

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1852, 1881 & 1882 /Mum/2023
(A.Y: 2014-15, 2015-16 & 2016-17)

Shri Sanjiv Vishwanath Rungta, 18, beau Monde No.1, 5 th Floor, Above Axis Bank, Sunder Nagar, Malad (West), Mumbai-400064.	Vs.	ITO-30(3)(2), Aaykar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. : AABPR0084L		
Appellant	..	Respondent

Appellant by :	Shri Pankaj R Toprani & Ms. Kurpa P. Toprani. AR
Respondent by :	Shri Virabhandra Mahjan. Sr.DR

Date of Hearing	19.10.2023
Date of Pronouncement	03.11.2023

आदेश / O R D E R

PER BENCH:

These are the three appeals filed by the assessee against the separate orders of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec 143(3) and U/sec 250 of the Act.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeals

before the Hon'ble Tribunal and filed the application for condonation of delay. Whereas, the facts mentioned in the application are reasonable and the Ld.DR has no specific objections. Accordingly, we condone the delay and admit the appeals.

3. Since the issues involved in these appeals are common and interlinked, for the sake of convenience, we shall take up the ITA No. 1852/Mum/2023 for the A.Y 2014-15 as lead case and facts narrated. The assessee has raised the following grounds of appeal

1. A) On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in considering the opening business cash of Rs. 1,22,190/- reported in the Income Tax Return of the appellant as the Total Cash Balance available with him without appreciating the fact that the personal cash available with the assessee at the beginning of the year was Rs. 24,25,800 details of which were also submitted to Ld. CIT(A) as well as AO who had not raised any doubt about the same, hence modifying the same is bad in law.

B) On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in not appreciating the fact that the cash to be reported in the Income Tax Return - Balance Sheet is only the Business Cash and the appellant also has kept sufficient Personal Cash accumulated out of earnings of previous years since the appellant has been tax filer from past many decades, also he had sufficient personal cash balance with him considering his son's

marriage during the year 2014-15, his ailing mother and family to look after. The assessee was also in receipt of inheritance from father Vishwanath Rungta who passed away on 29th June 2012.

C) On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in concluding that appellant failed to prove the existence and carrying out of business for the purpose of cash deposit without appreciating the fact that the existence of personal cash and its deposit was also submitted and CIT(A) has not brought on record any justifiable reason to invalidate the contention of the appellant that the cash being deposited by him was sourced from his own withdrawal.

2 On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the AO of directing him to make addition u/s 69A by considering the additions to be computed by AO as unexplained money without appreciating the fact that the appellant had provided explanation of the source and had also submitted his cash book to the AO as well as CIT(A), hence any additions u/s 69A is bad in law.

Without prejudice to the above,

3 On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in directing the AO to consider only cash withdrawn within 60 days prior to the date of deposit in bank as reasonable period for determining the source of such cash, without appreciating

the fact that there cannot be any reasonable period attributable to the cash deposit. The appellant has entire cash deposits backed by the opening personal and business cash balance as well as cash withdrawals from bank, among other cash sales, etc. entries which were duly submitted to the AO as well as CIT(A). Hence, arbitrary directing 60 days period is bad in law. The deposit ought to have backing by earlier cash withdrawals without any periodical restrictions.

4. On the facts and under the circumstances of the case and in law, the appellant craves to make an alternate plea that his opening cash balance was Rs. 31,22,190 instead of Rs. 1,22,190 reported in balance sheet as well in ITR with corresponding amount liability of Rs.33,01,239 being outstanding balance of SVC Overdraft account as on 31.3.2013 which was incorrectly reported at Rs. 3,01,239. Thus, the opening cash available should be considered at Rs. 31,22,190.

The Appellant craves leave to add, to alter or to delete the above ground of appeal if necessary."

4. The assessee has raised the additional grounds of appeal:

1. The Ld. CIT (A) erred in law and on facts in invoking section 69A of the Income Tax Act 1961 ("the Act") and in upholding an addition of Rs.49,62,202/- under the said section as unexplained cash credits on a mere suspicion without verifying the relevant entries in the cash book and the bank book in respect of cash deposited in the bank accounts and the cash withdrawn from the bank

accounts which were duly recorded in the cash book and the bank statements filed before him and the Ld. AO, in total disregard the explanation offered by the Appellant

2. The Ld. CIT (A) erred in law and on facts in upholding an addition of Rs. 49,62,202/- under section 69A of the Act as unexplained cash credits without he and the Ld. AO bringing any evidence on record to show that the Appellant earned undisclosed income which was not reflected in his books of accounts and proceeding on a mere suspicion that the Appellant having a law profitability in business cannot make frequent cash withdrawals from the bank accounts and again redeposit such cash in the said bank accounts.

3. The Ld CIT (A) erred in law and on facts in applying peak credit theory to the Appellant's case and directing the Ld AO work out peak credit in a manner stated in his directions without appreciating the fundamental principle that the peak credit theory is used for fraudulent entries rather than the real one since the bogus credit and the bogus debit entries cancel one other.

5. The Brief facts of the case are that, the assessee is engaged in the business and has filed the return of income for the A.Y 2014-15 on 15.09.2014 disclosing a total income of Rs. 1,85,670/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS – limited scrutiny for the reasons “Large value

sale of futures in a recognized stock exchange & cash deposits in savings bank account is more than the turnover”. The Assessing Officer (AO) has issued notice u/sec 143(2) and 142(1) of the Act along with the questionnaire. In compliance to notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The AO on perusal of the information and details found that the case of the assessee was selected for scrutiny being the cash deposits and therefore notice u/s 133(6) of the Act was issued. The AO on perusal of the bank account found that the assessee has submitted details in ITR data in respect of three bank account i.e Axis bank, ICIC and with the SVC Co Op bank and the total cash deposits made in all three banks aggregating to Rs. 67,93,524/-, the assessee has filed the explanations in this regard explaining the sources vide letter dated 30.11.2016. The submissions of the assessee are that the cash sales are reflected in the statements, similarly for purchases, the assessee has withdrawn the cash from the bank as and when required. The AO was not satisfied with the explanations and dealt on the cash deposits at Para 5.1.3 of the order and is of

the opinion that the assessee has made cash deposits without explaining the sources and treated as unexplained cash credits u/s 68 of the Act Rs. 67,93,245/-. Similarly, the AO found that the assessee had transactions in derivatives and details of the trading were called and the assessee has made profit of Rs. 20,996/- in the derivative segment segments and was not offered to tax. Finally, the AO has assessed the total income of Rs.69,99,910/- and passed the order u/s 143(3) of the Act dated 06.12.2016.

6. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but has sustained the addition to the extent of Rs.49,62,202/-and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Honble Tribunal.

7. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in partly confirming the additions by the AO overlooking the factual information filed in the proceedings. The Ld.AR emphasized that the CIT(A) has

ignored the personal cash balance available with the assessee though the disclosure was made in the ITR is to the extent of business cash balance. Further the Ld.AR submitted that the assessee has a good case on merits and has filed an application for admission of the additional evidence under Rule 29 of ITAT rules. Per contra, the Ld. DR submitted that the evidences were not examined by the lower authorities and the Ld. DR supported the order of the CIT(A).

8. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue that the CIT(A) has erred in partly sustaining the additions by the A.O. as the transactions are not supported with the documentary evidences. The Ld.AR emphasized that the assessee has submitted the details as called for by the authorities. Whereas the CIT(A) has overlooked the personal cash balance available with the assessee though the disclosure was made in the ITR is to the extent of business cash balance. The assessee is filling the application for admission of additional evidences under Rule 29 of ITAT rules with (i) Copy of Trial Balance for the previous year 01.04.2012 to 31.03.2013 of the

Appellant's proprietary concern M/s Mascan. (ii) Copy of the Cash Book for the previous year 01.04.2012 to 31.03.2013, of the Appellant's proprietary concern M/s Mascan showing closing balance of cash on hand 31.03.2013 at Rs.31,22,190/-. (iii) Copy of the Bank Statement of SVC Bank Ltd Overdraft A/c No. 101120950000113 Goregaon Branch Mumbai for the previous year 01.04.2012 to 31.03.2013 along with the Bank Reconciliation Statement. (iv) Copy of the Bank Statement of AXIS Bank Savings Bank A/c 91101002832121, Malad West Branch, Mumbai for the previous year 01.04.2012 to 31.03.2013. (v) Copy of the Bank Statement of ICICI Bank Savings Bank A/c 001101030940 Malad West Branch, Mumbai for the previous year 01.04.2012 to 31.03.2013. (vi) Copy of the Corrected Balance Sheet as at 31.03.2013 along with Trading A/c and Profit & Loss A/c and Capital A/c as on 31.03.2013. (vii) Copy of the Return Acknowledgement and Computation of Income for Assessment Year 2013-14 along with the Trading A/c and Profit & Loss. A/c and Capital A/c as on 31.03.2013. (viii) Copy of intimation under section 143 (1) dated 27th January, 2014 by CPC, Bangalore.

Whereas these details were not available earlier and could not produce before the lower authorities. Further the evidences play a important role in decision making in the adjudicating proceedings. Therefore considering the facts, circumstances and additional evidences, the assessee should not suffer for non filing of material information, as the evidences played vital role in decision making and admit the additional evidence. Accordingly, to meet the ends of justice, set aside the order of the CIT(A) and restore the entire disputed issues along with the additional evidence to the file of the assessing officer to decide afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

ITA 1881/Mum/2023, A.Y 2015-16
ITA1882/Mum/2023, A.Y 2016-17

10. As the facts and circumstances in these two appeals are identical to ITA No 1852/Mum/2023, A.Y

2014-15 on the disputed issues and the decision rendered in the above paragraphs will apply *mutatis mutandis* to these appeals also. Accordingly, the grounds of appeal of the assessee are allowed for statistical purposes.

11. In the result, the three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 03.11.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 03.11.2023
KRK, PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai