

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER,**

**ITA Nos.4819 to 4821/Mum/2023  
(AYs 2012-13, 2014-15 & 2017-18)**

Nitin Nagarji Mehta 42 Nirmal Bunglow 10 <sup>th</sup> Road, JVPD Scheme Vile Parle (W) Mumbai 400056	vs.	Income Tax Officer 25(3)(5) 6 <sup>th</sup> Floor, C-10, Prathaksh Kar Bhavan, BKC, Bandra (E) Mumbai 400051
PAN/GIR No. : AAHPM5176G		
Appellant	..	Respondent

Appellant by :	----- None -----
Respondent by :	Shri Sunil Shinde, Sr. A.R.

Date of Hearing	14.05.2024
Date of Pronouncement	14.05.2024

आदेश / O R D E R

**PER OM PRAKASH KANT, AM:**

These appeals by the assessee are directed against three separate orders dated 36.10.2023; 01.11.2023 and 27.10.2023, passed by the Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi (in short ‘ the CIT(A)’) for Assessment Years (AYs) 2012-13, 2014-15 and 2017-18, respectively. As the issue-in-dispute permeating in this appeals is arising from identical set of circumstances, same were heard together and disposed off by way of this consolidated order for the sake of convenience.

2. The grounds raised by the assessee in AY 2012-13 are reproduced as under:

“1. On the facts and circumstances of the case, the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "Ld. CIT(A)") erred in passing the order dated 26 October, 2023 upholding the action of the Ld. Income Tax Officer, Ward 25(3)(5), Mumbai (hereinafter referred to as 'Ld. A.O.]) in passing the assessment order dated 16.12.2019 under section 144 read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] determining the total income of the Appellant at Rs.1,26,81,000/- without appreciating the facts and circumstances of the case. The Appellant strongly objects to the impugned order passed by Ld. CIT(A) as the same is illegal, arbitrary and perverse on the following amongst other grounds which are urged without prejudice to one another: -

2. **Appellate Order passed without providing an appropriate opportunity of being heard is bad in law.**

The Ld. CIT(A) erred in passing the impugned order without providing the Appellant an appropriate opportunity of being heard. Hence, the impugned order passed by the Ld. CIT(A) is in gross violation of principals of natural justice and the same may be quashed.

3. **Addition by treating the deposits in the bank accounts as unexplained cash credit under section 68 of the Act is unjustified-74,81,000/-**

(i) The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in treating the deposits in the bank account of the Appellant totalling to Rs.74,81,000/- as unexplained cash credit invoking the provisions of section 68 of the Act without appreciating the fact that the amount was deposited from the withdrawals made from the known sources. Thus, treating the deposits as unexplained cash credit under section 68 of the Act is unjustified and the same may be deleted.

(ii) The Ld. CIT(A) further failed to appreciate that the provisions of section 68 of the Act is not applicable to the facts of the present case as the Appellant is not

*maintaining any books of account and bank statement cannot be considered as books of accounts. Hence, the credits shown in the bank statements cannot be treated as unexplained cash credit invoking the provisions of section 68 of the Act. The Appellant, therefore, humbly prays that the addition of Rs.74,81,000/- made under section 68 of the Act may be deleted.*

4. **Addition by treating the consideration received on sale of immovable property as unexplained cash credit under section 68 of the Act is unjustified-52,00,000/-**

- (i) *The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in treating the consideration received on sale of immovable property amounting to Rs.52,00,000/- as unexplained cash credit invoking the provisions of section 68 of the Act without appreciating the fact and circumstances of the case. Thus, the addition of Rs.52,00,000/- as unexplained cash credit under section 68 of the Act is unjustified and the same may be deleted.*
- (ii) *The Ld. CIT(A) failed to appreciate that the consideration received on sale of immovable property is to be chargeable to tax as capital gains and not unexplained case credit. Hence, treating the consideration received on sale of immovable property as unexplained cash credit under section 68 of the Act is unjustified and the same may be deleted.*
- (ii) *Without prejudice to the above, the Ld. CIT(A) further failed to appreciate that the provisions of section 68 of the Act is not applicable to the facts of the present case as the Appellant is not maintaining any books of account and bank statement cannot be considered as books of accounts. Hence, the credits shown in the bank statements cannot be treated as unexplained cash credit invoking the provisions of section 68 of the Act. The Appellant, therefore, humbly prays that the addition of Rs. 52,00,000/- made under section 68 of the Act may be deleted.*

5. *The Appellant denies any liability to pay interest under section 234B and 234C of the Act. Hence, the same are not leviable.*
  6. *The Appellant craves leave to add, alter, amend, rescind or withdraw any of the grounds of appeal mentioned above.”*
3. Almost identical grounds have been raised in AY 2014-15 and AY 2017-18.
4. Briefly stated facts of the case are that in view of the information of cash deposits in bank account and no return of income filed, the Assessing Officer (AO) commenced reassessment proceedings in AYs 2013-14 and 2014-15 by way of issue of notice u/s. 148 of the Income Tax Act, 1961 (in short ‘the Act’). The assessee did not comply to the notice u/s. 148 as well as other statutory notices issued by the AO and therefore, he completed the reassessment invoking section 144 of the Act, i.e., best judgment assessment for AY 2013-13 on 16.12.2019 assessing the total at Rs.12,68,100/- and for AY 2014-15 on 22.12.2017 assessing the total income at Rs.1,90,39,010/-. Similarly, for AY 2017-18 the return of income filed by the assessee on 26.03.2018 declaring Nil income was selected for scrutiny and assessment u/s. 144 of the Act was completed on 16.12.2019 assessing the total income at Rs.67,59,710/-. Aggrieved by the assessment orders passed, the assessee filed appeals before the ld. CIT(A).
4. No documentary evidences in support of the cash deposits and other additions were filed before the ld. CIT(A) and, therefore, the ld. CIT(A) sustained the additions which were made by the AO. Aggrieved, assessee is in appeals before the Tribunal by way of raising grounds as mentioned above.

3. At the outset, we may like to mention that the notice for hearing sent at the address provided by the assessee in Form No. 36, i.e., the form prescribed for filing appeal before the ITAT, was returned back by the postal authorities with the remarks “unclaimed” and hence none attended before us on behalf of the assessee. In view of the comments of the postal authorities, we are of the opinion that the assessee is not interested in prosecuting these appeals and therefore the same were heard ex-parte qua the assessee, after hearing the arguments of the ld. D.R.

4. We have considered arguments of ld Departmental Representative (DR) and perused the relevant material on record. Firstly, we take up the grounds raised by the assessee in AY 2013-13. The assessee has primarily challenged the order of the ld. CIT(A) on the ground that no opportunity of being heard was provided to the assessee. Further, on merit also the assessee has challenged the addition for cash deposits. Before the ld CIT(A) assessee submitted that those deposits were from the withdrawals made from known sources. Similarly, regarding addition of Rs.52,00,000/- in respect of sale of immovable property, before the ld CIT(A) it was submitted that addition for capital gains could have only been computed. The assessee had also objected making addition u/s. 68 of the Act on the ground that he was not maintaining books of account. The ld. CIT(A), however, has sustained the additions observing as under:

*5.1 The facts relating to the present appeal, in absence of any submission from the assessee has to be appreciated from the impugned order. The facts, in brief, are that the assessee had not filed his return his income for the assessment year. The AO came to know that during the year under consideration the assessee had deposited cash of Rs. 1,44,17,000/- in his bank account. The AO also came to know that the assessee had made certain*

*transactions of sale of immovable property amounting to Rs. 52,00,000/-. On the strength of this information reason to believe was formed by the AO that income has escaped assessment. The AO assumed Jurisdiction to reassess the income of the assessee by issuing notice u/s 148 on 28.03.2019. Notice u/s 142(1) was also issued on 16.10.2019 and on 30.10.2019. per which, the assessee was asked to explain the source of cash deposited in the bank account and also the working of capital gain/profit on account of sale of property. It is matter of record that assessee did not respond to these notices Consequently, a show-cause notice dated 04.12.2019 was issued to the assessee which also remained un-responded to. The AO noticed that the information relating to cash deposit was overstated for the reason that number of cash deposit was taken in duplicate. He found that the actual cash deposit in his bank account was Rs 74,81,000/- In absence of any explanation of the assessee the AO added Rs. 74,81,000/- under Section 68 and also added Rs. 52,00,000/- as income of the assessee on account of sale of the immovable property. Aggrieved by the above two addition, the assessee is in present appeal.*

#### 5.2 Ground No. 1:

*5.2.1 The ground taken by the assessee is sketchy. He has merely argues that addition of Rs. 1,26,81,000/- is erroneous. He has further argued that in respect of debit entries in the bank statement the AO should have taken only the element of the profit and not added the entire cash deposit in the bank account. This argument, though not specifically made by the assessee, can also be extended to the addition made by the AO in respect of income determine on account of sale of property.*

*5.2.2 in **Roshan Di Hatti Vs. CIT [1977] 107 ITR 938 (SC)**, it was held that the onus of proving the source of money found to have been received by an assessee is on him, if he disputes, it is not liable to tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation and in the absence of such proof the revenue is entitled to treat it as taxable income. Further, it was held that where the nature of and source of a receipt whether it be of money or of the property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source In **Kale Khan Mohammad Hanif vs CIT [1963] 50 ITR 1 (SC)**, one of the questions referred was relating to the burden of*

*proof, of the source of cash credit. It was held that the onus of proving the source of the sum of money found to have been received by the assessee is on him, if he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provision of the Act. In the present case, the assessee has miserably failed in explaining the receipt, the source of cash deposited by the assessee in the bank account and also as to why the sale consideration of immovable property should not be taken as the income of the assessee.*

*5.2.3 The assessee has not brought any fact for consideration of the undersigned as to why the receipt is not assessable as income in his hand, much less any documentary evidence to prove the facts. At this juncture, it is also pertinent to refer to form 35 submitted by the assessee while filing the appeal. At item sr. No. 12 of form 35 the assessee has specifically stated that he does not intend to produce any documentary evidence other than what was produced before the AO. Which means, in the present case that the assessee does not propose to support his claim by any documentary evidence. All the arguments contained in this ground are therefore, unsubstantiated, facile and self-serving. The decision of the AO cannot be interfered with such bald argument.*

*5.2.4 In terms of the discussion in para 5.2.1 to 5.2.3, the decision of AO is upheld. Ground No. 1 is dismissed.”*

5. We find that the assessee has not discharged its onus of explaining the source of the cash deposits in bank account with documentary evidences. The assessee has also neither explained the capital gain arising from the sale transaction of property nor substantiated with documentary evidences as no return of income was filed by the assessee. In our opinion, in the absence of any return of income filed by the assessee, lower authorities are justified in sustaining the additions against cash deposits and income arising from sale of the property. In the facts and circumstances of the case, we do not find any infirmity in the order of the ld. CIT(A) on the issue in dispute and, accordingly, we

uphold the same. The grounds of appeal of the assessee for AY 2012-13 are accordingly dismissed.

6. Identical grounds have been raised in AYs 2014-15 and 2017-18 and the assessee has failed to substantiate its claim with documentary evidences, therefore, following our findings in AY 2012-13, the grounds raised by the assessee in the appeals for AYs 2014-15 and 2017-18 are also dismissed.

7. In the result, all the three appeals of the assessee are dismissed.

Order pronounced in the open court on 14.05.2024.

Sd/-  
(RAJ KUMAR CHAUHAN)  
Judicial Member

Sd/-  
(OM PRAKASH KANT)  
Accountant Member

Place: Mumbai

Date: 14.05.2024

n.p

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)  
आयकरअपीलीयअधिकरण/ ITAT, Bench, Mumbai.