

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.506/M/2023  
Assessment Year: 2017-18**

M/s. Moss Hospitality Pvt. Ltd., Shop No.56, Arenja Corner, Sector 17, Vashi, Navi Mumbai, Maharashtra-400 703 <b>PAN: AAJCM0050G</b>	Vs.	Income Tax Officer, Ward-15(2)(3), Room No.360, 3 <sup>rd</sup> Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Suresh Otwani, A.R.  
Revenue by : Shri Joginder Singh, D.R.

Date of Hearing : 08 . 05 . 2023  
Date of Pronouncement : 31 . 05 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Moss Hospitality Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 25.01.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2017-18 on the grounds inter-alia that :-

*“1. The FAA erred in not accepting the contention of Appellant filed before FAA along with documents and submissions made.*

*2. The FAA went on to confirm the Order of A.O on assumptions and presumptions without bringing any legal defect/discrepancy in submission made before FAA.*

3. *The A.O during the Assessment proceedings was gone ahead with same findings which is confirmed by the FAA Ld. CIT(A).*

5. *The Appeal is in time and order.*

6. *The Appellant craves leave to add, alter or amend any of the grounds on or before the final date of hearing.”*

#### *PRAYER*

*The Appellant therefore prays that the estimation of Income U/s. 69A which is regular Cash from the Books of Account deposited by the Appellant need not be added and documents filed before the A.O and the FAA need to be accepted without making any business addition except addition U/s. 40A of Rs 50,000/-. Appellant therefore prays that the additions U/s 69A and estimation of Business Income needs to be deleted or any other relief may be granted as may be deemed fit and just, considering the facts and circumstances of the case.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of bar and restaurant and they also undertake outdoor catering of orders of veg and non-veg food items. From the data analytics and information gathered during the phase of online verification under “operation clean money” the Income Tax Department prepared a list of assessee who had deposited substantial cash in bank accounts during demonetization period but have not filed income tax return for A.Y. 2017-18 and the assessee is one such person who has deposited a cash of Rs.25,00,000/- in its bank account during demonetisation (9<sup>th</sup> November 2016 to 30<sup>th</sup> December 2016 in old currency notes). Notice under section 142(1) of the Income Tax Act, 1961 (for short ‘the Act’) was issued to file a correct return of income on or before 31.03.2018 but the assessee has failed to furnish return of income for the year under assessment i.e. 2017-18 under section 139 nor in response to notice issued under 142(1) of the Act. Then the Assessing Officer (AO) collected the information by way of issuing a notice under section

133(6) to Shamrao Vithal Co-operative Bank, Vashi and in response thereto the bank has given detail. Thereafter, summons were issued and served on the assessee company through affixture, but none attended. However, subsequently one Shri Surjit Singh Vig, Shri Manraaj Puril and Shri Sunil Nagarehave attended and got recorded their statement. The assessee also submitted the details called for along with cash book, bank statement, balance sheet, profit & loss account for the year ending 31.03.2017 & 31.03.2016 the sale figures and cash deposits have been furnished for the year ending 31.03.2016 and 31.03.2017. The AO noticed that the cash sales shown by the assessee are on higher side in comparison to the cash purchases and as such it is clear that the assessee is not maintaining its books of account regularly and his sales figures are very inconsistent. The AO also noticed that the cash deposit made during the year under consideration is more than the cash deposit made during earlier years. The assessee also filed VAT return on 02.11.2019 after three years of demonetisation period. Declining the contentions raised by the assessee company the AO proceeded to hold that the assessee company has tried to show the bogus sales to substantiate its cash deposit made during the demonetisation period under the well thought process and thereby treated the cash deposit of Rs.25,00,000/- during demonetisation as unexplained income under section 69A of the Act and to tax the same under section 115BBA of the Act. The AO also noticed from the balance sheet and profit & loss account for the year under consideration that an average percentage of net profit to total turnover of 7.52% has been declared by the assessee company under section 44AD of the Act. The AO proceeded to assess the tax at presumptive basis @ 8% of the total turnover. The

AO also hold 11% of the total receipts appearing in the bank accounts of Rs.23,42,000/- which comes to Rs.2,81,040/- and treated the same as business income of the assessee. The assessee also paid Rs.25,000/- in cash towards audit fees and Rs.25,000/- towards accounting charges which is above the monetary limit prescribed by section 40A(3) of the Act and as such disallowed the amount of Rs.50,000/- and added the same to the income of the assessee and thereby assessed the total income at Rs.28,31,040/-.

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 the present appeal.

4. I 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 filed return of income under section 139 and also failed to file the return in response to notice issued under section 142(1) of the Act by the AO. It is also not in dispute that the AO completed the assessment under section 144 of the Act. It is also not in dispute that during the year under consideration the assessee company has claimed total sale at Rs.23,42,000/-. It is also not in dispute that the AO as well as the Ld. CIT(A) have not considered the return of income filed by the assessee for the year under consideration subsequently on

24.03.2017 on the ground that the return of income was filed on 24.03.2017 of earlier years and as such not accepted the books of account also.

6. In the backdrop of the aforesaid facts and circumstances of the case the Ld. A.R. for the assessee contended that the entire detail has been given to the AO along with audited accounts. Instead of examining the same AO as well as the Ld. CIT(A) have proceeded to rejected the same on the ground that the return of income of earlier year was filed on 24.03.2017. The Ld. A.R. for the assessee further contended that there is a clear opening cash of Rs.24,40,212/- as on 01.04.2016 and a cash flow account for the year under consideration was also filed and balance cash as on 31.03.2017 was Rs.3,49,992/- but the same has not been considered without pointing out any defect in the same. It is also contended by the Ld. A.R. for the assessee that the assessee is into the restaurant business which runs 365 days in a year except on dry days and he was having 9000 regular sale and was serving 32 dishes on 10 table available in his restaurant but all these facts have not been considered by the AO as well as the Ld. CIT(A).

7. However, on the other hand, the Ld. D.R. for the Revenue relied upon the assessment order as well as the impugned order passed by the Ld. CIT(A) and contended that sufficient opportunities were given to the assessee but he has not duly explained the queries raised by the AO. I have examined the return of income filed by the assessee for A.Y. 2016-17 available at page 77 of the paper book and petty cash book available at page 86 to 100 wherein the assessee was having closing cash of Rs.24,40,212/-

which has already been accepted by the Revenue Authorities. However, the AO as well as the Ld. CIT(A) has not taken into consideration this fact while deciding the issue of depositing cash in the bank.

8. Furthermore, the assessee also brought on record petty cash book for the assessment year under consideration for the period 01.04.2016 to 31.03.2017 wherein again cash opening balance of Rs.24,40,212/- was shown out of which an amount of Rs.25,00,000/- was deposited on 02.12.2016, 09.12.2016 and 21.12.2016 (Rs.10,00,000/-, Rs.10,00,000/- & Rs.5,00,000/- respectively). However, all these facts have not been taken into consideration while deciding the issue. It is also a matter of record as mentioned in para 4 of the assessment order that the assessee company has submitted all the documents during the assessment proceedings but not considered by the AO who has rather proceeded to estimate the profit on the basis of conjecture and surmises. Para 4 of the assessment order is extracted as under:

*“4. Assessee company vide its submission on 5.11.2019, has submitted the details called for in respect of the questionnaire issued in the case of assessee company along with the cash book, bank statement, Balance sheet, Profit and loss account for the year ended on 31.5.2017 and 31.3.2016. The sales figures and cash deposits have been furnished for the year ended on 31.3.2016 and 31.3.2017 by the assessee company. The details of cash sales, cash deposits, sales and purchases for the year ended 31.3.2017 and 31.3.2016 have been furnished.”*

9. When the assessee has duly explained the details of cash sales, cash deposit, sales and purchase for the year under consideration, which have not otherwise been disputed by the AO there is no need to rush to the estimation and guess work by the AO. Rather the audit account books are required to be examined in entirety.

10. Moreover, the assessee has come up with categorical plea that his entire sale was in cash from a bar and restaurant business which runs 365 days in a year except on dry days and having average regular sale of 9,000 per day as it is serving 32 dishes on 10 tables. However, all these facts and documents have not been examined by the AO.

11. To decide the issues raised in this appeal once for all, all the account books and documents brought on record by the assessee are required to be examined afresh by the AO to reach the logical conclusion, instead of working on the basis of estimation and guess work. The Ld. D.R. has also agreed with the proposition that when all the documents/audit account books have been brought on record the same are required to be examined. So the impugned order passed by the Ld. CIT(A) is hereby set aside and file is remitted back to the AO to decide afresh after providing opportunity of being heard to the assessee.

12. Consequently, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 31.05.2023.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 31.05.2023.

\* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.