

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1969/मुं/2021 (नि.व 2011-12)
ITA NO.1969/MUM/2021(A.Y 2011-12)

Kanyalal Mewada,
A 202 Ridhisidhi Complex,
MG Road, Sukar Wadi,
Boriwali East, Mumbai – 400 066

PAN: AAEPM-2662-A

..... अपीलार्थी /Appellant

बनाम Vs.

The CIT(A)-44,
Kautilya Bhavan, BKC,
Bandra (E), Mumbai – 400 051

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 01/08/2022

घोषणा की तिथि/ Date of pronouncement : 27/10/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals) -44, Mumbai, [in short 'the CIT(A)'] dated 23/12/2016 for the assessment year 2011-12.

2. The assessee in appeal has raised solitary ground assailing disallowance of negative cash balance Rs.32,69,573/- under section 69A of the Income tax Act, 1961 [in short 'the Act']. The brief facts of the case as emanating from records are: The assessee is a Director in M/s. Dream Heritage Private Limited. The assessee is not maintaining any separate accounts. During the period

relevant to the assessment year under appeal, the assessee filed return of income declaring total income of Rs.12,73,360/-. In the return of income, the assessee declared income from house property, income from business, profession and income from other sources. In the course of scrutiny assessment proceedings, the Assessing Officer made addition of Rs.32,69,573/- on account of negative cash balance as on 27/01/2011. Aggrieved by the assessment order dated 28/03/2014, the assessee filed appeal before the CIT(A). During first appellate proceedings the Authorized Representative of the assessee appeared before the CIT(A), however, no submissions were made regarding negative cash balance. The CIT(A) upheld the addition made by Assessing Officer hence, the present appeal by the assessee.

3. The assessee in statement of facts has made following submissions:

"1) The learned CIT (A) without having gone to the facts and merits of the case disallowed the grounds of Appeal filed by the Appellant at the first appellate stage. It's a very simple case of Cash withdrawals from the appellant's bank account. The appellant has submitted the details of cash withdrawals from different bank accounts at the time of Assessment proceedings but was completely ignored by the learned AO as well as by CIT (A).

2) The issue raised that the Appellant had negative cash balance amounting to Rs. 3,269,573 on 27/01/2021. On the contrary there was never a negative cash balance of the appellant throughout the whole year.

3) Your Honour, we would like to put forth that negative cash balance means the appellant did not had cash in hand as on a particular date and made some expenses in cash on that day. This in any case is not possible because one cannot incur expenses in cash if he/she does not have cash in hand. The same is factually, technically and logically incorrect.

4) Your Honour, we understand the order was passed without considering the submission made and cash book summary left unchecked thoroughly. Thus resulting in unnecessary addition and raising a demand against the Appellant,

5) *Your Honour, we therefore request you to either consider the submission or kindly set aside the matter for further verification of the documents and submission made now and earlier as well.*"

4. Per contra, Ms.Beena Santosh representing the Department vehemently defended impugned order.

5. Submissions made by Id.Departmental Representative heard, orders of authorities below examined. From perusal of the impugned order it appears that no effective representation was there on behalf of the assessee. Taking into consideration entire facts, I deem it appropriate to restore this appeal to the file of CIT(A). The assessee is directed to furnish necessary documents/make submissions in support of his claim before the First Appellate authority. The CIT(A) after considering the same shall decide appeal of the assessee, in accordance with law.

6. In the result, appeal of the assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open Court on Thursday the 27th day of October, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 27/10/2022
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai