

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.480/Ind/2023
(Assessment Year: 2017-18)

Surya Prakash Arora G-2/119 Milestone 100 Complex Gulmohar Colony Trilanga Bhopal (Appellant / Assessee)	Vs.	ITO 2(1) Bhopal (Respondent/ Revenue)
PAN: ADHPA5670L		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.04.2024	
Date of Pronouncement	07.05.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 09.10.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2017-18. The assessee has raised following grounds of appeal:

“1. That on the facts and in the circumstances of the case and in law, having regard to the explanation furnished duly supported by the documentary evidences, the Ld. CIT(A) is not

justified in sustaining addition of Rs. 43,00,000/- u/s 69A for the alleged bank deposits in the bank account of the Maxima Traders Bhopal Pvt. Ltd. in which company the assessee is a Director. The unlawful and unjustified addition of Rs. 43,00,000/- be kindly deleted.

2. That on the facts and in the circumstances of the case and in law, the bank account bearing number 01820210003220 with UCO Bank is not the bank account of the assessee in which Rs. 43,00,000/- deposited but it is bank account of the Company i.e. Maxima Traders Bhopal Pvt. Ltd. and therefore the addition u/s 69A in the hands of the assessee is unlawful and unjustified and therefore be deleted.

3. That on the facts and in the circumstances of the case and in law, the deposited in the bank account of the Company is also not unexplained deposits and therefore the addition is unjustified and unlawful and therefore be deleted.

4. That on the facts and in the circumstances of the case and in law, it be held that the provision of Section 115BBE are not at all applicable and therefore the findings of the Ld. A.O. in this regard be kindly quashed.”

2. The solitary issue arises in this appeal is whether in the facts and circumstances of the case the CIT(A) has erred in confirming the addition made by the AO in the hands of the assessee of Rs.43 lakh on account of unexplained cash deposit in the bank account u/s 69A r.w. section 115BBE of the Act. The assessee is an individual and filed his return of income for the year under consideration on 27.10.2017. The case was selected for limited scrutiny through CASS on the issue of cash deposit during the demonetization period. The AO noted that the assessee has deposited cash aggregating of Rs.43 lakh during the period from 09.11.2016 to 30.12.2016 in UCO Bank. The AO issued notice u/s

142(1) along with questionnaire on 8th April 2019. In reply the assessee submitted that he is a partner in M/s Avinash Chalana and Co. partnership company director in M/s. Maxima Traders Bhopal Pvt. Ltd. and Million Traders Bhopal Pvt. Ltd. engaged in the retail sale of Indian made foreign liquor, beer as well as country liquor. The assessee further stated that he filed his response online to cash transaction 2016 query raised for deposits during the demonetization period and explained that this bank account belongs to M/s. Maxima Traders Bhopal Pvt. Ltd. in which the assessee is a director and transactions done by the company and not by the assessee in his individual capacity. Only PAN of the assessee is given in this account and therefore, erroneous reporting is done. The assessee further submitted before the AO that the amount of Rs.43 lakh has already been shown in the balance sheet of M/s. Maxima Traders Bhopal Pvt. Ltd. and a copy of the balance sheet was produced. Thus, the assessee contended that it was the money of M/s Maxima Traders Bhopal Ltd. The AO called the return of income of M/s Maxima Traders Bhopal Ltd. from ACIT 2(1) Bhopal for A.Y.2017-18 and noted that the disclosure of cash deposit of Rs.43 lakh was not mentioned by the M/s Maxima Traders Bhopal Ltd. in its return of income. Accordingly AO made an addition of Rs.43 lakh in the hands of the assessee u/s 69 of the Act. The assessee challenged the action of the AO before the CIT(A) and reiterated its contention that deposits were made by M/s Maxima Traders Bhopal Ltd. as part of their sale proceeds duly reported and disclosed in the balance sheet of the said company.

However, the CIT(A) has confirmed the action of the AO on the ground that the AO has conducted inquiry from the AO of the M/s Maxima Traders Bhopal Ltd. and noted that this account was not disclosed by the said company.

3. Before the Tribunal Ld. AR of the assessee has submitted that the assessee is a director in M/s Maxima Traders Bhopal Ltd. but the transactions in question of deposit of cash in bank belongs to the said company. He has referred to the concerned bank account in which cash was deposited and submitted that the said account is belonging M/s Maxima Traders Bhopal Ltd. and not to the assessee. He has also referred to note no.2.11 of notes on account of financial statements of M/s Maxima Traders Bhopal Pvt. Ltd. as on 31.03.2017 and submitted that the said company has shown balance with the bank of Rs.5,16,88,169/- which includes the amounts in question. He has also referred to the details of bank accounts of M/s Maxima Traders Bhopal Ltd. placed at page 53 of the paper book and submitted that the said company is working all over the state in the business of retail sale of India manufactured foreign liquor and therefore, the same is having more than 50 bank accounts in various cities bank and account in question belongs to the said company M/s Maxima Traders Bhopal Ltd. and therefore, the deposit made in the said account cannot be treated as income of the assessee merely because the PAN of the assessee is reported by the bank. Thus, Ld. AR has submitted that it was only mistake on the part of the bank which reported the transactions with PAN of the assessee whereas the bank account in which the amount was

deposited belong to the M/s Maxima Traders Bhopal Ltd. Ld. AR has also referred to the bank account of the assessee and submitted that there is no such transactions of deposit of cash reported in the bank account of the assessee. Hence he has pleaded that the addition made by the AO is liable to be deleted.

4. On the other hand, ld. DR has submitted that the bank account in which the amount is deposited having PAN number of the assessee and therefore, though the bank account may be opened in the name of M/s Maxima Traders Bhopal however, the status of the said entity as per the bank report is not clear whether it is proprietorship concern or the Pvt. Ltd. Co. The assessee has not disputed the fact that the assessee's PAN was given in respect of the said bank account in question and therefore, the AO has rightly come to the conclusion that the amount deposited in the bank account linked with the PAN number of the assessee is an unexplained/undisclosed income of the assessee. He has relied upon the orders of the authorities below.

5. We have considered rival submissions as well as relevant material on record. The AO has given a finding in para 7 of the assessment order as under:

“7. Ongoing through the reply/documents submitted by assessee it is seen that assessee has deposited an amount of Rs 43,00,000/- in account number 01820210003220 9/11 / 2016 to 30/12 / 2016 in UCO Bank during demonetization. However assessee said that this accounts was that of Maxima Traders and that his PAN number was wrongly used by the bank as he was the Director of the firm. Further that the

amount of Rs 43,00,000/- has already been shown in the balance sheet of the Maxima traders balance sheet. On going through copy of balance sheet of Maxima traders submitted by assessee it was seen that a list of bank account totaling the amount in bank of maxima traders, its seen that the amount of Rs 43,00,000/- is not mentioned in that list provided by assessee. An amount of Rs 56605/- is seen as deposited in the bank of UCO bank.

Another fact which the assessee had told in the query information submitted regarding deposit of Rs 43,00,000/- was that it was the money of Maxima Traders. The Return of income of Maxima Traders was called from ACIT-2(1) for assessment year 2017-18, on going through it, it was found that disclosure of cash deposit of Rs.43,00,000/- was not mentioned by Maxima Traders in his return for A.Y. 2017-18. And the bank names mentioned in their return of income no where had mentioning of UCO Bank account 01820210003220. Thus it is proved that the amount of cash deposit of Rs 43,00,000/- is not disclosed by Maxima Traders as stated by Shri Surya Prakash Arora. Hence, the amount of cash deposit of Rs. 43,00,000/- is unexplained of Shri Surya Prakash Arora.”

5.1 Thus, the AO after collecting information from the assessing officer of M/s Maxima Traders Bhopal Ltd. has found that the said company has not disclosed any such transactions of Rs.43 lakh during the demonetization period. On appeal the CIT(A) has confirmed this addition by noting the fact that the claim of the assessee that the bank account belongs to M/s Maxima Traders Bhopal Ltd. is not reported by the said company and some other accounts of UCO bank was reported in which no such transactions of deposit of cash was found. The assessee has now referred to the bank accounts of M/s Maxima Traders Bhopal Ltd. which are more than 50 bank accounts and one of which is claimed as bank

account in question belongs to the said company. Though the said company has shown balance with banks of more than Rs. 5.16 crores as on 31.03.2017 however, further bifurcation of the said balance with banks and a proper verification of different bank accounts maintained by the said company is required. We further note that the bank account statement in which the cash was found deposited is placed at page no.51 of the paper book in the name of M/s Maxima Traders Bhopal and not in the name of M/s Maxima Traders Bhopal Pvt. Ltd. therefore, it is not clear from the details of the bank account statements whether the said bank account belong to the Pvt. Ltd. Co. or other form of entity having PAN number of the assessee. Accordingly in the facts and circumstances of the case we find that this issue requires a proper and deeper investigation of facts as to whether the bank account in question belongs to M/s Maxima Traders Bhopal Pvt. Ltd. or to some other entity of the assessee. Further the AO is also required to gather the details from the said company as to whether the said company owns these transactions and explains the source of deposit of these transactions. Accordingly before making the addition in the hands of the assessee it is required to be ascertained that the cash was either deposited by the assessee or is deposited in the bank account of the assessee. Hence, the impugned order of the CIT(A) is set aside and matter is remanded to the record of the jurisdictional AO for fresh adjudication after conducting proper verification and inquiry as well as giving an opportunity of hearing to the assessee.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07.05.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 07.05.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore