

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.2746/Mum/2023  
(A.Y. 2014-15)**

Vijay Kumar Chandeshwar Yadav, A-1/28, R-10, Sector 21, Turbhe, Turbhe S.O. Turbhe, Raigarh (MH) Maharashtra – 400703	Vs.	ITO (28)(3)(4) Tower No.6, 3 <sup>rd</sup> Floor, Vashi Railway Station Navi Mumbai - 400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABMPY4068K		
Appellant	..	Respondent

Appellant by :	Vijay Kumar C. Yadav a/w Dharmendra Kumar
Respondent by :	Krishna Kumar

Date of Hearing	09.05.2024
Date of Pronouncement	17.05.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1. As per Section 68 of Income Tax Act 1961, any Cash credit which remains unexplained to the extent of satisfaction of AO shall be taxable. However, we have given explanation to AO and CIT(A) regarding the amount not shown in ITR as Turnover that it was unintentionally left to be shown while filing the ITR and it is purely a business transaction. Here, the AO & CIT(A) have approached a biased approach-Indore Malwa United Mills Ltd v/s. State of Madhya Pradesh [1966] 60 ITR 41 (SC).
2. As per section 44AD of Income Tax Act 1961, a specified business person can opt for presumptive taxation scheme and can file his return of income under this section by showing approximate turnover and profit will be declared above than a specified percentage (%) mentioned in this section. If the assessee is filing ITR under this section, then he cannot claim further expenditure except certain expenses under chapter VIA of Income

*Tax Act 1961. However, in the present case, the assessee is a labour contractor and thus he does fall in the specified business category mentioned in section 44AD of Income Tax Act 1961. Hence, there is no limit to claim amount of expense in this case. However, in our case, the expenses can be claimed by filing revised ITR u/s 139(5) of Income Tax Act 1961 but the time limit of filing this revised ITR has been expired and so we could not file the revised ITR.*

3. *As per section 143(3) of Income Tax Act 1961, the AO has to pass the order within specified period mentioned in this section and which can be set aside by the CIT(A) if AO does not have power to accept any fresh claim for any ITR as done in case of Goetze (India) v/s. CIT[2006] 284 ITR 323/157 Taxman 1; Hence, we requested to the respective CIT(A) to accept our fresh claim of expenses against the disallowed bank turnover added by the AO as per the Assessment Order letter dated 04th November 2016 as done in case of GVK Industries Ltd v/s CIT [2013] 56 SOT 73 (Hyd.), Apollo Tyres Ltd v/s. CIT [2013] 60 SOT 1 (cochin) while filing the CIT(A) and to allow us to file the revised ITR under section 139(5) but they did not allow us to file revised ITR or even they did not consider expenses against the additions made while sending the Assessment order by CIT(A). which is against the principal of natural justice.*
4. *In our case, the AO has accepted our original ITR filed u/s 44AD dated 14.11.2014 wherein Net Total Returned Income declared by us was Rs.2,20,419/- However, the AO has further added Rs.26,25,610/- in his Assessment Order dated 04.11.2016 wherein it was mentioned by AO that this is the Bank Turnover which was left by mistake while filing the original ITR dated 14.11.2014 Against this order, we filed an Appeal to CIT on 02.12.2016 and requested to CIT(A) to accept the revised computation made by us wherein we requested to accept the related expenses to the tune of Rs.21,06,616/- and the resultant Net Taxable Income was Rs.5,18,997/-. However, on 06.06.2023, CIT(A) has quashed our request and dismissed the appeal and confirmed the Tax demand order passed by the respective AO to the tune of Rs.10,12,400/- without considering our additional evidences submitted u/s 246A. We therefore, hereby requesting to the ITAT to accept our additional evidences u/s 246A and grant a relief to us.*
5. *We therefore pray: (a) that, your honour may be pleased to allow the relief for bank transactions disallowed under Section 68 and set aside the order of the Assessing Officer dated 04.11.2016 and CIT(A) dated 06.06 2023, and (b) that, your honour may be pleased to pass such further and other orders as the facts and circumstances of the case may require.”*

2. Fact in brief is that return of income declaring total income of Rs.2,20,419/- was filed on 14.11.2014. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 28.08.2015. The assessee is a contractor with proprietary concern M/s Sunita Enterprises. The assessee has shown business income and income from other sources during the year under consideration. During

the course of assessment on the basis of AIR information the assessing officer noticed that assessee had deposited cash of Rs.51,90,000/- in his bank account maintained with State Bank of India. On perusal of the bank statement the assessing officer found that assessee has deposited an amount of Rs.19,51,434/- by cash and cheques in his saving bank account maintained with State Bank of India and Rs.30,35,491/- in his bank Account maintained with Central Bank of India. Since the amount deposited in the bank account of Rs.49,86,925/- was exceeding the total gross receipts of Rs.25,81,730/- credited to the profit and loss account, therefore, assessing officer asked the assessee to reconcile the amount deposited in his bank account with the gross receipt credited in the trading account. In response the assessee filed revised statement of Income showing new additional turnover of Rs.24,05,195/- vide letter dated 3.11.2016. The assessee had also claimed corresponding expenses of Rs.21,06,616/- and shown further income of Rs.2,98,578/-. He submitted that undisclosed bank transactions were unintentionally remained to be disclosed in the Income Tax return and same have been taken into account in the revised statement of income. However, the assessing officer has not agreed with the submission of the assessee he was of the view that return of income can only be revised any time before the expiry of one year from the end of the relevant assessment year, since the last date for filing of revised return u/s 139(5) of the Act had already been expired on 31.03.2016, therefore, stated that said return cannot be revised. The assessing officer further stated that assessee had not disclosed the income as per provision of Sec. 44AD of the Income Tax Act, therefore, the expenses pertaining to the undisclosed receipt cannot be allowed. The assessing officer further stated that assessee has also not proved that amount deposited in the bank accounts was from his business income, therefore submission of the assessee was rejected and whole

amount of Rs.24,05,195/- was added as unexplained cash credit u/s 68 of the Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the ld. Counsel contended that before the ld. CIT(A) the assessee has filed paper book comprising relevant documents alongwith detailed bank book and their explanation that amount deposited in the bank accounts was pertaining to the normal course of business activities of the assessee. He further submitted that ld. CIT(A) has neither rejected the additional evidences as provided under Rule 46A of the Income Tax Rules nor considered the same before dismissing the appeal filed by the assessee.

5. On the other hand, the ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. During the course assessment on perusal of bank statement the assessing officer noticed that assessee has deposited cash and cheques to the amount of Rs.19,51,434/- in his saving bank account with State Bank of India and Rs.30,35,491/- in his Central Bank of India. Since, amount deposited in the bank accounts totalling to Rs.49,86,925/- exceeded the gross receipts credited to the profit and loss account of Rs.25,81,730/-, the assessee had shown the difference amount of Rs.24,05,195/- as the new additional turnover related to his business activities in the revised statement furnished before the assessing officer. The assessee has also claimed corresponding expenses to the amount of Rs.21,06,616/- against the new turnover of Rs.24,05,195/- which remained to be disclosed in the Income Tax return filed by the assessee. However, the AO has added the whole amount of turnover of

Rs.24,05,196/- to the total income of the assessee without giving any deduction to the corresponding expenses claimed by the assessee in his revised statement of income. On perusal of the material placed on record we consider that the claim of the assessee that amount deposited in the bank account was out of his normal business activities was not examined and verified at the level of lower authorities. The assessee has filed relevant documentary evidences before the Id. CIT(A) as additional evidences explaining that the transactions reflected in the bank accounts were related to the normal business activities of the assessee. However, the Id. CIT(A) has not dealt with additional evidences filed by the assessee as prescribed under Rule 46A of the I.T. Rule. In view of the above facts and circumstances we restore this case to the file of the assessing officer for deciding afresh after verification of the relevant supporting documents in support of his claim that new receipt shown cannot be effected without incurring the corresponding expenses in the normal course of business. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 17.05.2024

Sd/-  
(Vikas Awasthy)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai  
Date 17.05.2024  
Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.