

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.30/Hyd/2024		
Assessment Year: 2017-18		
Keshav Kumar Agarwal, 6-3-1089/A/1/502, Harmony Heights, Rajbhavan Road, Hyderabad. Telangana. PAN : ABQPA4260R	Vs.	The Income Tax Officer, Ward-6(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri S.K. Gupta, Advocate.
Revenue by:		Shri Aravindakshan, SR.AR
Date of hearing:		30/01/2024
Date of pronouncement:		30/01/2024

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.16.11.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“1. The order of the AO is not sustainable on facts or in law.

2. The CIT (A) should have considered filed before him w.r.t Sale of Tiles.

3.The Ld. CIT (A) failed to appreciate that there was dispute and to recover the initial deposit the assessee did distress sale.”

3. The brief facts of the case are that assessee filed his return of income for A.Y 2017-18 on 21.09.2017 admitting income from House Property Business & Other sources" at Rs.5,39,110/-. This case was selected for limited scrutiny under CASS on 26.09.2018 and the necessary statutory notices u/s 143(2) and 142(1) were issued through ITBA module to the registered mail ID of the assessee (sundeepchandarana@gmail.com) calling for certain information. As per the information received from the assessee as well as information available on record, Assessing Officer noticed that the total cash deposits were Rs.11,50,000/- (Rs.9,50,000/- + Rs.2,00,000/-). The explanation given by the assessee with respect to the source of the said cash deposits was not accepted by the Assessing Officer due to some discrepancies in the submissions of the assessee and due to non-availability of supporting documentary evidence. However, out of the said Rs.2,00,000/-, Assessing Officer found sources for Rs.1,00,000/- as genuine. As the assessee had not furnished any evidence for sources of Rs.10,50,000/- (Rs.9,50,000/- + Rs.1,00,000/-, Assessing Officer added the said amount to the total income of the assessee u/s 69A of the Act and initiated penalty proceedings u/s 271AAC separately. Thus,

Assessing Officer completed the assessment u/s 143(3) and passed order on 12.12.2019.

4. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before me, Id.AR argued that the sum of Rs.9,50,000/- deposited on 12.11.2016 resulted from sale of tiles, while the Rs.2,00,000/- deposited on 14.12.2016 derived from family savings. He contended that the cash deposits made by the assessee were from legitimate sources. The learned Authorised Representative pleaded that considering the above legitimate facts, the addition of unexplained income was unwarranted and should be deleted.

6. Per contra, the Id.DR has not raised any objection for remanding the matter back to the file of lower authorities.

7. I have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the orders of lower authorities, the submissions made by the assessee and the facts relating to the cash deposits, It is an admitted fact that find that before the Assessing Officer assessee failed to prove any verifiable documentary evidence like copy of ledger accounts, branch transfer copy etc. to substantiate that the assessee was dealing in Trading of Tiles and having closing stock to earn Rs.9,50,000/- deposited on 12.11.2016. With respect to this deposits, assessee submitted before the

Assessing Officer that being appointed as C&F for Sonarch International Private Limited, received an amount of Rs.21,00,000/- as deposit and facing litigation resulting in the cancellation of the C & F. The ld. AR for the assessee further submitted that the deposit amount was not fully refunded and hence, the stock was not returned back, stock was sold, and the sale proceeds were deposited in bank and adjusted against their balance. However, the explanation given by the assessee was rejected by the by the Assessing Officer due to non-furnishing of any documentary evidence like copy of ledger accounts, branch transfer copy etc.

7.1. It is also an admitted fact that out of Rs.2,00,000/- cash deposits, Assessing Officer accepted assessee's explanation to an extent of Rs.1,00,000/- only, as the same was transferred to the assessee. Consequently, the Assessing Officer treated the cash deposits of Rs.10,50,000/- (Rs.9,50,000/- and Rs.1,00,000/-) as unexplained money u/s 69A of the Act. I find that even in the appellate proceedings, assessee has not provided any supporting documentary evidence to prove the source of these cash deposits leading to the confirmation of the addition made by the ld.CIT(A).

7.2. However, before me, ld. AR filed some documentary evidence supporting the contention of assessee that an amount of Rs.9,50,000/- was received from sale of tiles. The documentary evidence includes letter dt.07.04.2016 from the said M/s. Sonarch International Private Limited to the representative of the assessee namely Mr. Tejas Anil Shah, establishing his involvement in the tiles business, mails sent to the said Mr. Tejas Anil Shah to prove that he was engaged in tiles business, a Lease cum Rental Agreement

executed in favour of the assessee by Shri Nithin Kumar Agarwal (Proprietor of M/s. Waterchem Laboratories) on whose name said cash deposit of Rs.9,50,000/- was transferred on 14.11.2016, copy of counter affidavit in a legal proceeding involving Sonarch International (P) Ltd. and others and etc.

7.3. From perusal of Para 8 of the counter affidavit filed by the Company namely, M/s. Sonarch International Pvt Limited in O.S.No.347 of 2014 on the file of XI Addl. Chief Judge, City Civil Court, Hyderabad, it is clear that the assessee was the C & F Agent of said M/s. Sonarch International Pvt. Limited and was having stock of tiles for an estimated value of Rs.12 lakhs and the said company has authorized to treat the tiles on sale of credit basis to it. Thus, the assessee was having tiles and was doing the business of tiles. Paragraph 8 is extracted below for ready reference.

“8. The true facts are that the petitioner approached the respondents and explained his difficulties in paying the balance amount of refundable deposit of Rs.14,00,000/- and has requested the respondents that they may be permitted to withdraw as C & F agents and that an amount of Rs.9,00,000/- out of Rs.21,00,000/- be refunded to them as they are urgent need of the said amount. They further stated that they may be permitted to sell the stocks worth Rs.16,87,577/- held by them and they would after adjusting the balance of deposit of Rs.12,00,000/- would remit the sale proceeds of the balance stock to the respondents. The respondents to accommodate the petitioner and also to maintain good business relationship has agreed to the said proposal of the petitioner. Thus, the stocks of the respondents lying with the petitioner were treated as purchase of the same by the petitioner on credit from these respondents.”

8. Now we left with the issue whether the assessee has sold the tiles and the source of cash deposit was explained by him or not ? It is already the case of the assessee before the Assessing Officer and Id.CIT(A) that the assessee has sold the tiles and deposited the amount received from the sale of tiles in the bank account. Undoubtedly, the assessee was having the tiles, and it cannot be denied that he must have sold the tiles and appropriated the amount towards its outstanding dues. However, the case of the Assessing Officer is that the assessee has failed to produce the necessary details of the person to whom the sales have been effected and also failed to produce a copy of GST Bill on the said sale. In my view, the assessee has bounden duty to maintain the bills and details of GST paid by him and to produce the same before the Revenue Authorities whenever called for. However, in the absence of the above said bills and more particularly, considering the counter affidavit filed before the City Civil Court, I am of the opinion that the assessee is entitled to partial relief in the matter and accordingly, I uphold the addition to an extent of Rs.4,20,000/- and thereby delete the remaining amount of Rs.6,30,000/-. Thus, the appeal of the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 30th January, 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 30th January, 2024.

TYNN/sps

Copy to:

S.No	Addresses
1	Keshav Kumar Agarwal, 6-3-1089/A/1/502, Harmony Heights, Rajbhavan Road, Hyderabad. Telangana.
2	The Income Tax Officer, Ward-6(1), Hyderabad.
3	PCIT, Hyderabad.
4	LD. DR, ITAT Hyderabad Benches
5	Guard File

By Order