

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2890/M/2022
Assessment Year: 2012-13**

Mr. Ashok John Dabre, Sanchit, Nr. Church Bhuigaon, Vasai West, Maharashtra- 401202 PAN: AFKPD4717N	Vs.	CIT (Appeals) A Wing, 6 th Floor, Ashar IT Park, Wagle Industrial Estate, Road No.16-Z, Thane, Maharashtra – 400 604
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Zenith Jain, A.R.
Revenue by : Shri Ashish Kumar Deharia, D.R.

Date of Hearing : 04 . 01 . 2023
Date of Pronouncement : 17 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mr. Ashok John Dabre (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 16.09.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2012-13 on the grounds inter-alia that :-

“1. The Learned AO has erred in law and on facts in passing the impugned order in Violation of the Principles of Natural Justice and the Assessment Order is bad in law.

2. Addition of the cash deposits made of Rs.17,38,400/- in the F.Y 11-12 as unexplained cash credit u/s 68 of the Act and completed the Assessment u/s 144 of the Act.

1. The Ld. AO erred in disallowing in cash deposits made of Rs. 12,38,400/- as "Unexplained Cash Credits' u/s 68 of the Act and Completed the Assessment u/s 144 of the Act. The Appellant is an Individual Salaried Employee and the address mentioned in the notice issued to appellant was received by his parents who being Senior Citizen have no knowledge about the Importance of such Notices. Hence, the same was not intimated to the appellant, as a result of which the Assessment was completed u/s 144 giving no opportunity to be heard to the appellant.

2. The cash deposited has been done out of the savings of the appellant, his wife, brother and mother. These deposits are out of the withdrawals by the above person from their bank accounts. It is further claimed that cash credits were genuine Cash Deposits out of the money received from Family Members from their Savings and also Cash in Hand in Order to make the Payment of Ongoing Bank Loan. The detailed chart (attached herewith) shows that he has received money of Rs.1,83,000/- from self which his own cash withdrawn, from brother Rs.1,00,000/- and from mother Rs.15,000 further Rs.12,26,900/- from his own account in the year 2011-12.

3. The Order was passed by CIT (A) National Faceless Appeal Centre on 16/09/2022 as the professional who was supposed to Reply on 14/09/2022 could not do so due to his Workload of Income Tax Audit for the year 2021- 22 due date of which at that time was 30/09/2022. As a result of which the appellant could not submit the requisite documents that proves the Identity. Credit Worthiness and Genuineness of the transaction The Appellant thus wishes to give all the details to the Tribunal and filed evidence of the Identity.

4. Without prejudice to the above, the Ld. CIT (A) Thane-3 further failed to appreciate the fact the appellant is a Small time Salaried Employee and not engaged in any business. Further he has always filed his Income tax returns on time with the help of Consultants. With the little knowledge about the assessment proceedings he was informed about the notices that was served physically at the address mentioned but the same was received by his parents who being Senior Citizen forgot to intimate him about the notice. Also in between these period, his mother passed away and Father was also unwell.

5. The appellant craves leave to add, amend, alter or delete all or any of the aforesaid grounds of appeal.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the assessee filed his return

of income for the year under consideration declaring income at Rs.6,29,120/- after claiming deduction of Rs.45,597/- under chapter VIA. Subsequently, assessment was reopened by initiating the proceedings under section 147/148 of the Income Tax Act,1961 (for short 'the Act'), on noticing that the assessee had deposited an amount of Rs.12,38,400/- during the year under consideration. The assessee has not preferred to file the return of income in response to the notice issued under section 148 of the Act. The assessee did not turn up before the Assessing Officer (AO) despite issuance of the notice as described in para 4 of the assessment order and consequently the AO proceeded to frame the assessment ex-parte under section 144 of the Act. The AO obtained the information from Bassien Catholic Co-operative Bank under section 133(6) of the Act which shows that during the year under consideration there is cash entry of Rs.12,38,400/- in the saving account No.SB.718 in the name of the assessee. On failure of the assessee to bring on record any documentary evidence in response to the show cause notice the AO proceeded to add the amount of Rs.12,38,400/- to the income of the assessee as unexplained cash credit under section 69A of the Act and thereby framed the assessment under section 144 read with section 147 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, the assessee has not brought on record any document to discharge his onus qua the cash deposit of Rs.12,38,400/- during the assessment proceedings the assessment was framed ex-parte under section 144 of the Act. Before the Ld. CIT(A) it is the case of the assessee that the assessee is an independent salaried employee and notice issued to him was received by his parents who are senior citizens having no knowledge about the same and they have forgotten to intimate the assessee about the notices issued by the AO. It was also case of the assessee before the Ld. CIT(A) that the cash deposit has been made out of the savings of the assessee, his wife, brother and mother which is out of the withdrawal by all of them from their bank accounts and as such unexplained cash credits are genuine cash deposits out of the money received from the family members from their savings. However, the assessee has failed to file any bank account/pass book of any such person nor any other document to substantiate his claim has been brought on record. The Ld. CIT(A) recorded that despite being provided with sufficient opportunity the assessee has not brought on record the complete documents, hence dismissed the appeal.

6. Now the assessee by moving an application for additional evidence sought to bring on record his bank statements and bank

statement of his family members, PAN cards, income tax returns, detail of cash deposit, closure of housing loan account available from page 1 to 25 of the paper book.

7. We are of the considered view that all these documents are necessary to arrive at the logical conclusion qua the unexplained cash credit lying in the account of the assessee. However, at the same time all these documents are also required to be examined by the AO. No doubt sufficient opportunity was given to the assessee by the AO as well as the Ld. CIT(A) but in the interest of justice and to decide the issue once for all the case is required to be remitted back to the AO to decide afresh after examining all the documents relied upon by the assessee.

8. Consequently, the order passed by the Ld. CIT(A) is set aside and appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.01.2023.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 17.01.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.