

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.324/Nag./2023

(Assessment Year : 2018-19)

Income Tax Officer
Yavatmal 445 001

..... Appellant

v/s

Sanjay Bansilal Jaiswal
Sitavandam Building, Datey College Road
Tilakwadi 445 001 PAN – ABKPJ2683D

..... Respondent

Assessee by : Shri Mukesh Agrawal

Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 13/05/2024

Date of Order – 13/05/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 26/07/2023, passed by the learned Commissioner of Income Tax (Appeals), Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. The Revenue has raised following grounds of appeal:-

"(1) Whether on facts and circumstances of the case, the Id. CIT(A) was justified in deleting addition of Rs 8,59,21,510/- by concluding that cash deposits of Rs 8.5921,510/- in the bank account do not pertain to the assessee as the bank account pertains to M/s Ramshazan Trading Coain which assessee is the partner without ascertaining as to whether each of the cash

deposit in the bank account hisobech owned up by M/s Ramsharan Trading Co in its books of accounts?

(2) Whether on facts and circumstances of the case, the Id. CIT(A) was justified in deleting addition of Rs 8,59,21,510/- by relying upon the remand report of the AO and submission of the Bank that the PAN of the assessee was wrongly mapped with the bank account, when, the remand report merely relied upon the fact that such bank account was included in audited books of accounts of M/s Ramsharan Trading Co. without conclusively ascertaining the source of such cash as belonging to M/s Ramsharan Trading Co.?

(3) Whether on facts and circumstances of the case, the Id. CIT(A) was justified in deleting addition of Rs 8,59,21,510/- by concluding that cash deposits of Rs 8,59,21,510/- in the bank account do not pertain to the assessee as the bank account pertains to M/s Ramsharan Trading Co. in which assessee is the partner without any conclusive evidence in his possession that all the cash deposits in the bank account pertained to M/s Ramsharan Trading Co. and not to the assessee?

3. Facts of the case: During the course of assessment proceedings, the Assessing Officer found that the assessee filed his return of income for A.Y. 2018-19 declaring total income at Rs.9,68,210/- on 12/10/2018. The case of the appellant was selected limited scrutiny for the reasons: "Large cash deposits in bank account(s)". Notices u/s 142(1) of the Act issued by the AO along with annexure were duly served upon the assessee through e-mail/e-filing portal on the registered e-mail id wherein assessee asked was to furnish certain details, information/documents etc. The assessee had submitted the necessary information/details before the AO in response to the notices issued from time to time. During the course of assessment proceedings, the AO noticed that the assessee has deposited cash amounting to Rs.8,59,21,510/- in Current account No.1021001310 held with Yavatmal Urban Co.op. Bank Ltd. during the year under consideration hence, source of the same along with other details were called for from the assessee by issuing notice u/s. 142(1) of the Act on 13.12.2019. In response, vide letter dt. 11/9/2020 issued by the AO, the assessee submitted that he has not deposited large

cash in his bank accounts, the cash deposits are related to his partnership firm M/s Ramsharan Trading Co having PAN No. AAHFM7660F with Current Account No. 1021001310 in Yavatmal Urban Co.op. Bank Ltd. The AO to verify the contention of the assessee, details i.e. bank statement for F.Y. 2017-18 in excel format or .csv format along with account opening form and KYC documents linked with the account No.1021001310 were called for from the Yavatmal Urban Co.Op. Bank Ltd. by issuing notice u/s 133(6) of the Act on 21/12/2020. however, the bank did not respond to this notice and to the reminder sent thereafter. Therefore, vide notice u/s. 142(1) dt. 6.2.2021 issued by the AO, the assessee was asked to substantiate his claim along with supporting evidence, copy of bank statement with KYC documents and copy of account opening form submitted before the bank. However, the assessee failed to furnish the same. Under the circumstances, cash deposited by the assessee amounting to Rs.8,59,21,510/- in the current account held with Yavatmal Urban Co.op. Bank Ltd. remained unexplained. Therefore, a show-cause notice along with draft assessment order proposing to add Rs.8,59,21,510/- as unexplained cash credits to the total income of the assessee was issued by the AO on 22.2.2021. The assessee was required to furnish his reply on or before 01/03/2021, but he failed to submit the same. One more opportunity by fixing date of response on 08.03.2021 was given to the assessee by the AO vide notice dt. 02.03.2021. However, the assessee again failed to furnish his reply.

4. The Assessing Officer also noted that the assessee has deposited cash of Rs.8,59,21,510/- in the current A/c. No. 1021001310 held with Yavatmal

Urban Co.Op. Bank Ltd. and failed to furnish the nature and source of the same during the course of assessment proceedings. Moreover, the assessee did not furnish any reply in response to show-cause notice which prove that the assessee did want to say anything in respect of proposed addition of Rs.8,59,21,510/-. In these circumstances, nature and source of cash deposited by assessee of Rs.8,59,21,510/- in his bank account remained unexplained. This cash deposit has also not been recorded by the assessee in his books of accounts. Thus the Assessing Officer added ₹ 8,59,21,510, to the total income of the assessee under section 69A of the Act.

7. The assessee being aggrieved, carried the matter in appeal wherein the learned CIT(A) allowed the appeal filed by the assessee by observing as under:-

"10. Now coming back to instant appeal, the submission states that in response to notice we have submitted the details required/ desired. The Branch Manager in the certificate has acknowledged the mistake on the part of the bank that they erroneously mapped the PAN of the partner with the current account instead of Firm's PAN account. The fallout of this was that case of firm was not considered for scrutiny and instead the partner's case got selected in CASS in the instant appeal due to bank's negligence. The appellant has also attached copy of ITR for A.Y. 2018- 19 in respect of the firm showing gross total income at Rs. 19,04,094/- filed on 26.09.2018.

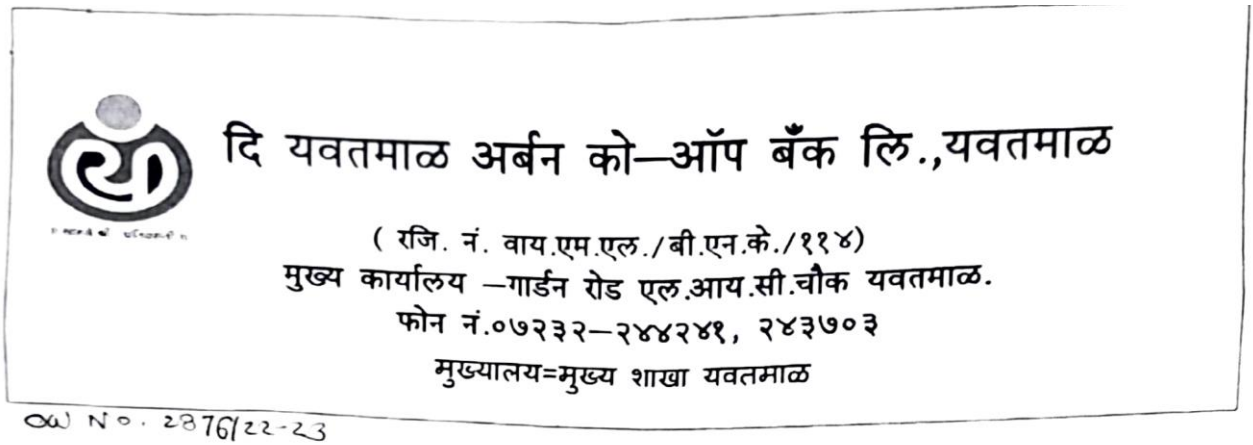
11. In the case of Ajit Babu Satam vs. DCIT, (ITAT-Mumbai) 147 taxmann.com 222 (2023) - cash deposited in bank account of a firm assessee was one of the partners since firm was a separate assessable entity AO was not justified in treating cash deposit as unexplained money of assessee partner u/s 69A.

12. The AO has submitted remand report and nothing adverse has been observed in the said report.

13. Hence, in the above circumstances, the addition cannot be sustained in the hands of the appellant company, the grounds of appeal are allowed. This is subject to the fact that no judgement is passed in respect of this cash deposits made in the current account of firm, being a separate entity/ assessee, identifiable and being assessed to tax."

Being aggrieved, the Revenue is in appeal before the Tribunal.

8. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. In the paper book no.1, there is a certificate from the Branch Manager of Yawatmal Urban Co-operative Bank that the PAN was erroneously mapped to this account was "ABKPJ2683D" of Sanjay Bansilal Jaiswal. The said certificate is reproduced below:-



Certificate

To whom it may concern

This is to certify that the Current Account No.01021001310 pertain to M/s "RAMSHARAN TRADING CO" Having PAN No.AAHFM7660F.As per documents it has two Partners namely:

- | | |
|----------------------------------|--------------------------|
| 1.Sanjay Bansilal Jaiswal | PAN No.ABKPJ2683D |
| 2.Kalpana Sanjay Jaiswal | PAN NO.ABMPJ5299H |

The PAN No.erroneously mapped to this account was ABKPJ2683D of Sanjay Bansilal Jaiswal instead of PAN No. AAHFM7660F OF M/s Ramsharan Trading co.

Thanking You.


Branch Manager
The Yawatmal Urban Co-op Bank Ltd
Yawatmal Br.Datta Chowk

5. The bank statement of the relevant account was examined and it was revealed that there was a total cash deposit of ₹ 8,59,21,510. The Profit & Loss A/c of Ramsharan Trading Co., where the assessee is a partner, reveals a turnover of ₹ 8,89,75,297. Thus, it is manifest that the entire cash deposit is subsumed within the quantum of turnover as disclosed. In the return of income submitted before us, in the details of Bank account, the impugned bank account was clearly mentioned. Further, the same bank account was also referred to be the same Bank account in which the income tax refund shall be credited. It appears that this is the only bank account of the firm. We have also gainfully examined the order under section 147 of the Act for the assessment year 2017-18 dated 28/03/2022, passed by the National Faceless Appeal Centre holding that the same Bank account does not belong to the assessee. In this year also, under the similar facts and circumstances, it was alleged that there was cash deposit of ₹ 12,90,55,760, in the said current account. However, no addition was made and the submissions of the assessee were found to be acceptable. The assessee is also covered by the remand report dated 12/05/2023, wherein it is specifically noted the partnership firm is mentioning the impugned current account and the closing balance as on 31/03/2018, was also reflecting in the Balance Sheet. The remand report is reproduced as under:-

"Kindly refer to the above subject.

2. As directed, I am submitting herewith the remand report after taking into account the material available on record of this office and submission of the assessee during the appellate proceedings. The facts of the case are as under:-

3. Regarding addition made of Rs.8.59.21.510/-: The assessee filed return of income declaring total income of Rs. 9.68.210/-, Case of the assessee was

selected for limited scrutiny for the reasons, "Large cash deposits in bank account(s) During the assessment proceedings, assessee submitted that the cash deposited pertains to the partnership firm M/s Ramsharan Trading Co. having PAN AAHFM7660F in which assessee is a partner Assessee was asked to produce the documentary proof ie, copy of bank statement with KYC details, and copy of account opening form submitted to the bank. However, assessee did not respond to the notices, reminder and showcause notice issued by the FAO. Under the circumstances, FAO has held the cash deposited of Rs.8.59,21,510/- as unexplained cash credits and added to the total income and passed the assessment order on 10.03.2021 raising demand of Rs.9,16,52,030/-.

4. Aggrieved with order of the FAO, assessee preferred the appeal before your honour. It is observed that assessee has taken the same plea before the CIT (A) that cash deposited of Rs.8.59.21,510/- belongs to M/s Ramsharan Trading Co. having PAN: AAHFM7660F During the course of appellate proceedings, assessee submitted the documentary proofs in support of his say. Assessee filed a letter issued by the Yavatmal Urban Co-op Bank Ltd. Datta Chowk Branch, Yavatmal. In the letter/certificate issued by the bank, it has been stated that the current account number 01021001310 pertains to M/s Ramsharan Trading Co. having PAN: AAHFM7660F. Shri. Sanjay Bansilal Jaiswal having PAN: ABKPJ2683D is a partner in the firm and his PAN was erroneously mapped to the firm M/s Ramsharan Trading Co.

5. On going through the written submission and documents filed by the assessee during the course of assessment proceedings, it is observed that the partnership firm M/s Ramsharan Trading Co. having PAN: AAHFM7660F has filed return of income for A.Y. 2018-19 on 26.09.2018 declaring total income of Rs. 19,04,090/-. It is also seen that M/s Ramsharan Trading Co is maintaining current account number 01021001310 with the Yavatmal Urban Co-op Bank Ltd. Datt Chowk Branch, Yavatmal. Further, it is also observed from the audited Financial statements of the firm for the year under consideration that the current account number 01021001310 is shown in the balance sheet and the closing balance of Rs. 4,12,260.50 as on 31.03.2018 as per the bank account statements is also reflecting in the balance sheet.

6. In view of the above, it is most humbly prayed that the appeal of the assessee may be decided on merits of the case."

9. The learned CIT(A) has taken due cognizance of the said remand report while passing the order. At this juncture, it would be worthwhile to refer to the grounds of appeal raised by the Revenue, which are reproduced below:-

"(1) Whether on facts and circumstances of the case, the Id. CIT(A) was justified in deleting addition of Rs 8,59,21,510/- by concluding that cash deposits of Rs 8.5921,510/- in the bank account do not pertain to the assessee as the bank account pertains to M/s Ramshazan Trading Coain which assessee is the partner without ascertaining as to whether each of the cash deposit in the bank account hisobech owned up by M/s Ramsharan Trading Co in its books of accounts?

(2) Whether on facts and circumstances of the case, the Id. CIT(A) was justified in deleting addition of Rs 8,59,21,510/- by relying upon the remand report of the AO and submission of the Bank that the PAN of the assessee was wrongly mapped with the bank account, when, the remand report merely relied upon the fact that such bank account was included in audited books of accounts of M/s Ramsharan Trading Co. without conclusively ascertaining the source of such cash as belonging to M/s Ramsharan Trading Co.?

(3) Whether on facts and circumstances of the case, the Id. CIT(A) was justified in deleting addition of Rs 8,59,21,510/- by concluding that cash deposits of Rs 8,59,21,510/- in the bank account do not pertain to the assessee as the bank account pertains to M/s Ramsharan Trading Co. in which assessee is the partner without any conclusive evidence in his possession that all the cash deposits in the bank account pertained to M/s Ramsharan Trading Co. and not to the assessee?

10. Upon perusal of the above, it is difficult to discern as to what is the infirmity in the order of the learned CIT(A) which is vehemently being articulated by the learned Counsel for the assessee. He could not effectively rebut any evidence to dismantle the voluminous evidences in favour of the appellant except making a general statement that the matter requires verification in the hands of the partnership firm. He has failed to controvert the clinching evidence by way of the remand report reproduced above. Presently, we are dealing with the case of the partner and we are not compelled to give any direction as regards the taxability of the firm. Accordingly, we find no merit to interfere in the well-reasoned and cogent order passed by the learned CIT(A) and uphold the same by dismissing the grounds of appeal raised by the Revenue.

11. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 13/05/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 13/05/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur