

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA NO.4843/MUM/2023

Assessment Year :2013-14

Shahenshah H.M.Raza Syed
A12/8, Gajanan Colony, Shivaji Nagar,
Govandi, Mumbai 400 043.

PAN:APOPS-5564-E

---- Appellant

Vs.

Assistant Commissioner of Income Tax,
Circle 25(1), Mumbai.

--- Respondent

Appellant by : Shri Shekhar Gupta
Respondent by : Shri Dinesh A. Chourasia
Date of Hearing : 27/05/2024
Date of Pronouncement : 27/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 20/11/2023 passed by Ld CIT(A), NFAC, New Delhi for assessment year 2013-14. The grounds of appeal urged by the assessee relate to the following two issues:

- (A) Addition of Rs.15.00 lacs u/s. 68 of the Act.
- (B) Adhoc disallowance of 10% of the expenses claimed by the assessee.

2. The facts relating to the case are stated in brief. The assessee is a transporter and fleet owner. The assessee filed his return of income declaring a total income of Rs.28.90 lacs for the year under consideration. The same was taken up for scrutiny.

The Assessing Officer notice that the assessee has received unsecured loan of Rs.51.39 lacs. Since the assessee did not furnish necessary details to prove the loans, the Assessing Officer assessed the same as unexplained cash credit u/s. 68 of the Act. The Assessing Officer also asked the assessee to furnish evidences in respect of various expenses claimed by the assessee. Since, the assessee did not furnish them, the Assessing Officer disallowed 20% of diesels expenses and 10% of salary expenses, spare parts expenses, vehicle registration expenses and repair and maintenance expenses.

3. Before Ld.CIT(A), the assessee furnished relevant details relating to cash credits. The ld.CIT(A) confirmed the addition to the extent of Rs.15.00 lacs and deleted the remaining addition relating to cash credits. With regard to the disallowance made out of expenses, the Ld.CIT(A) took the view that the assessee has failed to furnish necessary evidences and hence, the Assessing Officer was right in making disallowances. However, he directed the Assessing Officer to correct the computational error pointed out by the assessee in respect of disallowance made out of diesel expenses. Still aggrieved, the assessee has filed this appeal before the Tribunal.

4. We have heard the parties and perused the record. With regard to the cash credit of Rs.15.00 lacs confirmed by the Ld.CIT(A), the Ld.A.R submitted that the assessee had agreed to sell a property and above said amount of Rs.15.00 lacs was received from the buyer of the property. In this regard the Ld.A.R invited out attention to the paper book wherein copy of

agreement for sale of property is given. He further invited our attention to page 30 of the paper book, which contains payment schedule of the agreement. A perusal of the agreement would show that the assessee has received Rs.15.00 lacs from the buyer towards the transfer of property. We notice that the Ld CIT(A) has confirmed the addition only for the reason that the assessee has shown the amount of Rs.15.00 lakhs as loans, while it was claimed as advance. However, the fact would remain that the assessee has received the above said amount towards sale of a property, which is proved by the agreement. Hence wrong classification of the receipt in the Balance sheet should not be a ground to reject the genuineness of the receipt. Accordingly, we are of the view that the Ld.CIT(A) was not justified in sustaining the addition of Rs.15.00 lacs u/s. 68 of the Act. Accordingly, we modify the order passed by Ld.CIT(A) on this issue and direct the Assessing Officer to delete the addition of Rs.15.00 lacs made u/s. 68 of the Act.

5. With regard to disallowances made by the Assessing Officer from various expenses claimed by the assessee, we notice that the Assessing Officer was constrained to make disallowances, since the assessee has failed to furnish evidences in support of the claim. The Ld. A.R prayed that the assessee may be provided with one more opportunity to furnish various evidences to the Assessing Officer. In the interest of natural justice, we agree with the aforesaid plea of Ld.A.R. Accordingly we set-aside the order passed by Ld.CIT(A) on this issue and restore the same to the file of Assessing Officer for examining it afresh. We also direct the

assessee to furnish all the details that may be called for by the Assessing Officer. After affording adequate opportunity of being heard to the assessee, the Assessing Officer may take appropriate decision in accordance with law.

6. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 27th May, 2024.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER
Mumbai, Date : 27th May, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai