

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 1272/MUM/2023**  
**Assessment Year: 2017-18**

Faiyaz Yunus Patel,  
Flat NO. 602, VMK CHS,  
LBS Marg, Chirag Nagar,  
Ghatkopar (W),  
Mumbai-400086.  
**PAN NO. AKXPP 9040 L**  
**Appellant**

ITO-27(1)(4),  
Room No. 409, 4<sup>th</sup> floor, Tower  
**Vs.** NO. 6 Vashi Railway Station  
Commercial Complex Vashi,  
Navi Mumbai-400703.  
**Respondent**

**Assessee by** : Mr. Navin Prakash Mishra  
**Revenue by** : Ms. Indira Adakil, DR

Date of Hearing : 06/07/2023  
Date of pronouncement : 10/07/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the assessee against the order dated 28.02.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:

*1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal), NFAC erred in confirming the addition of Rs. 12,67,239/- on account of the routine business Cash Receipt from retailers on account of Vodafone M Pesa and treating it as*



*unexplained cash credit by invoking provisions of section 68 of the Act.*

*Provisions of the Act ought to have been properly construed and regard being had to facts of the case such income should not have been assessed under section 68 of the Act. Reasons assigned by Assessing Officer are wrong and insufficient to assess Rs. 12,67,239/- as unexplained cash credit under section 68 of the Act.*

*2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal), NFAC erred in confirming disallowance of Rs.75,600 by invoking provisions of section 40(a)(ia)of the Act on rent expense.*

*Provisions of the Act ought to have been properly construed and regard being had to facts of the case such expense should not have been disallowed under section 40(a)(ia) of the Act as there is no TDS provision applicability to the Assessee for the relevant assessment year. Reasons assigned by Assessing Officer are wrong and insufficient to disallow Rs.75,600 under section 40(a)(ia) of the Act on Rent Expenses.*

*3. The order made under section 143(3) of the Act is illegal, bad-in-law, ultra virus and without allowing reasonable opportunity of the hearing, without appreciating facts, submission and evidences in their proper perspective is liable to be annulled.*

*4. The appellant crave leave to add, amend, alter and/ or vary any of the grounds of appeal before or at the time of hearing.*

2. Briefly stated, facts of the case are that the assessee is an individual, and was running a proprietary concern under the name of M/s Patel Enterprises for the year under consideration. The said proprietary concern was engaged as a distributor of mobile recharges of brand "Vodafone" and its other related services. The



assessee earned nominal margin of income on sale of recharge balances to retailers. This nominal margin was provided to the assessee by the 'Vodafone' in the form of 'recharge balance' only, which was monetised by the assessee by way of sale of those recharge balance to retailers. by The assessee further passed on some of the margin in the form of 'charge balance' to retailers on sale of recharges. During the year under consideration, the assessee also provided services of transfer of money through 'Vodafone M-pesa' i.e. an online wallet application, and earned commission .

2.1 For the year under consideration, the assessee filed return of income on 02.11.2017 declaring total income of Rs.4,48,860/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessee filed necessary documents including tax audit report u/s 44AB of the Act, loan confirmation, bank statement etc. The Assessing Officer completed the assessment u/s 143(3) of the Act on 10.12.2019 and made two additions. **Firstly**, addition of Rs.12,67,239/- was made as unexplained cash credit u/s 68 of the Act in relation to cash deposits received in various bank accounts from the retailers against 'Vodafone M-Pesa' service facility. **Secondly**, the disallowance of Rs.75,600/- was made u/s 40(a)(ia) of the Act on account of non-deduction of tax at source (TDS) payment of rent of



Rs.2,52,000/-. On further appeal, the Ld. CIT(A) rejected the request of the assessee for adjournment and dismissed the appeal ex-parte.

3. Before us, the Ld. Counsel of the assessee filed a Paper Book containing pages 1 to 38. The Ld. Counsel referred to page No. 38, which is a copy of the acknowledgement of the adjournment sought before the ld CIT(A). He further referred to pages 22 to 32 of the Paper Book to demonstrate that amount of Rs.12,67,239/- which was received from retailers in cash, was transferred to 'Vodafone'. The Ld. Counsel submitted that since this money of Rs.12,67,239/- was received from retailers in cash on behalf of the M/s Vodafone and the assessee has substantiated that said amount was transferred to Vodafone and the assessee earned only commission therefore, the addition made by the Assessing Officer invoking section 68 of the Act is not justified.

3.1. The Ld. Departmental Representative (DR) on the other hand relied on the order of the lower authorities.

3.2. We have heard rival submission of the parties and perused the relevant material on record. The brief facts qua the issue in dispute are that the assessee alongwith the business of distribution of recharge balances of Vodafone, also opted for services of Vodafone for transfer of instant money using wallet scheme launched by Vodafone namely 'M-Pesa'. In respect of business of distribution



mobile recharge balances, the assessee earned margin in purchase and sale of recharge/talk time but the services of M-Pesa being purely service of money transfer like bank therefore, Vodafone gave a nominal commission as handling charges. For the purpose of handling cash received from retailers under M-Pesa , a separate account in the bank of ICICI was opened where beneficiary was Vodafone M-Pesa Ltd. Further on the direction of Vodafone company for avoiding bank charges, the assessee opened a new escrow type account with Yesh Bank Ltd, wherein total of Rs.4,26,27,248/- was deposited during the year under consideration, which was received in cash from retailers. The major portion of the M-Pesa transaction was being made during the year through said Yes Bank M-Pesa account. However, in certain instances, rather than directly depositing the money of M-Pesa transaction into the said Yes Bank account, the assessee had deposited the said M-Pesa into his other accounts and thereafter transferred that amount to Yes Bank account or ICICI Bank account. The assessee has provided the detail of the total proceeds relating to M-PESA transaction during the year under consideration as under:

<b>M-PESA Proceed Received through :</b>	<b>Amount (Rs.)</b>	<b>Percentage (%)</b>
Directly in Yes Bank Ltd. Exclusive account bearing No. 041963000000156	4,26,27,248	97.11%
Through other bank accounts (as mentioned) maintained for normal business transactions	12,67,239	2.89%
<b>Total</b>	<b>4,38,94,487</b>	<b>100%</b>



3.3. The assessee before us, submitted that assessee has already declared commission income of Rs.1,09,149/- earned from the said M-Pesa transaction of Rs.4,38,94,437/- and same are also reflected in Form No. 26AS. We find that the Assessing Officer has duly noted this fact of earning commission on M-Pesa. However, the AO treated the cash received of Rs.12,67,239/- as unexplained cash credit. Whereas, the assessee has before us duly demonstrated that said amount of Rs.12,67,239/- has been transferred to Vodafone (PB-22 to PB-32) and thus this money was received by the assessee on behalf of the Vodafone M-Pesa. In our opinion, the Ld. Assessing Officer has ignored the factual information provided by the assessee. When the receipt is subjected to commission income the assessee was not liable to record the same as turnover of the assessee. In view of the discussion above, The impugned order of the Ld. CIT(A) on the issue in dispute is accordingly set aside and we direct the Assessing Officer to delete the addition of Rs.12,67,239/- made u/s 68 of the Act.. The ground No. 1 of appeal of the assessee is accordingly allowed.

4. The ground No. 2 of the appeal of the assessee relates to disallowance of Rs.75,600/- being paid as 30% of the rent expenses of Rs.2,52,000/- invoking section 40(a)(ia) of the Act.

4.1. We have heard rival submission of the parties and perused the relevant material on record. We find that the assessee has been subjected to tax audit u/s 44AB of the Act for the first time in



assessment year 2017-18 i.e. current assessment year. Since, the assessee was not subjected to tax audit u/s 44AB in assessment year 2016-17, therefore, provisions of Chapter XVII-B (TDS) were not applicable for the assessment year under consideration and would be applicable from subsequent assessment year i.e. assessment year 2018-19. We are of the opinion that the Assessing Officer has ignored the requirement of section 194I of the Act for liability of individual u/s 194-I of the Act in the assessment year subsequent to the year of audit u/s 44AB of the Act. In view of the above, we direct the Assessing Officer to delete the disallowance the order of the Ld. CIT(A) on the issue in dispute is set aside. The ground No. 2 of appeal of the assessee is accordingly allowed.

5. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 10/07/2023.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 10/07/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,



//True Copy//

(Assistant Registrar)  
**ITAT, Mumbai**