

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.3998/Mum/2023  
(Assessment Year :2013-14)**

Anil Mehta HUF, Partner of erstwhile Hathibhoy and Sons (since dissolved) Swashraya Building Paliram Road Andheri West Mumbai – 400 058	Vs.	ITO-24(2)(1), Room No.608 Piramal Chambers Lalbaug, Mumbai-400012
<b>PAN/GIR No.AAAFH0566Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Dharmesh Shah & Smt. Mitali Parekh
Revenue by	Shri Manoj Kumar Sinha
<b>Date of Hearing</b>	<b>16/04/2024</b>
<b>Date of Pronouncement</b>	<b>19/04/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 14/09/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.144/147 of the Act for the A.Y.2013-14.

2. In the grounds of appeal assessee has raised the following grounds:-

*“1. The Ld. CIT (A)/NFAC has erred in law and in facts in treating the appeal as infructuous and dismissing the appeal in limine u/s. 249(4) of the Act on the ground that no advance tax is paid by the appellant.*

*2 The Ld.CIT(A)/NFAC has erred in law and in facts in confirming the addition in the hands of the appellant to the tune of Rs. 61,70,115/- on account of alleged cash deposit made during the year.”*

3. The brief facts are that the firm, ‘Hathibhoy and Sons’ was a partnership firm which got dissolved w.e.f. 01/06/2009. Thereafter, there was no existence of partnership firm. Intimation about the dissolution of the firm and that the firm has been closed on 31/05/2009 was duly intimated to the ld. AO / department vide letter dated 15/06/2009 alongwith copy of deed of dissolution and also intimating that PAN number has been discontinued. Later on, the business of the firm was taken under proprietary concern of Rupa Mehta. The assessee, i.e., Anil Mehta HUF carried out its business through separate proprietary concern.

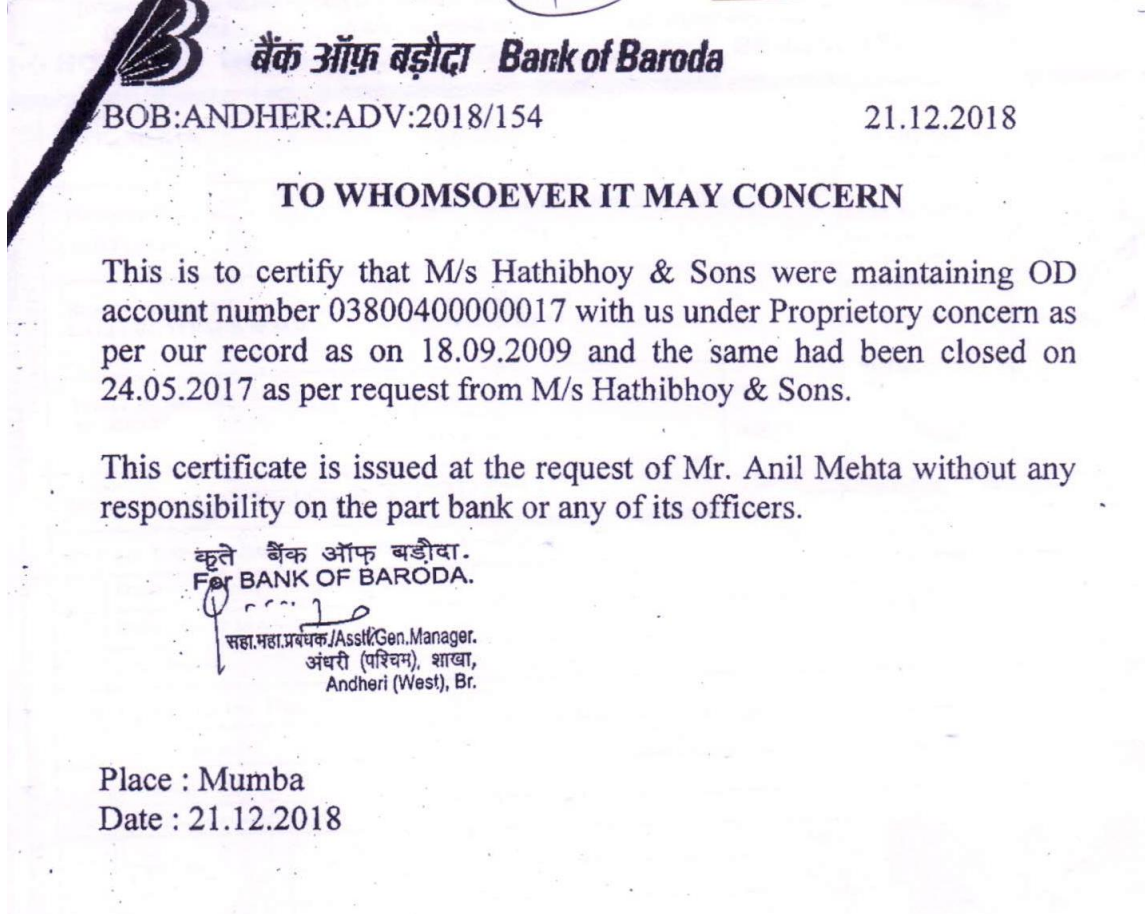
4. Based on some AIR / ITS data downloaded from the system revealed that there were some cash deposits of Rs.61,70,115/- during F.Y.2012-13 in the bank account and since assessee firm has not filed its return of income for A.Y.2013-14, accordingly, notice u/s.148 dated 20/03/2019 was issued to the assessee with prior approval of Pr. CIT-24, Mumbai. According to ld. AO, notice issued to the assessee on 20/03/2009, assessee did not

responded to the notices and also did not file return of income and accordingly, ld. AO completed the assessment u/s.144 and added the entire cash deposits of Rs.62,70,115/-. Nowhere, he has mentioned in which bank account and on which PAN detail the said cash was deposited.

5. The First Appellate Authority instead of examining the records and submissions made before him which uploaded in the ITBA portal on 17/03/2021, he has dismissed the appeal as infructuous holding that assessee has not deposited the payment of taxes before filing of this appeal and no return has been filed by the assessee and after invoking the provision of Section 249(4)(b), wherein if no return has been filed by the assessee, assessee has to pay an amount equal to the amount of advance tax which was payable by him. Thus, ld. CIT (A) did not even verify the records or the submissions and without applying his mind has simply dismissed the appeal on a very flimsy ground, which is not even applicable on the facts of the case.

6. After hearing both the parties and on perusal of the relevant material placed on record, we find that erstwhile partnership firm 'Hathibhoy and Sons' was dissolved by deed of dissolution dated 01/06/2009 and not only that, it was also intimated to the ld. AO about the closure of the assessee firm as on 31/05/2009 vide letter filed on 18/09/2009 alongwith copy of dissolution deed. Further, assessee has also filed confirmation from the bank vide letter dated 21/12/2018 about the closure of

partnership firm account on 24/05/2017 wherein the bank has certified as under:-



7. Before us ld. Counsel further informed that assessee has also filed copy of return of Rupa Mehta, in the bank account wherein this entire cash has been accounted as business income has been disclosed in a proprietary set up in the name and style as Hathibhoy & Sons (Andheri) having a different PAN and address altogether different from the erstwhile firm alongwith copy of balance sheet and profit and loss account and computation of income. It has been further pointed out by the ld. Counsel that a similar proceedings u/s 148 were initiated for the

A.Y.2011-12 and when ld. AO was brought to its notice that firm has already been dissolved, the assessment proceedings were dropped vide order dated December 2018 on the ground that after verification of the details filed, the proceedings have been dropped because assessee's firm was dissolved since 01/06/2009. Once the firm's bank account was in-operational and business of the firm was taken by another concern having a different PAN, then how the assessment or adverse inference could have been drawn in the case of non-existing firm which was dissolved in the year 2009 itself. It has also not been brought on record in which bank account cash was deposited. Once the account itself was in-operational and the account in the Bank of Baroda belongs to proprietary concern which has been duly disclosed taking into consideration all the transactions, then where is the question of adding the same in the hands of the firm. Here, the notice u/s.148 has been issued to a non-existing entity, which itself is invalid. None of the authorities have even bothered to examine the records itself and blindly followed uncorroborated information linking it with partnership firm in A.Y. 2013-14. We further, find that before the First Appellate Authority, assessee had brought all these submissions and information to the knowledge of ld. First Appellate Authority which is evident from the copy of screen shot of e-filing before NFAC on the date of hearing of notice filed on 17/03/2021 wherein assessee had submitted written submissions, dissolution deed of the firm, ITR, Rupa Mehta proprietary concern, letter from the bank (as incorporated above)

and assessment order for A.Y.2010-11 alongwith intimation of closure of the firm. If all these submissions were uploaded and submitted before the ld. CIT (A), we do not find any reason as to why ld. CIT(A) had made such observation that, since assessee has not filed the return of income and not paid the tax and therefore, appeal of the assessee is not maintainable and dismissed as infructuous. Accordingly, not only the order of the ld. AO is quashed being passed on a non-existing entity but also the order of the ld. CIT (A) which has been passed without application of mind and on erroneous assumption of facts. Accordingly, the grounds raised by the assessee are allowed.

**8. In the result, appeal of the assessee is allowed.**

Order pronounced on 19<sup>th</sup> April, 2024.

**(RENU JAUHARI)  
ACCOUNTANT MEMBER**

**(AMIT SHUKLA)  
JUDICIAL MEMBER**

Mumbai; Dated 19/04/2024  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**