

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 3155/Mum/2023
(Assessment Year: 20171-18)

Income Tax Officer
-19(1)(5)
501, Piramal Chamber, Parel, Vs. Chamna Ram
Mumbai-400 012 Bera Pipliya Seeriyari, Pali
Rajasthan-306023
(Appellant) **(Respondent)**
PAN No. BVMPR7717M

Assessee by : None
Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 17.04.2024
Date of pronouncement : 23.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA number 3155/M/2023 is filed by The Income Tax Officer – 19 (1) (5), Mumbai (the learned AO) for assessment year 2017 – 18 in case of Mr. Chamna Ram (the assessee) against the appellate order passed by the National Faceless Appeal Centre (NFAC), Delhi (the learned CIT – A) on 11/7/2023 wherein the appeal filed by the assessee against the assessment order dated 23/12/2019 passed under section 144 of The Income Tax Act 1961 (the ACT) by The Id. AO was partly allowed.



02. The learned assessing officer is aggrieved with that order and is in appeal before us. He has raised following grounds:-

"1. On the facts and in the circumstances of the case, the Ld. CIT has erred in holding that the assessing officer was not right in invoking Sections 69A of the Income Tax Act, 1961, in the hands of the whereas credit transactions aggregating to Rs.2,08,40,162/- including cash deposits of Rs. 58,42,500/- were found in assessee's bank account, at both the stage of assessment as well as appellate proceedings and the assessee failed to explain the nature and source of acquisition of the money?"

2 "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing to consider the peak credit as unexplained money u/s. 69A of the I.T Act, 1961 in spite of the fact that the assessee has not filed his return of income for the year under consideration as well as for any of the assessment years and no ostensible business connection has been observed by the Assessing Officer

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing to consider the peak credit as unexplained money u/s, 69A of the IT Act, 1961, in spite of the fact that, the Assessing Officer observed that there was no regular trend of cash deposits in the assessee's case for A.Y 2015-16 and AY 2016-17 and abnormal cash deposits of Rs 58,42,500/- observed in the relevant A.Y 2017-18."

03. Brief facts of the case show that the assessee is an individual, did not file any return of income for assessment



year 2017 – 18. Information was received from Actionable information monitoring system of ITBA system that the cash of Rs. 5,509,900/- is deposited in the bank account maintained by the assessee during the period of demonetization from 8/11/2016 to 31 December 2016. Therefore, the basis on the information, notice under section 142 (1) of the Act was issued. Information was called from the assessee, and he was required to file the return of income. The learned assessing officer further called for the bank account from the Kotak Mahindra bank which was received. However, the assessee has not filed any return of income or submitted any details in response to the said notice.

04. The learned assessing officer noted that as the assessee has not filed any return of income for any of the assessment years, bank statement for financial year 2015 – 16 and 2017 – 18 in case of the assessee was scrutinized and it was seen that there is nil deposit of cash in financial year 2015 – 16 and financial year 2017 – 18. Therefore, he concluded that there is no regular trend available of cash receipts/deposits in the bank account of the assessee. However, during the year, the substantial amount of the sum of Rs. 5,842,500/- is deposited as cash during demonetization period as well as during the entire year for which no explanation has been received from the assessee. Therefore, he held that deposit of cash in previous year 2016 – 17 shows abnormal pattern and unaccounted and unexplained money of the assessee having no connection with any business activity of the

assessee. The learned assessing officer made enquiry under section 133 (6) of the act and called for bank account statements of the assessee of bank account number 0411577085 with Kotak Mahindra bank. On analysis of the bank statement furnished by the bank the AO noted that there is a total credit of Rs. 20,840,162/- made by the assessee during previous year 2016 - 17 which included the cash deposit of Rs. 58,42,500/-. As no information is forthcoming the learned assessing officer made the above addition under section 69A of the act by passing an assessment order under section 144 of The Income Tax Act on 23/12/2019 determining the total income of the assessee at Rs. 20,840,162/-.

05. Assessee preferred an appeal before the learned CIT - A. As before the assessing officer assessee did not comply with any of the notices, the assessee also did not comply before the learned CIT - A. Therefore, the learned CIT - A proceeded to decide the issue on the merits of the case. In the appellate proceedings, the burden of proof lies on the assessee to prove that the facts and findings of the learned assessing officer are incorrect. Therefore, he reached a conclusion that the assessee had no evidence or explanation against the finding of the AO. Accordingly on the merits the learned CIT - A held , based on the statement of facts filed, that the appellant came to Mumbai when he was 19 years old and after two years left for his hometown and is doing odd jobs works for survival. The assessee could not understand various notices and ex parte orders were passed. He says that the bank account



was also not operated by him. He also held that the submission of the assessee that the AO has only considered deposits and debit entries were not considered. Accordingly, he directed the learned assessing officer to consider the debit entry also and consider pre-credit as the unexplained money under section 69A of the act. Therefore, the ground of appeal was partly allowed.

06. Now the learned assessing officer has preferred this appeal. The learned departmental representative reiterated the grounds of appeal and supported the order of the learned assessing officer. He submits that the assessing officer has made the total addition in the bank account including all the credits and therefore the learned CIT – A is not correct in directing the learned assessing officer to consider the debit and only the peak credit is required to be added under section 69A of the act. He submits that unless the assessee proves that he is entitled to the peak credit, showing similar transaction, same cannot be allowed.
07. Despite notice, none appeared on behalf of the assessee. Therefore because of the non-appearance of the assessee despite service of notice, the issue is decided on the merits of the case as per information available on record.
08. We have carefully considered the contentions of the learned departmental representative. The facts as stated clearly show that the assessee is an individual who did not file his return of income and in the bank account of the assessee with Kotak Mahindra Bank , sum of Rs.



20,840,162/- was found to be deposited including the cash deposit of Rs. 5,842,500/-. The assessee did not furnish any information before the learned assessing officer. Before the learned CIT – A only the statement of facts was filed, and no further compliance was made. Before us also the assessee did not remain present. In the facts of the case, it is apparent that the assessee has deposited a sum of Rs. 20,840,162/- including the cash deposit of Rs. 5,842,500 in his account with Kotak Mahindra bank account. It is apparent that the assessee is required to establish the source of such cash deposit and the various other deposits. There is no explanation forthcoming from the assessee. The learned CIT – A based on the information available held that the peak credit is required to be added in this case for making an addition of section 69A of the act. The learned assessing officer is aggrieved with the direction of learned CIT – A about, confirmation of the peak credit in the hands of the assessee. It was not shown before us what is the grievance of the learned assessing officer if the peak credit is added in the hands of the assessee because that would only be the unexplained money according to the provisions of section 69A of the act. As the learned CIT – A, the addition under section 69A of the act, he has directed to make addition to the extent of the credit and give if any debit balances are available of withdrawal of cash against the cash deposits, thus we find that the ground number 1 – 6 does not have any merit. It is not the case of the learned departmental representative that the learned CIT



– A has deleted the addition. Against this the learned CIT
– A has upheld the addition, confirmed applicability of the provisions of section 69A of the act but directed the assessing officer to give credit of any cash withdrawals which could be shown to have been used for the debit/deposit in the bank account and to make an addition of the peak credit. Thus, we do not find any merit in the grounds of appeal of the learned AO.

09. Accordingly, appeal filed by the learned assessing officer is dismissed.

Order pronounced in the open court on 23.04 .2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 23.04.2024

Sudip Sarkar, Sr.PS/ Dragon

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