

**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. 1485/MUM/2020
Assessment Year: 2015-16**

Harbirsing Y. Bhavra,
B/305, Ruchin Apartment,
Sai Nagar, Vasai,
Thane-401-209.

Vs. Income Tax Officer-4(5),
Room No. 03, A-Wing, 6th floor,
Ashar IT Park, Wagle Industrial
Estate, Road No. 16-Z,
Thane (W)-400-604.

**PAN No. ALJPB 7870 P
Appellant**

Respondent

Assessee by : Mr. Shashank Mehta, AR
Revenue by : Mr. Ajeya Kumar Ojha, Sr. DR

Date of Hearing : 29/06/2022
Date of pronouncement : 27/07/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 20/09/2019 passed by the Ld. Commissioner of Income-tax (Appeals)-3, Thane [in short 'the Ld. CIT(A)'] for assessment year 2015-16, raising following ground:



1. *In the facts and circumstances of the case and in law, the Ld. CIT(A)-3, Thane has erred in confirming addition of ₹32,65,863/- u/s 68 of the Act as unexplained credits in the books of accounts.*

2. At the outset, the Ld. counsel of the assessee submitted that appeal has been filed with the delay. The impugned order has been passed on 20/09/2019 and therefore appeal before the Tribunal was due on or before 19/11/2019, whereas this appeal is been filed on 12/03/2020 i.e. appeal has been filed with the delay of 113 days. The Ld. counsel referred to the affidavit of the assessee wherein he submitted that Income-tax affairs of the assessee were used to be handled by his employer. Mr. Rafiq Khan, who passed away on 02/12/2019 and only after his demise, documents were provided to the assessee in the last week of January 2020 and thereafter on professional advice, he filed the appeal before the Tribunal. The Ld. DR did not controvert the facts narrated by the assessee in the affidavit. In the circumstances, we were of the opinion that there



exist a sufficient cause for not filing the appeal by the assessee within the prescribed period and therefore delay in filing of the appeal is condoned and the appeal is admitted for adjudication.

3. Briefly stated facts of the case are that the assessee e-filed his return of income on 18/02/2017 declaring total income of ₹2,96,900/-. The case was selected for scrutiny any statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and served upon the assessee. The assessee was asked to explain cash on hand of ₹32,65,863/-appearing in the relevant column of the balance sheet filed along with return of income, however, no response was filed by the assessee, despite several opportunities provided and therefore, in absence of source of the cash on hand, the Assessing Officer treated the same as unexplained cash credit in terms of section 68 of the Act. The assessee, filed further appeal before the Ld. CIT(A) however no compliance was made of the various notices issued to the assessee for providing opportunity of



hearing, thus Ld. CIT(A) dismissed the appeal of the assessee and upheld the addition made by the Assessing Officer.

4. Before us the Ld. counsel of the assessee submitted a paper book containing pages 1 to 42 which consist of copy of the return of income filed and bank statement of the assessee in respect of bank accounts maintained in Central Bank of India (A/c No. 1182571864); Bassin Catholic Cooperative Bank (A/c No. SB 26335); Bank of India (A/c No. ending with 227) and Syndicate Bank (A/c No. 54752200086488). The Ld. Counsel submitted that bank statements have been filed for the first time before the Tribunal.

5. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The Ld. counsel submitted that assessee was not aware of the business



which was carried out by his employer using his bank statement.

The relevant part of his affidavit is reproduced as under:

- 1. That I was employed with Mr. Rafiq Habib khan. Mr. Rafiq Habib khan had opened various Bank Accounts in my name to undertake some basic transactions. Being my employer, I had no objections then as I was under the honest impression that Mr. Rafiq Habib khan had opened these accounts to route some basic transactions. Mr. Rafiq Habib khan solely used to operate these accounts*
- 2. That all these transactions undertaken by Mr. Rafiq Habib khan solely and I was not aware about any of these transactions.*
- 3. That Mr. Rafiq Habib khan also used to handle my Income Tax Matters. I was under the honest impression that Mr. Rafiq Habib khan was carefully handling all the income tax matters on timely basis.*
- 4. That Mr. Rafiq Habib khan passed away on December 02, 2019. Only after his demise, I was made aware regarding these transactions and very few documents were provided to me only in the last week of January, 2020. That, only after the receipt of the documents, I learnt that Mr. Rafiq Habib khan had undertaken such huge transactions and I had no idea about the magnitude of these transactions.*
- 5. Hence, this affidavit is being made in support of my contention that the transactions reflected in the bank accounts and*



figures mentioned in the Income Tax Return do not belong to me.

5.1 The Ld. counsel of the assessee submitted that assessee is willing to appear before the Assessing Officer and explain the source of cash balance appearing in the balance sheet and therefore one more opportunity might be provided to the assessee. We find that assessee has not been represented either before the Assessing Officer or before the Ld. CIT(A). The main reason for non-compliance has been explained by the assessee as his income tax affairs were being looked after by his employer who expired on 02/12/2019. In view of facts and circumstances and in the interest of substantial justice, we set aside the order of the Ld. CIT(A) and Assessing Officer and restore the matter to the file of the Assessing Officer for deciding the issue-in-dispute afresh. The assessee is directed to cooperate before the Assessing Officer and file detailed books of accounts including narration of bank statements etc.



required for verification issue in dispute involved. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 27/07/2022.

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 27/07/2022

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