

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

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.1138/MUM/2024  
Assessment Year 2017-18**

JMD International,  
57 3<sup>rd</sup> Floor, Ashoka Chamber,  
Devji Ratansey Marg,  
Masjid East, Mumbai – 400 009  
PAN:AAHFJ-7718-H

- Appellant

Vs.

ITO 17(2)(1), Mumbai  
Kautilya Bhavan, G-Block,  
BKC, Bandra East,  
Mumbai – 400 051

- Respondent

Appellant by : Shri Anuj Kisnadwala  
Respondent by : Shri Jagdish Jangid –CIT-DR

Date of Hearing : 05/06/2024  
Date of Pronouncement : 10/06/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The assessee has filed this appeal challenging the order dated 29/11/2023 passed by Commissioner of Income Tax (Appeals) [in short the Id. CIT(A)], NFAC, Delhi and it relates to the Assessment Year 2017-18. The assessee is aggrieved by the decision of Id CIT(A) in confirming the addition of Rs.13.37 crores made by the Assessing Officer u/s. 69A of the Act.

2. The appeal is barred by limitation by 45 days. The assessee has filed an application requesting the Bench to condone the delay, wherein it is stated that the staff of Advocate who was looking after appeal matters of assessee went on maternity leave and hence, the

appeal could not be filed in time. We have heard ld. Departmental Representative on this preliminary issue. Having regard to the submissions made by the assessee, we are of the view that there was reasonable cause for the assessee in filing the appeal belatedly. Accordingly, we condone the delay and admit the appeal for hearing.

3. The assessee has also raised grounds challenging validity of reopening. However, at the time of hearing, the ld A.R did not press those grounds. Accordingly, those grounds are dismissed as Not Pressed.

4. The facts relating to the addition of Rs.13.37 crores are stated in brief. The assessee is a partnership firm. It came to the notice of the Assessing Officer that the assessee had made cash deposits to the tune of Rs.13.37 crores in its current account. It was also noticed that the assessee did not file any return of income. Accordingly, the Assessing Officer reopened the assessment by issuing notice u/s.147 of the Act. Thereafter, the Assessing Officer issued notices u/s. 142(1) of the Act, but the assessee did not respond to the same. Accordingly, the Assessing Officer completed the assessment to the best of his judgement assessing the cash deposits amounting to Rs.13.37 crores as unexplained income of the assessee u/s. 69A of the Act.

5. Before the CIT(A) the assessee explained that two Partnership firms were formed under the same name of "JMD International", viz.,

(a) The first partnership firm was formed on 17/02/2011 with PAN "AAHFJ-7718-H".

(b) Subsequently, another partnership firm with the very same name of "JMD International" was formed on 03/06/2015 with another PAN "AALFJ-1741-N".

It was submitted that the first partnership firm did not carry on any business. The second partnership firm has actually carried on the business and it opened a bank account with Syndicate Bank by giving PAN number of first firm, by inadvertence. Hence, all the transactions carried on by the second partnership firm with Syndicate Bank was captured under the PAN number of first partnership firm. It was also submitted that all the transactions of deposits of/withdrawals from above said Syndicate Bank account have been duly disclosed in the books of second Partnership firm. Accordingly, it was submitted that there was no concealment of income as perceived by the Assessing Officer. However, the Id.CIT(A) was not convinced with the submissions made by the assessee for the reason that the assessee did not furnish cash books to prove its claim. Accordingly, he dismissed the appeal of the assessee.

6. We have heard the parties and perused the record. It is the submission of the assessee that the transactions of cash deposits noted by the Assessing Officer have been duly recorded in the books of second partnership firm. It is the submission of the assessee that the said Bank account was opened with the PAN belonging to the first partnership firm by inadvertence. It is also submitted that the old firm did not carry on any business and hence, it did not file return of income. Since, the cash deposits have been made in the Syndicate Bank account having PAN of first partnership firm and since the said first partnership firm did not file return of income, the AO has reopened the assessment by issuing notice u/s. 148 of the Act. Since the assessee did not respond to the notices issued by the AO, he was constrained to pass the impugned assessment order ex-parte.

7. We notice that the case of the assessee is that the confusion has arisen on account of giving of wrong PAN to the Syndicate Bank while opening Bank account. It is the submission of the assessee that all the transactions of deposits and withdrawals are duly recorded in the books of second Partnership firm. If, the Bank transaction including cash deposits are duly recorded in the books of the second partnership firm, then the said deposits would stand explained by the said books of account, as the said transactions are owned up by the second partnership firm. Hence, in the normal circumstances, there should not be any requirement to make any addition in the hands of first partnership firm.

8. However, we notice that all these facts have been explained for the first time before Ld CIT(A) and further, these facts have not been examined by the first appellate authority on the reasoning that the assessee did not furnish relevant cash books. Under these set of facts, we are of the view that the contentions of the assessee require examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by ld.CIT(A) and restore this issue to his file for examining this issue afresh in accordance with law, by duly considering information and explanations that may be furnished by the assessee. We also direct the assessee to fully co-operate with the Assessing Officer for completion of the assessment expeditiously.

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

Order pronounced in the open court on 10 June, 2024.

Sd/-

[Justice (Retd) C V Bhadang]  
President

Sd/-

(B.R. Baskaran)  
Accountant Member

Mumbai, Date : 10 June, 2024

VM.

Copy to :

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

By Order

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