

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.3367/Mum/2023
(Assessment Year: 2010-11)

Asif Rasool Kadiwala B 601, Paradise Sra Pathanwadi Malad (E), Mumbai – 400 097	Vs.	ITO, Lower Parel East Mumbai – 400 012
PAN/GIR No. ALKPK 4488 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri S. A. H. Zaidi
Respondent by	:	Ms. Kakoli Ghosh
Date of Hearing	:	31.01.2024
Date of Pronouncement	:	31.01 .2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

2. The assessee has challenged the order of the Id. CIT(A) on the grounds of the addition made by the Id. Assessing Officer ('A.O.' for short) and upheld by the Id. CIT(A) u/s. 68 of the Act amounting to Rs.15,50,000/- as being the cash deposit for which source was unexplained.

3. The brief facts are that the assessee is an individual and had not filed his return of income during the year under consideration. The Id. A.O. reopened the assessee's case based on the information received from ITAX Net NMS Cycle 1 in the priority category P1 that the assessee has engaged in commodity transaction of Rs.173,76,98,425/- during the impugned year. Notice u/s. 148 of the Act dated 31.03.2017 was issued and served upon the assessee and in response to the said notice, the assessee has stated that his return of income is to be considered as Nil. After duly considering the submissions made by the assessee, the Id. A.O. determined the total income at Rs.16,73,200/- after making an addition of Rs.15,50,000/- u/s. 68 of the Act being the cash deposit in the savings bank account of the assessee which was not substantiated and passed the assessment order dated 29.12.2017 u/s. 143(3) r.w.s. 147 of the Act.

4. The assessee was in appeal before the first appellate authority who then confirmed the impugned addition made by the Id. A.O. vide an *ex parte* order dated 31.07.2023 on the ground that the assessee had not offered any explanation as to the nature and source of the cash deposits.

5. Aggrieved, the assessee is in appeal before us, challenging the order of the Id. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the first appellate authority has not given sufficient opportunity to substantiate the claim of the assessee.

7. The learned Departmental Representative ('ld.DR' for short) vehemently opposed to the said contentions stating that the assessee has been continuously non compliant before the lower authorities.

8. From the rival contentions, it is observed that the assessee has traded on MCX and NCDEX from which the ld. A.O. had sought for information pertaining to the transaction entered into by the assessee along with the details of the brokers. The ld. A.O. observed that from the global report submitted by M/s. Monarch Comtrade Pvt. Ltd., the assessee has incurred a loss of Rs.26,98,015/- and that the assessee has advanced various amounts to the brokers as per the ledger. The ld. A.O. also observed from the bank statement submitted by the assessee that there has been cash deposit of Rs.15.50 lacs in his bank account which the assessee has advanced to M/s. Monarch Comtrade Pvt. Ltd. The assessee has during the assessment proceeding disowned the said amount and stated that his younger brother has misused his signed cheques which were paid to M/s. Monarch Comtrade Pvt. Ltd. The ld. A.O. not convinced with the assessee's contention added the impugned amount to the total income of the assessee u/s. 68 of the Act as 'unexplained cash credit' for the reason that the assessee has failed to discharge the onus casted upon him to prove the source of the said deposit. Even before the first appellate authority, the assessee has failed to substantiate his claim by sufficient documentary evidences.

9. In view of the above factual matrix, we are of the considered opinion that the assessee may be given one more opportunity to present his case before the first appellate authority in view of the principles of natural justice. We hereby direct the assessee to co-

operate with the proceedings before the Id. CIT(A). We, therefore, remand this issue back to the file of the Id. CIT(A) to decide the grounds of appeal on the merits of the case.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 31.01.2024

Sd/-

Sd/-

(O P Kant)

(Kavitha Rajagopal)

Accountant Member

Judicial Member

Mumbai; Dated : 31.01.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai