclosed income of the assessee.(ii) Further in respect of other expenditure, the total credit card payments by the assessee in Citi bank, Barclays Bank and Deutsche Bank aggregated to Rs. 7,26,362/- and the information was called for

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to substantiate the payments. Whereas the assessee has submitted the details of credit card payments to the extent of Rs.2,56,052/- of Citi bank and Barclays bank of Rs. 10,686/- and no further explanation were provided. The AO found that the assessee has made the credit card bill payments from the PNB bank account and the expenses are debited to M/s Bimal Opitcs. Therefore in the absence of information 1/3 of total expenses made through credit cards on ad-hoc basis of Rs.2,42,121/- was disallowed.(iii)The assessee has undisclosed bank account with standard chartered bank and the total deposits of Rs. 50,460/- was not explained and is treated as income.(iv)Where as in the Punjab national Bank, the assessee has made the aggregate deposits of Rs.17,41,065/- which includes cash, cheque and interest component. The assessee has submitted the details of cash deposits referred at Para 10 of the order. The A.O after considering the facts, cash deposits and information in the financial statements observed that the genuineness of the transactions are to be verified and issued notice u/s 142(1) of the Act calling for books of accounts and confirmations.

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Since the information was not produced, the A.O. treated Rs.17,41,065/- as undisclosed source of income.(v) the A.O. has denied the claim of loss from house property of Rs.1,50,000/- as no evidence was produced. Finally the A.O. has assessed the total income of Rs. 45,25,040/- and passed the order u/s 143(3) r.w.s 144 of the Act dated 23.12.2011.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), the CIT(A) considered the grounds of appeal, submissions, and findings of the A.O and called for the remand report on the submissions made by the assessee. The CIT(A) find that the assessee has not complied properly with the date of hearings and only partial information was filed. Therefore the CIT(A) has no option left other than relying on the information available on record. The CIT(A) in respect of denial of loss from house property, observed that since the assessee has produced a certificate from Punjab national bank in respect of sanctioned loan in the name of the assessee has directed the AO to verify the facts and allow the claim. Whereas in respect of other grounds of appeal, the CIT(A) has confirmed the action of the AO and

dismissed. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the additions overlooking the factual aspects. The Ld. AR of the assessee appeared and submitted the information but due to various reasons further information could not be filed. The assessee has good case on merits and demonstrated the evidences in paper book consist of financial statements, cash balance and cash with draws at page 5&6 of paper book. Further the bank statements and month wise closing cash on hand at page 7 to 18 which goes to roots of the case and emphasizes that the evidences play a vital role in the decision making and prayed for an opportunity to substantiate with the material evidences before the lower authorities and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The disputed issues envisaged by the Ld. AR that the CIT(A) erred in confirming the additions made by the A.O because the requisite material

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information was not filed. Further the Ld.AR emphasized that the assessee is now ready to substantiate the claim with the evidences and prayed for an opportunity of hearing. We are of the view that there could be various reasons for non submission of details which cannot be overruled. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case along with evidences. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the Assessing officer to adjudicate afresh on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information expeditiously and allow the grounds of appeal of the assessee for statistical purposes.

Order pronounced in the open court on 22.06.2022.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.06.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai