

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6039/Mum./2019

(Assessment Year : 2014-15)

Shri Ramji L. Kuchhadiya
Shop no.03, Dalmiya Compound Appellant
T.H. Karariya Road, Mahim (West)
Mumbai 400 016 PAN – ABJPK6592P

v/s

Income Tax Officer Respondent
Ward-21(3)(1), Mumbai

Assessee by : Shri Ritesh Kumar Shah

Revenue by : Shri Ajeya Kumar Ojha

Date of Hearing – 30/06/2022

Date of Order – 05/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/06/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals)-48, Mumbai, [*learned CIT(A)*], for the assessment year 2014-15.

2. In this appeal, the assessee has raised following grounds:

"1. Learned A.O. erred in adding Rs.26,20,000/- on account of Cash Deposits in Bank. CIT(A) has directed has dismissed the Appeal, being aggrieved by the order Second Appeal is Preferred."

3. The brief facts of the case pertaining to the sole ground raised in this appeal, as emanating from the record, are: The assessee is an individual and is the proprietor of firm viz., Ronak Enterprises. The assessee derives its income from business and income from other sources. Assessee is engaged in the business of courier services with franchisee of Shree Maruti Courier Services Private Ltd. During the course of assessment proceedings, on the basis of AIR information, it was observed that receipts under section 194C are more than the receipt shown in the income tax return and the assessee has also deposited large cash in savings bank account. Accordingly, the assessee was asked to show cause as to why the difference in receipts be not treated as unexplained income and added to the total income of the assessee. In reply, assessee submitted that he follows cash method of accounting and therefore the receipts are as per income and expenditure account. The assessee further submitted that its customers are deducting TDS during the year, while the payment of the bills are received by the assessee in subsequent year and therefore difference appears in 26 AS. The Assessing Officer vide order dated 20/12/2016 passed under section 143(3) of the Act treated the cash deposit of Rs. 26 lakh in the bank accounts of the assessee maintained with State Bank of India as income earned from undisclosed sources and added the same to the total income of the assessee. In appeal before the learned CIT(A) assessee submitted additional evidence in support of its claim that amount deposited in bank account has been received as loan from its close relatives and some amount was withdrawn

from its bank account. The assessee also claimed that some amount has also been received from its proprietary concern viz. Ronak Enterprises. In this regard, assessee submitted the confirmation from his relatives, copy of passbook and copy of capital account and balance-sheet of Ronak Enterprises. The learned CIT(A) vide impugned order dated 28/06/2019 rejected the additional evidence filed by the assessee under Rule 46A of the Income Tax Rules. The learned CIT(A) also held that the assessee has failed to prove the creditworthiness and genuineness of transaction with its close relatives. As regards the loan from the proprietor concern, learned CIT(A) held that assessee has failed to prove that cash was available with the proprietor concern on the particular date and the same was lent/given to the assessee in the individual capacity. As regards the withdrawal from its bank account, learned CIT(A), in absence of corroborative evidence in support of the claim that withdraws from the bank have been utilised for the purpose of deposit in assessee's bank account, rejected the claim of the assessee. Being aggrieved, the assessee is in appeal before us.

4. During the course of hearing, learned Authorised Representative (*learned AR*) referred to bank statement of the proprietary concern as well as affidavits of close relatives/creditors filed along with the application seeking admission of additional evidence under Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963. The learned AR submitted that the assessee could not furnish the documents, now filed as additional evidence, before the lower authorities. On the other hand, learned

Departmental Representative vehemently relied upon the orders passed by the lower authorities.

5. We have considered the rival submissions and perused the material available on record. It is evident from the record that, in the present case, the documents, now furnish before us by way of additional evidence, could not be filed by the assessee before the lower authorities and the impugned addition was made in absence of these details. Further the learned CIT(A) also dismissed assessee's appeal rejecting the admission of additional evidence filed by the assessee. In view of the above, in the larger interest of justice, we deem it appropriate to remand this issue to the file of Assessing Officer for *de novo* adjudication after consideration of all details, as submitted by the assessee. Needless to mention that no order shall be passed without affording opportunity of hearing to the assessee. The Assessing Officer shall also have the liberty to call for or examine any other documents/detail as may be necessary for complete adjudication of this issue. As a result, the sole ground raised in present appeal is allowed for statistical purpose.

6. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 05/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/09/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai