

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 3121/Mum/2023

(Assessment Year: 2013-14)

Rohan Nitin Mehta
42, Nirmal Bungalow,
10th Floor, Jai Hind CHS,
JVPD, Vile Parle,
West, Mumbai -400 056

Vs.

ITO Ward 25(3)(3)
Room No.606,6th Floor,
C-10, Pratyakshkar Bhawan,
Bandra Kurla Complex,
Bandra East,
Mumbai-400 051

(Appellant)

(Respondent)

PAN No. AMNPM3626M

Assessee by : Shri Jitendra Singh (Adv.)

Revenue by : Shri Mahita Nair (Sr. DR.)

Date of hearing: 02.01.2024

Date of pronouncement : 05.01.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee against the appellate order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2013-14, dated 5th July, 2023, wherein the appeal filed by the assessee against the assessment order under Section 144 of the Income-tax Act, 1961 (the Act) dated 17th December, 2016, passed by the ITO Ward, 25(3)(3), Mumbai, was dismissed.
02. Assessee is in appeal against that appellate order raising following grounds of appeal:-

"1. The Ld. National Faceless Appeal Centre (NFAC) Delhi (hereinafter referred to as the "Ld. CIT(A)") erred in passing the order dated 05.07.2023 upholding the action of the Ld. Income Tax Officer Ward 25(3)(3), Mumbai (hereinafter referred to as 'Ld. A.O.')

in passing the reassessment order dated 17.12.2016 under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") determining the total income of the Appellant at Rs.96,87,718/- without appreciating the facts and circumstances of the case. Thus, the order dated 11.05.2023 passed by Ld. CIT(A) is bad in law and the same may be quashed.

2. Appellate Order passed without providing an appropriate opportunity of being heard is bad in law

(i) The Ld. CIT(A) erred in passing the impugned order without providing the Appellant an appropriate opportunity of being heard. Hence, the impugned order passed by the Ld. CIT(A) is in gross violation of principals of natural justice and the same may be quashed.

(ii) The Ld. CIT(A) failed to appreciate that the Appellant had moved an application under Rule 46A before the Ld. CIT(A)-37, Mumbai and the same was referred to the Ld. A.O. for his comment / remand report. Hence, the Ld. CIT(A) was not justified in passing the impugned assessment order in undue haste without providing the Appellant an opportunity to substantiate his claim. Thus, the impugned

order is passed against the provisions of law and the same may be quashed.

3. Addition by treating the deposits in the bank accounts as unexplained cash credit under section 68 of the Act is unjustified-96,87,720/-

(1) The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in treating the deposits in the bank account of the Appellant totaling to Rs.96,87,720/- as unexplained cash credit invoking the provisions of section 68 of the Act without appreciating the fact that the amount was deposited from the withdrawals made from the known sources. Thus, treating the deposits as unexplained cash credit under section 68 of the Act is unjustified and the same may be deleted.

(ii) The Ld. CIT(A) further failed to appreciate that the provisions of section 68 of the Act is not applicable to the facts of the present case as the Appellant is not maintaining any books of account and bank statement cannot be considered as books of accounts. Hence, the credits shown in the bank statements cannot be treated as unexplained cash credit invoking the provisions of section 68 of the Act. The Appellant, therefore, humbly prays that the addition of Rs.96,87,720/- made under section 68 of the Act may be deleted.

4. The Appellant denies any liability to pay interest under section 234A, 2348 and 234C of the Act. Hence, the same are not leviable.

5. The Appellant craves leave to add, alter, amend, delete, rescind or withdraw any of the grounds of appeal mentioned hereinabove."

03. Brief facts of the case shows that assessee is an individual did not file return of income. The information was available that assessee has deposited cash of ₹40,93,000/- in a bank account and therefore, reasons were recorded on 16th September, 2015 and notice under Section 148 of the Income-tax Act, 1961 (the Act) was issued on 22nd September, 2015. Notices were issued to the assessee, however, assessee kept on seeking adjournments and therefore, the learned Assessing Officer was constrained to pass the an assessment order under Section 144 of the Act, wherein the addition of ₹96,87,718/- was made to the total income of the assessee vide order dated 17th December, 2016. The learned Assessing Officer obtained the information under Section 133(6) of the Act from Greater Bombay Cooperative Bank, Kotak Mahindra Bank and Oriental Bank of Commerce and therefore, made addition of all the amounts credited in the bank accounts.
04. The assessee preferred the appeal before the learned CIT (A), wherein also it is mentioned that assessee was issued notice for hearing on six occasions but did not file any information and thereafter, the learned CIT (A) confirmed



the action of the learned Assessing Officer and dismissed the appeal. The assessee is aggrieved is in appeal before us.

05. The learned Authorized Representative submitted that before the learned CIT (A) when it was in physical mode and before migration to National Faceless Appellate Centre, assessee submitted the complete details before the learned Commissioner of Income-tax (Appeals). There was a petition under Rule 46A for admission of additional evidences. Such details are filed on 21st May, 2018. Such additional evidences were admitted by the Id CIT (A) and directed the assessee to submit remand report. It was further stated that the assessee has appeared before the learned Assessing Officer during the course of remand proceedings. Such remand proceedings was on occasion of admission of the additional evidences by the learned CIT (A). Such remand report was also awaited. Meanwhile, the appeal was migrated to National Faceless Appeal Centre and this appeal was dismissed by the National Faceless Appeal Centre. It was further submitted that the learned CIT (A) neither considered the additional evidences and nor the remand report.
06. On the merits it was submitted that assessee has given complete information about the total deposits of ₹96,87,718/- in the remand proceedings. Therefore, the addition made by the learned Assessing Officer and its confirmation by the learned CIT (A) is not proper.

07. The learned Departmental Representative vehemently submitted that despite notices given by the learned CIT (A) to the assessee, the assessee never mentioned such proceedings pending before the learned CIT (A), therefore, there is no infirmity in the orders of the lower authorities.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee did not file its return of income under Section 139(1) of the Act. Based on ITS information, the learned Assessing Officer came to know that assessee has deposited sums into various bank accounts and therefore, valid and proper notices were served for reopening of the assessment. The assessee was also issued several notices during the course of assessment proceedings but no information on merit was submitted. Thus, the addition was made. On appeal filed by the assessee before the learned CIT (A), assessee made an application for admission of additional evidences under Rule 46A of the Income Tax Rules, on 21st May, 2018. An acknowledgement to the same was filed before us. Based on this information assessee produced e-proceedings response acknowledgement dated 19th October, 2022, wherein the assessee submitted that last matter was heard by learned CIT (A)-37 and petition under Rule 46A of the Act was submitted for admission of additional evidences. The learned CIT (A) admitted the same and sent the matter to the learned Assessing Officer for the remand report. The assessee appeared before the learned Assessing Officer in the remand proceedings. Assessee submitted an acknowledgement dated 13th

March, 2019, wherein the details were submitted before the learned Assessing Officer with respect to the amount deposited in all the three banks. It was claimed by the assessee that there are disputes of the actual amount deposited in various bank accounts. The assessee submitted note with respective deposits in bank accounts of all the three banks. However, without going into the merits of the case, we find that the learned CIT (A) has passed the order, despite recording these facts in Para no.4.6. The fact of the claim of the assessee that remand report is awaited, in paragraph no.4.7, he held that no remand report requisition is available and further no additional evidences are filed by the assessee. He further held that appeal of the assessee had been filed on 16th January 2017, through e-filing system and no such additional evidences are sent on the system. However, before us, the assessee has filed a letter dated 21st May, 2018, addressed to CIT (A)-37, with a request to admit the additional evidences and further, there are submissions produced before us in the remand proceedings before the learned Assessing Officer on 13th March, 2019. Therefore, we find contradiction in the order of the learned CIT (A) specifically with reference to paragraph no.4.6 and 4.7 as well as the acknowledged copy of letters produced by the assessee before us. Therefore, in the interest of justice, we restore the issue of addition of ₹96,87,780/-back to the file of the learned Assessing Officer for the reason that remand proceedings are pending before him and as no remand report is



available with Id CIT (A) or with the Assessee, and direct the assessee to reiterate its submission before him within 90 days from the receipt of this order. The learned Assessing Officer may examine the same and decide the issue afresh in accordance with the law after providing assessee reasonable opportunity of hearing.

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

Order pronounced in the open court on 05.01.2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 05.01.2024

Sudip Sarkar, Sr.PS

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//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai