

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

BEFORE SHRI PRASHANT MAHARISHI, AM

**ITA No. 341/Mum/2024**

(Assessment Year: 2012-13)

Virendra M. Gaur  
Room No. D-5,  
Bhagwan Seth Estate,  
Behind Bata Godown,  
Purna Village, Tal Bhiwandi,  
Bhiwandi, Mumbai-421302

**(Appellant)**

Vs.

Income Tax Officer,  
Ward 23(3)7,  
3<sup>rd</sup> Floor,  
Nariman Point,  
Mumbai-400 001

**(Respondent)**

**PAN No. APLPG8799J**

**Assessee by** : Shri Sunil Makhija a/w Shri  
Virendra M. Gaur, ARs  
**Revenue by** : Shri R.R. Makwana, DR

**Date of hearing:** 05.06.2024

**Date of pronouncement :** 27.06.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No.341/Mum/2024 is filed by Mr. Virendra M Gaur (assessee / appellant) against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)], wherein the appeal filed by the assessee against the assessment order passed under Section 144 read with section 147 of the Income-tax Act, 1961 (the Act) passed by the Income Tax Officer, Ward 23(3)(7), Mumbai dated 9<sup>th</sup> December, 2018, for A.Y. 2012-13, was dismissed.

02. The assessee has raised following grounds of appeal:-

*"1. The learned AO has erred by issuing notice u/s 271(1) (c) for inaccurate particulars of income by*



*treating the Estimated G.P. income as concealed income.*

*2. On the facts and circumstances of the case and in law the learned Assessing Officer erred in passing the order on the addition of Rs.49,91,470/-by treating entire deposit as unexplained income.*

*3. The learned AO has erred by passing the order u/s 144 r.w.s 147 without serving any Notice upon the 'appellant' u/s 148 of the Act and also without going in to the merits of the case.*

*4. The learned AO has erred by not considering the Hon'ble ITAT's decision in the case of M/s K.P. Cold Storage Vs ITO (ITAT Agra) as well as various judgment of various higher authorities in connection with service of notice u/s 148 of the Act and provisions of CPC in this regards.*

*5. The appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing."*

03. The brief facts of the shows that the assessee is an individual who did not file return of income for the impugned assessment year. Information is available in non-filers data that assessee has deposited ₹49,91,470/- in bank account in cash. Therefore, notice under Section 148 of the Act was issued on 13<sup>th</sup> March, 2019. Such notice remain unserved by postal authorities and therefore, same was served by affixture on the last known address of the assessee on 17<sup>th</sup> June, 2019. From the



CIBIL data, whereabouts of the assessee were enquired and which also could not locate the same. One more notice was issued to the assessee on 29<sup>th</sup> October, 2019, same was also not responded. The learned Assessing Officer obtained information under Section 133(6) of the Act from the bank account and also obtained KYC document on the address found from those KYC documents. The learned Assessing Officer issued another letter which was also returned as 'not known'.

04. The learned Assessing Officer passed an assessment order under Section 144 read with section 147 of the Act making an addition of ₹49,91,470/- as unexplained cash money under Section 69A of the Act by order dated 9<sup>th</sup> December, 2019.
05. Assessee aggrieved with the same preferred an appeal before the learned CIT (A), which was delayed by 65 days and the reason of delay was explained about domestic and health issues. The learned CIT (A) condoned the delay.
06. On the merits the assessee submitted that the case was reopened under Section 147 of the Act and notice under Section 148 of the Act was not served to the assessee at all. The learned CIT (A) has held that the notice has been served on the assessee by affixture at the last known address and therefore, the validity of the notice cannot be questioned.
07. On the merits of the addition, assessee submitted that he was carrying on the business or profession of trading of

grey cloth in his individual name and the sale proceeds of ₹73,70,615/- were received from cash and RTGS. Further, the assessee has also withdrawn cash. The assessee also submitted that in the business of the assessee the margin of profit is 0.5% to 0.75% and total profit on the turnover of ₹73,70,615/- is in the range of 55,280/- only. As the income is below the threshold limit the return was not filed. The assessee was ready to pay the tax under Section 44AD or under Section 44AE of the Act on the basis of peak credit. The assessee also submitted the comparative rate of net profit. The learned CIT (A) rejected the explanation of the assessee and held that assessee was having a money and has not given any explanation therefore, the learned Assessing Officer has invoked the provision of Section 69A of the Act as the assessee has not discharged his burden, he confirmed the addition. The appeal of the assessee was dismissed.

08. Before us, the learned Authorized Representative submitted a paper book containing 29 pages, wherein the submissions before the learned CIT (A) are also placed at page no.26 to 29. It was the claim of the assessee that looking to the bank statement of the assessee it clearly shows that assessee is engaged into the business in very small level. Therefore, reasonable profit may be ascertained. He also demonstrated by submitting the copies of the bank statement and also reconciliation of cash deposit in the bank account of the assessee. Therefore, he submitted that the addition made by the learned Assessing Officer and confirmed by the

learned CIT (A) is not sustainable as deposit is out of sale proceeds of grey cloth business and also out of cash withdrawn earlier.

09. Assessee also remained present in hearing and explained how he carried business. He has now closed the business and is now working as a godown keeper in small company.
010. The learned Departmental Representative vehemently supported the order of the learned lower authorities. He submits that it is for assessee to prove that he is carrying a business and in possession of cash to deposit the same in the bank account. Therefore, orders of the lower authorities are correct. He submits that the addition is made under Section 69A of the Act needs to be sustained.
011. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, the assessee has deposited cash in bank account with Union bank of India and Syndicate Bank for the impugned year amounting to ₹49,91,470/-. Before the learned CIT (A), assessee has submitted that assessee was carrying on business at very small level trading in grey cloth in the individual name. From the bank statements also it is seen that he has sold goods at various places where from cash is deposited in his bank account. The cash is deposited from Bhagalpur, Panipat, Delhi, Muhul, Laitur, Erode, Noida, etc. The bank statement of Union Bank of India and Syndicate bank shows these deposits. The assessee has also given a summary of his day to day transactions in the bank account. The payment also shows that assessee has



made payment of Rajesh kumar Textile Pvt Ltd for purchase. Further, assessee has also withdrawn cash. He further submits that cash withdrawn from one bank is also deposited in another bank for making payment to party for purchases. In view of the above facts it is apparent that assessee is carrying on business of grey cloth. No doubt the assessee has not maintained his books of account but same should be looked in a stringent manner, looking to the facts and circumstances of the case. Comparative rates of profit were also shown in the submission of assessee and oral submission made by assessee. In view of this to meet the interest of justice, it would be fair to estimate the profit at the rate of 4 % of the annual turnover of ₹73,70,615/-. The learned Assessing Officer is directed to determine the net profit of the above sum. Ground no.2 of the appeal is allowed to that extent.

012. No other grounds are pressed before us.

013. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 27.06. 2024.

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.06. 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,

True Copy//

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