

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE [VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND

DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.285/PUN./2018
Assessment Year 2010-2011

Vibrant Shelter Pvt. Ltd., Nagpur - 440 013PAN AACCV9904F C/o. RD Gopalani, Advocate 'Shital', Rajnagar, Opp. Zilla Parishad Girls High School, Katol Road, Nagpur. Maharashtra.	vs.	The ACIT, Circle-13, 60/61, Praptikar Sadan, Erandawane, Karve Road, Pune - 411 004 Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Hirani
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	06.03.2024
Date of Pronouncement :	13.03.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2010-11, arises against the CIT(A), Pune-5, Pune's Order in Appeal No. PN/CIT(A)-5/ACIT, Cir-13, Pune/163/2016-17, dated 09.10.2017, involving proceedings u/s.143(3) r.w.s.144 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“The reopening of the assessment and the assessment so completed are illegal and deserves to be quashed as per law.*
 2. *On the facts and circumstances of the case, the assessment so framed is against the principles of natural justice making the assessment and the additions so made unsustainable and bad in law.*
 3. *The Ld. AO grossly erred in making and the CIT(A) grossly erred in confirming the additions made U/s 68 of the Income Tax Act, 1961. The additions made U/s 68 of the Income Tax Act, 1961 are illegal and liable to be deleted according to law.*
 4. *Without prejudice, the quantum of addition U/s 68 is miscalculated which deserves to be corrected as per law and further be restricted to "peak credit" in the interest of justice.*
 5. *The Appellant denies its liability to be assessed to interest as charged. Under any case the levy of interest is highly excessive.*
 6. *The Appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal before or at the time of hearing of this Appeal with the kind permission of the Hon'ble Tribunal.”*
3. Mr. Hirani, first of all sought to challenge validity of the impugned reopening itself as not based on any “tangible” material and having taken recourse by the Assessing Officer by adopting “a borrowed satisfaction” only. He sought to buttress the point that the learned Assessing Officer herein had no access to the assessee’s

bank statement before recording the corresponding reopening reasons.

4. We find no substance in the assessee's instant first and foremost legal ground as it has nowhere placed on record the corresponding reopening reasons going to root of the matter. That being the case, we express our inability to decide the instant clinching issue of validity of reopening on account of assessee's failure in drawing some support from the Assessing Officer's assessment order dated 30.03.2016 in casual fashion. This is indeed coupled with the fact that the learned counsel could not dispute the assessment findings that the assessee had not filed any return, even after receiving sec.148 notice, so as to question the validity of the impugned reopening in light of GKN Driveshafts (India) P Ltd., vs. ITO [2003] 259 ITR 19 (SC). We accordingly reject the assessee's instant first and foremost substantive grievance.

5. Next comes the latter issue of correctness of sec.68 unexplained cash credit addition of Rs.84,05,721/- representing assessee's cash deposits in its bank account statement which is enclosed as 'Annexure-A' with the assessment order. Mr. Hirani first of all submitted that such account statement or bank records could not form subject matter of sec.68 addition as they are not in the nature of "books of account" as held in hon'ble jurisdictional high court's decision in CIT vs. Bhaichand Gandhi 141 ITR 67 (Bom.). And also that the assessee's above stated bank statement also carries certain contra entries as well as re-deposits and vice-versa

which have not been properly appreciated in the learned lower authorities orders.

5. The Revenue has drawn strong support from both the learned lower authorities action making the impugned addition.

6. We have given our thoughtful consideration to the foregoing vehement contentions and find no merit in the assessee's stand in principle. We make it clear that the assessee had admittedly deposited the impugned cash amount(s) in its bank account(s). It has further failed all along to explain the corresponding alleged customer(s) forming source of the said deposits. So far as the assessee's technical stand of non-applicability of sec.68 is concerned, hon'ble jurisdictional high court's landmark decision in Arun J Muchalla vs. CIT [2017] 399 ITR 256 (Bombay) has settled the issue that mere mentioning of a wrong provision in the impugned addition does not *ipso facto* render the same as not sustainable in law. We thus reject the assessee's vehement arguments seeking to delete the impugned addition on merits in principle.

7. Now comes the equally important aspect of quantification of the impugned addition. Mr. Murkunde could hardly dispute that the assessee's impugned bank statement also involves reversal of an entry dated 27.01.2010 to the tune of Rs.5 lakhs as "funds insufficient". We fail to understand as to how such an entry which is not actually credited, would form subject matter of an addition as unexplained income under the provisions of the Act. Faced with the

situation, we grant limited relief to the extent of Rs.5 lakhs to the assessee in very terms. The impugned addition of Rs.84,05,721/- is affirmed to the extent of Rs.79,05,721/- in otherwords. The assessee gets relief of Rs.5 lakhs. Ordered accordingly.

8. The assessee's last arguments seeking "peak" credits addition is found to be carrying no merit as it could not indicate any withdrawal and re-deposits from the said bank account statement forming part of the record. Rejected accordingly.

No other argument has been pressed during the course of hearing.

9. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open Court on 13.03.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 13th March, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Pune-5, 578/2B, Aayakar Sadan, 5 th Floor, Room No.511 & 512, Salisbury Park, Gultekdi, Pune. PIN - 411 037
3.	The Pr. CIT, Pune-4, Pune.
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.