

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM**

ITA No. 3681/Mum/2023

(Assessment Year: 2017-18)

Dy. Commissioner of Income
Tax 19(3)
Room No.513, Fifth Floor,
Piramal Chambers, lalbaug,
Parel, Mumbai-400 012
(Appellant)

Vs.

Ranjeet Kumar Mohanlal Jain
11/13, Shop No.4,
Shaik Memon Street,
Kalba Devi,
Mumbai-400 002
(Respondent)

PAN No. AABPJ8735A

CO No. 34/Mum/2024

(Arising in ITA No. 3681/Mum/2024 for A.Y. 2017-18)

Shirish RanjeetKumar Jain
L/H of late Ranjeet Kumar
Mohanlal Jain
11/13, Shop No.4,
Shaik Memon Street,
Kalba Devi,
Mumbai-400 002
(Appellant)

Vs.

Dy. Commissioner of Income
Tax 19(3)
Room No.513, Fifth Floor,
Piramal Chambers, lalbaug,
Parel, Mumbai-400 012
(Respondent)

PAN No. AABPJ8735A

Assessee by : Shri Dharan Gandhi, AR
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 28.05.2024
Date of pronouncement : 31.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA No.3681/Mum/2023, is filed by the learned Assessing Officer against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 14th August, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 144 read with section 143(3) of the Income-tax Act, 1961 (the Act) dated 28th December, 2019, passed by the Asst. Commissioner of Income Tax, Circle 23(3), Mumbai (the learned Assessing Officer), was allowed.
2. The learned Assessing Officer has raised following grounds of appeal:-

“1. On the facts and the circumstances of the case and in law is the Ld. CIT(A) right in deleting the addition made by the Assessing Officer without considering the Remand Report, which was due on 14.08.2023 whereas the ld. CIT(A) has passed the order on 14.08.2023 before uploading of the Remand Report prepared by the Assessing Officer.

2. On the facts and the circumstances of the case and in law is the Ld. CIT(A) right on 14.08.2023 when the assessee was non-cooperative, before the Assessing Officer and the order had been passed u/s 144 of the Income Tax Act, 1961 and thus the documents filed de

novo before the Ld. CIT(A) has not been examined by the Assessing Officer during the assessment proceedings and the Ld. CIT(A) has passed the order even before the uploading of the Remand Report.

3. On the facts and the circumstances of the case and in law the Ld.CIT(A) erred in deleting the addition made by the AO without appreciating the facts that in such Bank accounts as when compared to the previous Financial year 2015-16 in this year ie. F.Y. 2016-17 in a particular month there is abnormal cash deposits which are not explained by the assessee and without any rectification in remand by the Assessing Officer.

4. On the facts and the circumstance of the case and in law the Ld. CIT(A) erred in deleting the addition made towards cash deposits at Rs.1,03,26,554/- as in the statement of the F.Y. 2016-17, same pattern is observed till October, 2016 that there no cash sales booked by the assessee till October, 2016, but on 8th of November, 2016, assessee suddenly made sale of Rs. 1,03,26,554/-, which required verification beyond doubt by the Assessing Officer.

5. On the facts and the circumstance of the case and in law the Ld. CIT(A) erred in deleting the addition made towards unexplained loans/credits to the extent of Rs.61,00,000/- as the same were not explained by the assessee that credit worthiness and genuineness of

transactions made without any verification in remand by the Assessing Officer.

5. On the facts and the circumstance of the case and in law the Ld. CIT(A) erred in deleting the addition made towards interest of Rs. Ra. 11,37,147/ claimed as expenditure on unexplained loans / credits to the extent of Rs.61,00,000/- as the same were not explained by the assessee that credit worthiness and genuineness of transactions made. Hence, the deletion of interest is not acceptable and without any verification in remand by the Assessing Officer.

7. On the facts and the circumstance of the case and in law the Ld. CIT(A) erred in deleting all the additions made by the AO without appreciating the fact that nothing is explained to the satisfactions of the AO as it specifically mentioned in the section 68 of Income Tax Act, 1961.

8. On the facts and circumstance of the case and in law the order of the Learned CIT(A) suffers from perversity as it ignores the facts brought on record establishing that no proofs are filed and explained by the assessee and without any verification in remand by the Assessing Officer.

9. On the facts and circumstance of the case and in law the Learned CIT(A) erred in deleting the addition of Rs. 1,03,26,554/- as unexplained deposits/investment u/s 68 overlooking the fact that the entire transactions were stage managed with the object to facilitate the assessee to

plough back its unaccounted income in the form of fictitious cash sales and made bogus claim and without any verification in remand by the Assessing Officer.

10. On the facts and the circumstances of the case and in law, Ld CIT(A) erred in ignoring the decisions in Sumati Dayal v. CIT 214 ITR-80 and CII v. Durga Prasad More 82 ITR-540 (S.C.) and coming to a conclusion only on the basis of the arguments advanced by the assessee, without awaiting the Remand Report by the Assessing Officer, when the assessee has not discharged its onus, during the assessment proceedings.”

3. Brief facts of the case shows that assessee filed its return of income on 31st October, 2017, at a total income of ₹43,43,730/-, which was selected for scrutiny for verifying abnormal increase in cash deposit during demonetization period. Notice under Section 143(2) of the Act was issued on 13th August, 2018. During the course of assessment, the learned Assessing Officer was informed by Mr. Shirish Ranjeet kumar Jain that assessee Shri Ranjeet Kumar Mohanlal Jain has passed away on 27th November, 2019, and thereafter the legal heir of deceased was brought on record by the name of Mr. Shirish Ranjeet kumar Jain. The assessment proceedings were continued on legal heir. The learned Assessing Officer found on 8th November, 2016, assessee has made sales of ₹103,26,554/-, whereas in earlier years and during the same financial year prior to that date there was no cash deposited. The learned Assessing Officer after examination of cash bill found that all the cash



bills are of less than 2 lacs. Therefore, he held that all these bills are prepared to avoid KYC provisions. He also verified the bills of purchase and sales. Further, the purchase bills were also verified. The Assessing Officer reached at a conclusion that cash sales being booked by the assessee to adjust its undisclosed income during demonetization period. For this purpose, the assessee has manipulated the books of account. The assessee has pretended that he has sold stock and cash received from the same is deposited in the bank account. This statement of the assessee is not accepted by the learned Assessing Officer because assessee has undertaken purchase and sales out of the book to adjust undisclosed money during monetization period by booking bogus sales. Based on the above findings he made 100% addition of cash deposited in bank demonetization period amounting to ₹1,03,26,554/- under Section 68 of the Act and chargeable to tax under Section 115BBE of the Act. Further, it was found that there are two unsecured loan received from Amrit Mohanlal HUF of ₹29 lacs and ₹32,50,000/- received from Nina Bhavesh Jain. Assessee has failed to prove the creditworthiness of the lenders and genuineness of the transactions and therefore, same were added under Section 68 of the Act. The assessee has debited interest expenditure of ₹5,16,135/- and ₹6,21,012/- on both the above loan which were also disallowed. Accordingly, the total income of the assessee is assessed at ₹2,19,57,430/- as per assessment order dated 28th December, 2019, passed under Section 144 of the Act in the name of Late Shri Ranjeet Kumar Mohanlal Jain through legal heir Mr. Shirish Ranjeet kumar Jain.



4. Aggrieved with the assessment order, legal preferred an appeal before the learned CIT (A), who passed an appellate order dated 14th August, 2023.
5. The learned CIT (A) passed 34 pages order however, before us, the learned Assessing Officer while filing the appeal did not file page no.5 to 33 of the appellate order. However, last line of the appellate order shows that the appeal of the assessee is allowed.
6. Against this, the learned Assessing Officer is aggrieved and has filed the appeal.
7. At the beginning itself, the learned Assessing Officer contested that the appeal is filed by the learned Assessing Officer in the name of deceased person Shri Ranjeet Kumar Mohanlal Jain, who passed away after filing of the return of income but before the passing of the assessment order. Even the assessment order is passed in the name of late Shri Ranjeet Kumar Mohanlal Jain through legal heir Shri Ranjeet Kumar Mohanlal Jain. However, the present appeal is filed in the name of dead person Shri Ranjeet Kumar Mohanlal Jain. He submits that if appeal is filed in the name of dead person same is not maintainable.
8. The learned Departmental Representative was questioned on that how the appeal can be filed in the name of a dead person. But it was stated as the return of income was filed in the name of same person and the Permanent Account Number (PAN) of the deceased is to be used for filing appeal, name of respondent is deceased person. It was stated that at the most same can be a irregularity.



9. We have carefully considered the contention of both the parties and find that really the learned Assessing Officer has filed the appeal in the name of dead person namely Shri Ranjeet Kumar Mohanlal Jain even the name of respondent in form no.36 is also the dead person. There is no mention of legal heir Mr. Shirish Ranjeet kumar Jain in form no.36 filed by the learned Assessing Officer. Furthermore, the authorization memo submitted before us also clearly shows that name of the assessee is of a dead person. Naturally, the appeal cannot be filed in the name of a dead person.
10. There is another reason for dismissal of the appeal is that ld AO has not filed the complete order of the ld CIT (A) as stated above.
11. Therefore, this appeal of the learned Assessing Officer deserves to be dismissed however we give liberty that if the learned Assessing Officer still wishes to file an appeal he must file the appeal in revised form no.36 along with the reasons for delay in filing of the appeal.
12. In the result, the appeal of the learned Assessing Officer is dismissed without discussing the issue on merit as it is filed against the deceased assessee without mentioning anything about legal heir and also in incomplete manner.
13. Consequently, the cross objection filed by the assessee also stands dismissed. The assessee is also given a liberty that if the learned Assessing Officer files an appeal, the assessee will have



the right this Cross Objection substituted or may file a fresh Cross Objection. Hence, the CO of the assessee is dismissed.

14. In the result, both, the appeal of the learned Assessing Officer and co of the assessee are dismissed.

Order pronounced in the open court on 31.05.2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05 .2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai