

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "A" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1429/Mum/2023 (A.Y. 2014-15)

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| Aska Jewels Private Limited 7, Tata Road No. 2, Pratik Arcade, Opera House Mumbai-400 004. PAN : AADCA8151A (Appellant) | Vs. | ITO-5(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent) |
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| Assessee by | Shri Jayant Bhatt |
| Department by | Shri Manoj Kumar Sinha |
| Date of Hearing | 06.07.2023 |
| Date of Pronouncement | 06.07.2023 |

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28.3.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition relating to the bogus purchases and also unexplained cash deposits assessed under section 68 of the I.T. Act.

2. Learned AR submitted that the assessee is engaged in the business of trading in diamonds. The Assessing Officer, during the course of assessment proceedings, noticed that the assessee was one of the beneficiaries of accommodation entry providers, i.e., the assessee has purchased diamonds to the tune of Rs. 24.54 lakhs. The Assessing Officer treated the above said purchases as bogus in nature and accordingly estimated the profit thereon at 12.5% which resulted in addition of Rs. 3,06,778/-. The Assessing Officer also noticed that the assessee has made cash deposits into its bank account

aggregating to Rs. 49,56,200/-. Though the assessee explained that the deposits were made out of cash balances available in the books of account, yet the Assessing Officer assessed the above said cash deposit as income of the assessee by observing that the cash book furnished by the assessee is not reliable. The Learned AR submitted that the assessee challenged both the additions by filing appeal before learned CIT(A). Since the assessee did not respond to the notice issued by him, the first appellate authority took the view that the assessee is not interested in pursuing its appeal and accordingly dismissed the appeal of the assessee. Aggrieved, the assessee has filed this appeal before the Tribunal.

3. The Learned AR submitted that the Assessing Officer has made identical addition relating to alleged bogus purchases in AY 2013-14 also, but he has estimated the profit @ 3% in that year. He submitted that the assessment of A.Y. 2013-14 was, in fact, completed after passing of the assessment of the year under consideration i.e. A.Y. 2014-15. Accordingly he submitted that the estimate at 12.5% made by the Assessing Officer is on the higher side and further contended that the AO cannot have taken two different stands in two different assessment years. Accordingly, he submitted that this issue may be restored to the file of AO for examining it afresh.

4. With regard to the addition relating to cash deposits, the learned AR submitted that the assessee is maintaining proper books of account and deposits were made out of cash balances available therein. He submitted that the Assessing Officer has observed that the cash book maintained by the assessee is not reliable without any basis, i.e., no credible reason was given by the Assessing Officer for holding so. Accordingly, he submitted that no addition was called for on account of cash deposits also. He submitted that the AO has not examined the books of accounts properly and accordingly prayed that this issue may also be restored to the file of the Assessing Officer for examining it afresh.

5. The Learned DR, on the contrary, submitted that the assessee did not cooperate with the learned CIT(A) and hence the learned CIT(A) was constrained to dismiss the appeal of the assessee.

6. Having heard the rival contentions, we find merit in the submissions made by learned AR. We notice that the Assessing Officer himself has taken the rate of profit on alleged bogus purchases @ 3% in A.Y. 2013-14 and the said assessment has been completed subsequent to the date of completion of the present assessment under consideration. According to Ld A.R, there is no change in facts on this issue between these two years. Hence there cannot be any reason to take two different views on the same issue. We also notice that the profits from alleged bogus purchase of diamonds are estimated around 3% only. Accordingly, we are of the view that this issue may be restored to the file of the Assessing Officer for examining it afresh by considering the assessment order passed for A.Y. 2013-14 and other decisions rendered by Tribunal on identical issue.

7. With regard to the addition relating to the cash deposits, there should not be any dispute that no addition could be made, if the deposits have been made by the assessee out of cash balances available in the books of account. We notice that the Assessing Officer has refused to accept cash book furnished by the assessee on the reasoning that the same is not reliable. However, as submitted by learned AR, the Assessing Officer has not given any credible reason in support of his stand. If no credible reason for rejecting the books of account is available, then the books of account of the assessee, in our view, cannot be rejected. If the source of deposits is the cash balance available in the books of account and the said deposits have also been duly accounted for in the books of account, then the cash deposits would stand explained, in which case no addition is called for. Since the AO has not examined the books of accounts of the assessee, in our view, this

issue also requires verification at the end of AO. Accordingly we set aside the order passed by the learned CIT(A) and restore both the issues to the file of the AO for examining them afresh. Needless to mention the assessee should be provided adequate opportunity of being heard.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 6.7.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai.; Dated : 06/07/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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