

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

SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1476/M/2023
Assessment Year: 2013-14**

Mr. Vasudendra Lakshminarayan Shetty, Room No. 2B 65, 2JNPT Township, JNPT Sector, Uran, Raigad, Maharashtra- 400 707 PAN: BPHPS0940A	Vs.	ITO, National Faceless Assessment Centre and Ward-3, Panvel, Maharashtra-110 001
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rajesh Athavale, A.R.
Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 13 . 07 . 2023
Date of Pronouncement : 22 . 08 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mr. Vasudendra Lakshminarayan Shetty (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 03.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2013-14 on the grounds inter-alia that :-

"1. The learned CIT(A) erred in confirming the reopening the assessment under Section 147 of the Income tax Act. He erred in not appreciating that the assessing officer had reopened the assessment based on incorrect information available on AIR.

2. The learned CIT(A) erred in confirming addition of INR 9,188 being the difference between 0.5% on the total receipts of INR 45,93,586 collected towards mobile recharge wallet i.e. INR 22,968 and commission income of INR 13,780 as already disclosed in the return of income. It is submitted that the appellant would have also incurred certain business expenses and therefore, considering the nature of his business no further addition of INR 9,188 should be made to his business income.

3. The learned CIT(A) erred in confirming addition of INR 17,72,300 towards unexplained money under Section 69A r.w.s. 115BBE of the Income Tax Act. He erred in not appreciating that as per the bank statement of saving bank account the last transaction for the financial year 2012-13 was undertaken only till 28 March 2013. Thereafter, the appellant undertaken a transaction in the next financial year on 2 April 2013. The reasons for banking transactions could not be undertaken between 29 March 2013 till 1 April 2013 are as under:

Date	Reason
27 March 2013	Bank closed due to Holi festival
28 March 2013	Cash deposited in Bank as Bank was operational
29 March 2013	Bank closed due to Good Friday
30 March 2013	Bank closed for public transactions to retail customer in banking sector due to annual account closing
31 March 2013	Bank closed on Sunday
01 April 2013	Bank closed for public transactions to retail customer in banking sector due to annual account closing
02 April 2013	Cash deposited in Bank as Bank was operational

This shows that the information regarding deposit of INR 17,72,300 on 31 March 2013 in appellant's saving bank account of SBI as reflected in AIR is not correct.

4. The learned CIT(A) erred in confirming the levy of interest under Sections 234A and 234B of the Income tax Act.

5. Each one of the above grounds of appeal is without prejudice to the above.

6. The appellant reserves the right to add, alter or amend to the above grounds of appeal.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee being a distributor of mobile recharge wallet in the name and style of Shetty Online

earned commission @ 0.5% by collecting the amount from retailers such as pan shop, general stores, provision stores, mobile recharge shops etc. The assessee after providing mobile recharge balance to the customers deposited the sum in the bank account to get the recharge wallet balance from mobile recharge to service provider companies like Oxygen Services, Utility Services, LV Communications and Gujarat Technologies. The Assessing Officer (AO) noticed that the assessee has made cash transaction of Rs.17,72,300/- in the bank account which he has not disclosed for taxation nor offered the source of cash transaction nor filed the return of income for the year under consideration i.e. A.Y. 2013-14 and consequently case was reopened by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short 'the Act'). Notice under section 142(1) was issued and in response thereto the assessee filed his submissions along with the copy of return of income, computation of income, profit & loss account, balance sheet, bank account statement of saving account No.32158896338 and current account No.32742404355 and given justification for large cash deposits and mode of operation. The assessee offered an income of Rs.13,780/- being 0.5% of the total receipts on account of his business transaction. The AO noticed that during the year under consideration the assessee has shown cash deposit of Rs.45,93,586/- and @ 0.5% his commission comes to Rs.22,968/- but has offered an amount of Rs.13,780/- as against total commission income of Rs.22,968/- and thereby made an addition of Rs.9,188/-. The AO also noticed from the annual information report (AIR) that during the year under consideration a cash deposit of Rs.17,72,300/- in saving bank account maintained with SBI was deposited on a single day. On failure of the assessee

to file any explanation to the aforesaid cash deposit the AO proceeded to make addition of Rs.17,72,300/- to the total income of the assessee and thereby framed the assessment under section 143(3) read with section 147 read with 144B 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 is maintaining his saving bank account No.32158896338 with SBI JNPT Branch, Uran. It is also not in dispute that reopening in this case has been initiated by the AO under section 147/148 of the Act on the basis of information received from AIR that the assessee has made cash transaction of Rs.17,72,300/- in his bank account which he has not taken into consideration in the total bank credits on which commission income was offered. It is also not in dispute that the assessee has claimed his total receipt of Rs.45,93,586/- during the year under consideration on which he has computed his commission income @0.5% which comes to Rs.22,968/-. It is also not in dispute that the assessee has not filed the return of income being below taxable limit.

6. In the backdrop of the aforesaid undisputed facts the Ld. A.R. for the assessee has challenged the reopening in this case under section 147/148 of the Act on the ground that initiation of reopening proceedings itself is void ab-initio having been initiated on the basis of incorrect alleged AIR information “that the assessee has made cash transaction of Rs.17,72,300/- in the bank account in a single day on 31.03.2013” which he has not disclosed for taxation nor offered the source of cash transactions nor filed the return of income. The Ld. A.R. for the assessee further drew our attention towards the bank account statement of the captioned bank account (supra) for the period under consideration covering the alleged date of transaction of Rs.17,72,300/-, which is extracted for ready perusal as under:

Txn Date	Value Date	Description	Ref No./Cheque No.	Debit	Credit	Balance
26 Mar 2013	26 Mar 2013	TO TRANSFER-INB Ivbalaji-	IT5982400 TRANSFER TO 31761514341	10,000.00		6.46
26 Mar 2013	26 Mar 2013	BY TRANSFER-FI DEP REF:165991043,KO LOC:16792--	TRANSFER FROM 32011496350		4,000.00	4,006.46
26 Mar 2013	26 Mar 2013	CASH DEPOSIT-CASH Deposited at GCC-			10,000.00	14,006.46
26 Mar 2013	26 Mar 2013	TO TRANSFER-INB RCMB718	IT59605607 TRANSFER TO 32520469542	5,000.00		9,006.46
26 Mar 2013	26 Mar 2013	TO TRANSFER-INB MT349-	IT59605739 TRANSFER TO 30775222418	5,000.00		4,006.46
26 Mar 2013	26 Mar 2013	TO TRANSFER-INB SELF-	IT09636538 TRANSFER TO 32742404355	4,000.00		6.46
28 Mar 2013	28 Mar 2013	BY TRANSFER-GRPT SBM2803131125703 Ms JYOTHI SHREE B J-	TRANSFER FROM 2399484044302		22,000.00	22,006.46
28 Mar 2013	28 Mar 2013	BY TRANSFER-FI DEP REF:166588347,KO LOC:16792--	TRANSFER FROM 32011496350		5,000.00	27,006.46
28 Mar 2013	28 Mar 2013	TO TRANSFER-INB rcmb718-	IT59703628 TRANSFER TO 32520469542	5,000.00		22,006.46
28 Mar 2013	28 Mar 2013	TO TRANSFER-INB mt349-	IT59707351 TRANSFER TO 30775222418	13,000.00		9,006.46
28 Mar 2013	28 Mar 2013	TO TRANSFER-INB Ivbalaji-	IT59709240 TRANSFER TO 31761514341	9,000.00		6.46
28 Mar 2013	28 Mar 2013	BULK POSTING- 0655366127306990370429CA Nc390.00-			390.00	396.46
2 Apr 2013	2 Apr 2013	TO TRANSFER-INB Oxi Services- ..	37803221GH3988 914 TRANSFER TO 323911	206.00		190.46
2 Apr 2013	2 Apr 2013	TO TRANSFER-INB Oxi Services-	37803751GH3990 219 TRANSFER TO 323911	121.00		69.46
3 Apr 2013	3 Apr 2013	CASH DEPOSIT-CASH Deposited at GCC-			28,000.00	28,069.46
3 Apr 2013	3 Apr 2013	TO TRANSFER-INB Iv balaji-	IT60143568 TRANSFER TO 31761514341	25,000.00		3,069.46
3 Apr 2013	3 Apr 2013	BY TRANSFER-INB Refund of IGH3988914--	37803221X27400 168 TRANSFER FROM 323		206.00	3,275.46
3 Apr 2013	3 Apr 2013	BY TRANSFER-INB Refund of IGH3990219--	37803751X27400 312 TRANSFER FROM 323		121.00	3,396.46
3 Apr 2013	3 Apr 2013	CASH DEPOSIT-CASH Deposited at GCC-			19,000.00	22,396.46
3 Apr 2013	3 Apr 2013	TO TRANSFER-INB Iv balaji-	IT60182753 TRANSFER TO 31761514341	10,000.00		12,396.46
3 Apr 2013	3 Apr 2013	TO TRANSFER-INB-	IT09752003 TRANSFER TO 32742404355	12,000.00		396.46
4 Apr 2013	4 Apr 2013	CASH DEPOSIT-CASH Deposited at GCC-			4,500.00	4,896.46
4 Apr 2013	4 Apr 2013	BY TRANSFER-INB-	IT09760710 TRANSFER FROM 32742404355		200.00	5,096.46

7. The Ld. A.R. for the assessee further contended that on the alleged date i.e. 31.03.2013 for making transaction of

Rs.17,72,300/-there was no transaction in the bank, the bank being closed on 29th March on account of Good Friday/bank holiday, 30th the bank was closed for public transaction due to annual accounts closing and 31.03.2013 (the date of alleged transaction) being Sunday. I have perused the calendar of the aforesaid dates in question which are extracted for ready perusal as under:

March 2013						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

8. Bare perusal of the bank statement as well as calendar extracted in the preceding para goes to prove that there was no such transaction carried out by the assessee on 31.03.2013 being Sunday and even no such transaction is there during the entire month of March 2013. It shows that the edifice of reopening assessment under section 147/148 is crumbled and reopening is not sustainable in the eyes of law rather it is miscarriage of justice.

9. In these circumstances I am of the considered view that reopening on the basis of incredible and incorrect AIR information and the subsequent order passed is void ab-initio, hence hereby quashed.

10. In view of the matter present appeal filed by the assessee is hereby allowed on legal ground for reopening of the assessment under section 147 is incorrect and invalid without going into the merits of the case.

11. Resultantly, appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 22.08.2023.

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

Mumbai, Dated: 22.08.2023.

* 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.