

**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. 7734/MUM/2019
Assessment Year: 2008-09**

Jalaja Sadhu Moolya,
C/4, Block No. 51, Gokul Ashish CHS,
Dr. R.P. Road, Mulund (West),
Mumbai-400080.

**PAN No. ALLPM 8887 F
Appellant**

Vs.

Income Tax Officer-23(2)(3),
C-10, First Floor, Room No. 107,
Pratyakshakar Bhavan, Bandra-
Kurla Complex, Bandra East,
Mumbai-400051.

Respondent

**ITA No. 6697/MUM/2019
Assessment Year: 2009-10**

Jalaja Sadhu Moolya,
C/4, Block No. 51, Gokul Ashish CHS,
Dr. R.P. Road, Mulund (West),
Mumbai-400080.

**PAN No. ALLPM 8887 F
Appellant**

Vs.

Income Tax Officer-29(1)(5),
C-10, First Floor, Room No. 107,
Pratyakshakar Bhavan, Bandra-
Kurla Complex, Bandra East,
Mumbai-400051.

Respondent

Assessee by : Mr. Aditya Ramchandran, AR
Revenue by : Mr. Ajeya Kumar Ojha, Sr. DR

Date of Hearing : 30/06/2022
Date of pronouncement : 27/07/2022



ORDER

PER OM PRAKASH KANT, AM

These two appeal by the assessee are directed against two separate orders dated 30.09.2019 and 23.07.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2008-09 and 2009-10 respectively. Being common grounds involved, permeating from same set of facts, these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. The ground of appeal for the assessment year 2008-09 is reproduced as under:

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer in adding cash deposits amounting to ₹12,05,700/- u/s 68 without appreciating the fact that the same arose on account of sale of immovable property and the appellant had proved the source of the same with supporting documentary evidences.*



3. The grounds of appeal for assessment year 2009-10 are reproduced as under:

1. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer without providing the appellant with a reasonable opportunity of being heard.*
2. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred-in confirming the action of the Ld. Assessing Officer in adding cash deposits amounting to ₹15,00,400/- u/s 69 without appreciating the fact that the said amount has been assessed to tax in the appellant's daughter's case.*
3. *On the facts and circumstances of the case in law the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer in adding cash deposits amounting to ₹9,94,300/- without appreciating the fact that the same arose on account of sale of immovable property and the appellant had proved the source of the same with supporting documentary evidences.*
4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer in adding cash deposits amounting to ₹13,07,700/- u/s 69 without appreciating the facts that the same were out of the appellant's past savings and earlier cash withdrawals.*

4. Briefly stated, the facts of the case are that the Assessing Officer observed cash deposited in the bank accounts maintained by



the assessee in Satara Sahakari Bank Ltd. In assessment year 2008-09, the Assessing Officer observed cash deposit of ₹12,05,700/- in bank account No. 15734 maintained with Satara Sahakari Bank Ltd. The assessee explained the source of cash deposit as out of sale consideration of ₹22.00 lakhs on sale of slum property at Thane, but no registered sale agreement was furnished. In view of the unsatisfactory explanation/evidences of the source of cash deposit, the Assessing Officer added the said sum to the income of the assessee for assessment year 2008-09. In assessment year 2009-10, the Assessing Officer observed deposit in three bank accounts (i) Firstly, cash deposit of ₹15,00,400/- in bank account No. 15735 maintained with Satara Sahakari Bank Ltd., which was claimed by the assessee as belonging to her daughter but said explanation was not accepted by the Assessing Officer and amount of cash deposit has been added to the income of the assessee. (ii) Secondly, cash deposit of ₹21,02,000/- in bank account No. 15734 maintained with



Satara Sahakari Bank Ltd., the source of which was explained by the assessee as sale of property (₹9,94,300/-) and past withdrawal (₹11,07,700/-), however, the said explanation of the assessee was not found satisfactory by the AO and he added the said sum to the income of the assessee. (iii) Thirdly, the Assessing Officer observed cash deposit of ₹2 lakhs in bank account No. 1592 maintained with Thane Janta Sahakari Bank Ltd., the source of which was explained as past withdrawal and savings however in absence of evidences, the Assessing Officer added the said amount to income of the assessee. The Ld. CIT(A) also upheld the Assessing Officer in both the assessment years.

5. Aggrieved, the assessee is by way of grounds as reproduced above before the Tribunal.

6. The Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 41.



7. We have heard the rival submissions of the parties and perused the relevant material on record. As far as Ground No. 1 of the appeal for assessment year 2008-09 of cash deposit of ₹12,05,700/- in bank account No. 15734 maintained with the Satara Sahakari Bank Ltd. is concerned, the assessee filed submission before the AO and also during remand proceedings before the Ld. CIT(A). The assessee contended that the said amount of cash deposit was received on account of sale of slum property situated at Wagle Industrial Estate in Thane. According to the assessee, said property was sold to Shri Nitin Vatkale but he was not traceable as he sold the property under reference to another person 'Shri Nilesh Shinde'. During remand proceedings, the assessee could not produce any agreement with respect to acquisition of the property. The assessee could not produce Shri Nitin Vatkale for examination by the Assessing Officer. Before us, the assessee has submitted that person from whom, the assessee acquired the property i.e. Rajendra



Balaram Thakur accepted before the Assessing Officer that said property was sold by him. Further, the assessee contended that Mr. Nitin Vatkale sold the property to Shri Nilesh Shinde and Nilesh Shinde in terms accepted the purchase from Mr. Nitin Vatkale. The assessee produced affidavit of Shri Ajay Shah, who claimed to be agent for facilitating of sale of property from the assessee to Shri Nitin Vatkale. However, the Assessing Officer rejected all these contentions of the assessee as according to him there was no registered agreement for transfer of the property and the person to whom the assessee has sold property, was not produced for verification of source of cash in his hand. The relevant finding of the Assessing Officer are reproduced as under:

"5. To the main query as to the cash deposit made in bank of Rs.12,05,700/-, the assessee's explanation, as can be seen from the foregoing para, is that same is out of the sale consideration received from the transfer of a house property situated at Thane vide agreement dated 16/09/2007. According to the said agreement, the assessee Smt.Jalaja S.Moolya had sold a property viz., Room Nos. 3 & 4, Mahatma Gandhi Nagra, Kisan Nagar -II, Road No. 16, Wagle Indl. Estate, Thane



400 604 to one Mr. Nitin Vatkale of Satara for a total consideration of Rs.22,00,000/-. However, a perusal of the said agreement, it is seen that the address of the transferee is absolutely incomplete and the advance received as per the agreement is only Rs.1.00,000/-. As per Clause (2) of the said agreement, it is stated that the total consideration of Rs.22,00,000/- will be paid on or before 15/03/2009. It is worthwhile to mention here that the said agreement did not indicate the payment schedule date-wise but a vague condition governed the future payment. The assessee has also not been able to furnish the details as to the receipt of Rs.21,00,000/- and hence not linked the said receipt with the cash deposit appearing in the bank account with reference to its date of receipt and date of deposit. In the circumstances, assessee's contention that the cash deposit is directly discernable to the sale consideration received can not be accepted. It is further explained by the assessee's representative that the entire consideration is received in cash. This also appears to be incredible.

6. Further, the sale agreement furnished by the assessee is not a valid one as per law in view of the fact that the same suffered from the following infirmities.

- i. The purchase of stamp paper is made in the name of one Shri Ajay N Shah whereas this should have been bought either by the purchaser seller and not by a third party. Shri Ajay N. Shah is a third party.
- ii. The document is not registered.
- iii. The stamp duty payable as per the Government rate is not quantified no any payment in this connection is made.

7.1 The relevant finding of the Ld. CIT(A) is reproduced as under:



4. Decision:

The only issue as stated by the appellant in his grounds of appeal is regarding addition made by the A.O. of Rs.1205700/- being the cash deposit appeared in the assessee's bank account with the Satara Sahakari Bank Ltd. Since the assessee was not able to offer any cogent, convincing explanation in regard to the source of the said cash deposit the entire cash deposit aggregating to Rs.1205700/- was added to the total income of the assessee u/s.68 of the I.T. Act. The appellant filed an appeal before the then Commissioner of Income tax(A) by filing a set of additional evidences on which the then CIT(A) called for a remand report vide his letter dt.03.05.2012. The A.O. in his remand report filed on the addition made at Rs.1205700/- in his order dt. 29.12.2010 u/s.143(3) of the I.T. Act, 1961 vide his letter dt. 28.06.2012 in which the A.O. has stated that the appellant has reiterated his stand that the source of cash deposit reflected in the bank account represents the sale proceeds of a slum situated at Wagle Estate in Thane, which was the bone of contention raised by the assessee at the time of asstt.proceedings. The A.O. made the addition of cash deposits u/s.68 for the reasons that the assessee had not registered the above said property with the Registrar and no evidence to show that any stamp duty paid in connection with the transaction. The appellant in the remand proceedings contended that since the property under sale was a slum, the same could not be registered with the Registrar for want of basic documents. The slums are not constructed in an authorized land and hence it is embroiled with various circumstances. Therefore the said documents could not be



registered nor any stamp duty could be paid. Since the transfer was not legal even the receipt of consideration also received in cash.

In the remand report the A.O. has also clearly mentioned the genuineness of the assessee's sale transaction, the assessee said to have sold this property to one Shri Nitin Vatkale who was not traceable as he had left the place by selling the property in question to one Shri Nilesh Shine. The A.O. has also clearly mentioned in his remand report that the appellant could not produce any agreement either with respect to acquisition of property or an agreement from Mr. Nilesh Shinde who is reported to have purchased the property from Mr. Nitin Vatkale. The assessee was able to produce only one agreement i.e. relating to sale of the property to Mr. Vatkale. It is not clear as to how the other transactions took place without the support of any agreement.

Over and above the A.O. issued summons u/s.131 to verify the genuineness of the loan transactions reflected in the appellants' bank account i.e. Satara Sahakari Bank Ltd. and the Thane Janta Sahakari Bank Ltd. Out of the total 17 loan creditors summons u/s.131 were served on 14 parties. However, only 7 parties responded to the summons who were examined on oath, u/s.131 of the I.T. Act. In their deposition all the 7 parties confirmed having given loans to the assessee. But none of them have filed any supporting documentary evidence except confirmation letter, copy of I.T. acknowledgment to buttress their claim of having given the loan. The parties also could not file any bank statement to substantiate the loan transaction which clearly establish that they failed to prove that loan being genuine i.e. identity, genuineness and credit worthiness. Hence they could not establish the loans said to



have been extended to the appellant. The A.O. has also verified the above said loan creditors who do not have significant source of livelihood or earning capacity as it can be seen from the copies of return of income filed which all reflect the income below taxable limits in most of the loan creditors appeared before him.

The A.O. further filed another report dt.27.09.2013 on the details of loans as claimed by the appellant and to their genuineness. In most of the cases, the loan creditors have not filed any documentary evidence in support of having advanced loan to the assessee except filing confirmations letters and copy of acknowledgment of IT. return. It is also observed that in most of the cases the account holder was introduced by one or two persons only and it was noticed that the bank accounts opened by the alleged loan creditors in Satara Sahakari Bank Ltd., Mulund were opened within a span of 2 to 3 days by depositing cash of Rs.500/- or 1000/- and just before transfer of fund from the bank account of the loan creditors to that of the assessee there have been cash deposit for the same amount. Thus the deposits in the bank account of the assessee can be linked to the cash deposits in the bank of this alleged loan creditors. On analysis of bank a/c. statement of the alleged loan creditors reveal the modus operandi adopted by the appellant. It is kind of circle of transactions that the loan creditors have come to the assessee bank account after transfer of funds from one bank account to another amongst the alleged loan creditors and other persons. Keeping in view of the submissions made by the A.R. of the appellant as well as remand report, the addition made by the A.O. to the extent of Rs.1205700/- is hereby confirmed as unexplained credits in the



bank account of the appellant u/s.68 of the I.T. Act. All the grounds of appeal filed are hereby dismissed.”

7.2 It is evident that source of cash of ₹12,05,700/- deposited in Bank account has been explained as out of sale consideration of ₹22.00 lakhs received on sale of property but the assessee (i) has not produced registered agreement for sale of property (ii) not produced any evidence in support of creditworthiness of buyer to show availability of cash in hand with him. In view of the above discussion, in our opinion, the assessee has failed to explain the source of cash deposits amounting to ₹12,05,700/- and therefore, we do not find any error in finding of the Ld. CIT(A) on the issue-in-dispute and accordingly, the ground No. 1 appeal of assessee for AY 2008-09 is dismissed.

8. As far as Ground No. 3 for assessment year 2009-10 is concerned, regarding source of cash deposit of ₹ 9,94,300/- out of ₹21,02,000/- in bank account NO. 15734 maintained with Satara Sahakari Bank Ltd. the assessee explained the same as out of sale of



slum property, which was sold for sum of a sum of ₹22,00,000/- and the amount of ₹12,05,700/- was deposited in assessment year 2008-09 and the balance amount of ₹9,94,900/- was deposited in assessment year 2009-10. Since, we have already rejected the contention of the assessee of source of deposit of cash ₹12,05,700/- in assessment year 2008-09, therefore, the balance amount of ₹9,94,900/- claimed to have been deposited out of sale of the said property is also rejected. The ground No. 3 of the appeal for AY 2009-10 is accordingly dismissed.

8.1 As far as amount of ₹13,07,700/- challenged in ground No. 4 is concerned, which is related to the balance amount of ₹11,07,700/- cash deposited in Bank account No. 15734 and ₹2,00,000/- cash deposited in bank account No. 1592 with Thane Janta Sahkari Bank Ltd., the assessee explained that same was deposited out of past withdrawals and savings. The Ld. CIT(A) held that no evidences were furnished in support of contention of past withdrawals and



savings. Before us, also no evidences have been filed by the assessee to show that cash has been deposited out of the past withdrawals or saving. In the circumstances, we do not find any error in the findings of the Ld. CIT(A) on issue-in-dispute. The ground No. 4 of the appeal is accordingly dismissed.

9. In ground No. 2, the assessee has challenged the addition of ₹15,00,000/- for cash deposit in Bank account No. 15735 in Satara Sahkari Bank Ltd. The assessee claimed that bank account is held as first holder by her daughter and his name is appearing as second holder. He submitted that addition was made in hands of daughter also and assessment proceedings in her case has already been quashed by the Ld. CIT(A).

10. We have seen the order of the Ld. CIT(A) dated 30.05.2019 in case of his daughter Kumari Subhlaxmi S. Bangera. We find that the Ld. CIT(A) has quashed reassessment proceedings in her case on the ground of change of opinion. No finding has been given regarding



the source of cash deposit of ₹15,00,400/-. In view of the claim of the assessee before us that said cash deposit belongs to her daughter, we feel appropriate to restore the issue back to the Assessing Officer, for verification of claim of the assessee. The onus is on the assessee to produce evidence in support that said cash deposit is out of the income of her daughter, which is subjected to Income-tax. The ground is accordingly allowed for statistical purpose.

11. The ground No. 1 of the appeal was not pressed and hence dismissed as infructuous.

12. In the result, the appeal for AY 2008-09 is dismissed, whereas appeal for AY 2009-10 is allowed partly 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