

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 431/MUM/2023
(Assessment Year: 2013-14)**

Shharad M Jain

E-703, Prafulla Paradise, Barave Road,
Khandakpada, Kalyan - 421301
[PAN: ADZPJ1447N]

..... **Appellant**

**Commissioner of Income-tax
(Appeals), Faceless Appeal Centre,**
204, B-Wing, 2nd Floor,
Rivera Siddeshwar Garden, Kolshet Road,
Dhokali, Thane (West) - 400607

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Shri Sridhar Govind Menon

Date : 18.05.2023
Conclusion of hearing : 26.05.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 26/12/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2013-14, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 21/12/2018, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised the following grounds of appeal:

"My lord As per the passbook of appellant it is clear that cash deposit by appellant in various year i.e. in F.Y. 2012-13 was Rs. 5,54,000/-, F.Y. 2013-14 was Rs. 4,13,900/-, and F.Y. 2014-15 was Rs. 5,00,000/- So total Cash deposit Amounted to Rs. 14,67,900/-.

My lord it is mistake made by the AO while making order, he simply made addition of Rs. 14,31,400/- as a cash deposit in FY 2012-13 i.e. A.Y. 2013-14 u/s 69A of the IT Act 1961 and accordingly determined the income tax liability which is not only unjustifiable, but is against the principal of natural justice.

My lord we have explained Sources of each cash deposit along with documentary evidence, please delete the addition made by AO of Rs. 14,31,400/-."

3. Brief facts of the case are that the Appellant is engaged in the business of sub broker of real estate i.e. purchase and selling of flat, room on behalf of the tenant. The Appellant filed its return of income for the Assessment Year 2013-14 on 15/04/2014 declaring total income at INR 2,12,700/-. The Assessing Officer completed the assessment under Section 143(3) read with Section 147 of the Act by making addition of INR 13,43,828/- as unexplained cash deposit under Section 69A of the Act.
4. When the appeal was taken up for hearing, none was present for the Appellant. On perusal of record, we found that the Appellant had placed on record the relevant documents/bank statements along with the appeal set and therefore, we proceeded with hearing.
5. We have heard the Learned Departmental Representative placed reliance on the order passed by the Assessing Officer and CIT(A). On perusal of the material on record, we find that the Appellant has placed on record Cash Flow Statement along with the Bank

Statement in respect of the following bank accounts held by the Appellant during the Financial/Previous Year 2012-13 relevant to the Assessment Year 2013-14 – (a) HDFC Bank, Andheri (A/c No. 05431610051780), (b) ICICI Bank, Kalyan (A/c No. 020301529054) and (c) Saraswat Bank, Kalyan (A/c No. 060200100011909). On perusal of the same, we find that contention of the Appellant that the aggregate cash deposit for the Assessment Year 2013-14 in only INR 5,54,000/- is factually correct. Both, the Assessing Officer and CIT(A) have incorrectly held that the cash deposit of INR 14,31,400/- was made by the Appellant during the relevant previous year.

6. On perusal of the Assessment Order we find that according to the Assessing Officer the figure of INR 14,31,400/- is the sum of cash-in-hand of INR 9,56,076/- as on 01/04/2012 (as claimed by the Appellant) and actual cash deposits made by the Appellant during the relevant previous year. The Assessing Officer made addition of INR 13,43,828/- holding that the Appellant had failed to explain the source of opening cash-in-hand of INR 9,56,076/- as well as cash deposits made during the relevant previous year. In case the version of the Assessing Officer is accepted, as regards, the opening cash-in-hand of INR 9,56,076/- is concerned it cannot be said that the same was not recorded in the books of accounts. Further, in response to the query from the Assessing Officer regarding high cash-in-hand, the Appellant had explained that the same was maintained in order to take care of medical needs of his wife and elderly parents. The opening cash-in-hand was sourced from the income offered to tax by the Appellant and his wife over the period of preceding five years as well as financial support received from his father. In support of the same, the Appellant had

provided details of income offered to tax for the preceding three assessment years. The Assessing Officer doubted the stand taken by the Appellant as on scrutinizing the return of income for Assessment Year 2012-13, the Assessing Officer noted that the Appellant had shown cash in hand of INR 87,572/-. Therefore, the Assessing Officer concluded that the cash-in-hand as on 01.04.2012 was only INR 85,572/-. Whereas the CIT(A) incorrectly noted that the Appellant had made cash deposits of INR 14,31,400/- in the bank account and has concluded that the Appellant has provided details of cash deposits for the Financial Year 2013-14 and 2014-15 whereas the deposits were made during the Financial Year 2012-13 without appreciating that the Appellant had provided the details of deposits made in cash during the Financial Year 2012-13 (INR 5,54,000/-), Financial Year, 2013-14 (INR 4,13,900/-) and Financial Year 2014-15 (INR 5,00,000/-) aggregating to INR 14,53,900/-. Therefore, actual cash deposited during the Financial Year 2012-13 relevant to the Assessment Year 2013-14 was only INR 5,54,000/- and not INR 14,31,400/- as concluded by the CIT(A). Though the CIT(A) has rightly observed that the cash withdrawal made in the subsequent period and the financial help received by the Appellant from his father cannot be used to explain the source of deposits during the Financial Year 2012-13. However, we note that the Appellant has placed on record details of cash withdrawals as well as cash deposits made in bank accounts during the Financial Year 2012-13 along with the bank statement for the relevant period which, in our view, have not been taken into account. Further, before the Assessing Officer the Appellant had explained the source of cash in hand as savings made by the Appellant and his wife over past few years and justified keeping

high cash in hand to meet the medical requirement of parents and wife. However, as noted by the Assessing Officer, apart from filing copy of the income tax return acknowledgement, the Appellant had not filed bank statements/other documents pertaining to the preceding years to support his claim. Given the aforesaid facts and circumstances of the present case, we deem it appropriate to remand this issue back to the file of the Assessing Officer for adjudication afresh after giving the Appellant reasonable opportunity of being heard. The Appellant is directed to file all the documents/details on which reliance is sought to be placed by the Appellant to establish cash-in-hand as on 01/04/2014 and the source of cash deposits of INR 5,54,000/- during the Financial Year 2012-13. In terms of the aforesaid directions, grounds of appeal raised by the Appellant are allowed for statistical purposes.

7. In result, the present appeal by the Assessee is allowed for statistical purposes.

Order pronounced on 26.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 26.05.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai