

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 3850/Mum/2023 (A.Y.2013-14)

Raj Sarathy Jagdish

C/001, Ignis Building Lodha
Splendora, Ghodbunder
Road, Thane 400 607
PAN: AGPPJ8217K

..... Appellant

Vs.

ITO Ward 3(2)/NFAC

Ashar IT Park, Wagle Estate
Thane- 400 604

..... Respondent

Appellant by : Shri Bhupendra Shah, Ld. AR
Respondent by : Shri R. R. Makwana, Ld. DR

Date of hearing : 08/04/2024
Date of pronouncement : 26/06/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 29.09.2023 passed u/s. 250 of the Income

Tax Act, 1961 (in short 'the Act') for A.Y. 2013-14. The assessee has raised the following grounds of appeal:-

[A] Grounds of Appeal:

1. *On the facts and circumstance of the case and in law the learned Faceless assessing officer erred in adding Rs. 14,83,500/- in respect of Cash Deposited in Bank Account by the Appellant as Unexplained money u/s. 69A of Income Tax Act, 1961.*

a. *Even though no money was found by the Faceless assessing Officer for invoking sec.69A of the Act.*

b. *Only on the basis of suspicion and presumptions that cash withdrawn earlier was spent.*

c. *There is no provision to debar the Appellant from re-depositing the cash on hand comprising of opening cash on hand and subsequent withdrawals of Cash from Bank.*

d. *Wrongly assuming that gap between the cash withdrawn and cash re-deposited is not explained.*

e. *Erroneously Ignoring cash flow statement submitted by the Appellant.*

f. *No Books of accounts are required to be maintained by the Appellant and therefore invoking the provisions of sec.69A of the Act are not tenable in law.*

g. *In the facts of the case and in Law, the learned CIT(A) NFAC erred in confirming 80% of the addition of Rs.14,83,500/- viz Rs. 11,86,800/- by rejecting this ground of appeal without considering detailed facts and case laws submitted by the Appellant.*

2. *On the facts and circumstance of the case and in law the learned Faceless Assessing Officer erred in making addition of Salary Income of Rs.18,92,291/- and not allowing TDS Credit of Rs. 2,71,675/- treating the return fled in response to Notice u/s. 148 of the Act as Invalid return.*

a. *By overlooking the fact that the new Income Tax website was having several lacuna and was non-functional or down for several months after the same was launched during the period of covid-19 and therefore the return filed by the Appellant u/s. 148 of the Act could not be e-verified by the Appellant within original time limit prescribed, for which the appellant cannot be made responsible.*

b. By ignoring Form No.16 which itself is an evidence of disclosed Income as well as TDS Deducted thereon so far as Asst Year 2013-14 is concerned.

c. In the facts of the case and in Law, the learned CIT(A) NFAC erred in confirming 100% of the addition of Rs. 18,92,291/-by rejecting this ground of appeal without considering detailed facts and case laws submitted by the Appellant.

3. On the facts and circumstance of the case and in law the learned Faceless Assessing Officer erred in making addition of Rs. 10,29,885/- in respect of amount paid for Credit Card Bills as Unexplained expenditure and adding the same u/s. 69C of Income Tax Act, 1961.

a. By ignoring the fact that the appellant is not required to maintain Books of Accounts thus Provisions of sec.69C of the Act could not be applied in the absence of books.

b. By overlooking the fact that the expenses is paid by the Appellant from disclosed Bank Accounts and out of disclosed source of Income cannot be considered as unexplained expenditures under any circumstances.

c. Without considering the fact that this amounts to double taxation of same Income, Firstly under the head Cash deposit and again under the head unexplained expenditure and thereby denying the scope of telescoping of 1st Addition against the 2nd Addition which is prayed as an alternative plea.

d. In the facts of the case and in Law, the learned CIT(A) NFAC erred in confirming 50% of the addition of Rs. 10,29,885/- viz Rs. 5,14,942/-by rejecting this ground of appeal without considering detailed facts and case laws submitted by the Appellant.

4. On the facts and circumstance of the case and in law the learned Faceless Assessing Officer erred in initiating the penalty u/s 271(1) (c) and 271F and also charging interest u/s. 234A/B/C of the Act.

[B] Relief Prayed:

The appellant therefore prays as follows,

1. to delete the addition of Rs. 11, 86,800/- made u/s. 69A of the Act.

2. to delete the addition of Rs. 18, 92,291/- as salary and allow the credit of TDS Rs.2, 71,675/-

3. to delete the addition of Rs. 5, 14,942/- made u/s 69C of the Act.

4. To delete charging of interest u/s. 234A/B/C and initiation of penalty us 271(1)(c) and 271F of the Act.

[C] General: -

- The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.
- This appeal is filed on time and the same may please be allowed in full.
- A Detailed paper book along with case laws will be submitted at the time of hearing.

2. The brief facts of the case are that the assessee is in the category of non-Filer, i.e. had not filed any return of income u/s. 139 of the Act. As per NMS data available on the system AST/AIR that during the F.Y. 2012-13 relevant to the A.Y. 2013-14 assessee has deposited cash of Rs. 13,17,500/-, in the bank accounts, Paid credit card bills of Rs. 10,29,885/- and salary income of Rs. 17,55,778/- and income of Rs. 20,28,804/-. The assessee has gross income of Rs. 37, 84,582/- and deposited the cash in bank accounts of Rs. 13, 17,500/- for the F.Y. 2012-13. After collecting the data from ITBA system, the department has issued a computer-generated letter to the assessee on 15.07.2016 requesting the assessee to file ITR for the A.Y. 2013-14 and to furnish a copy along with details of financial transactions entered during the F.Y. 2012-13. This notice was issued through ITBA system as well as through registered post AD. However, assessee has not taken any cognizance of the same and did not file any return of income as per the provision of the section 139 of the IT Act though he was having taxable income. Non filing of return of Income is a failure on the part of the assessee.

3. Thereafter, the case of the assessee was reopened u/s. 148 of the Act vide notice dated: 24.02.2020. The assessee has filed return of income u/s. 148 of the

Act on 17.02.2021, but the same was not duly verified by the assessee as required. Hence return was declared as invalid return. The assessee was issued a notice u/s. 142(1) of the Act and again asked to E-Verify the return but ultimately the same is remained as invalid return. Ultimately the case of the assessee was assessed at Rs. 44, 05,676/- (Comprising Rs. 18, 92,291/- as salary, Rs. 14, 83,500/- as unexplained cash deposit and Rs. 10, 29,885/- as unexplained expenditure) u/s. 144 r.w.s. 147 and 144B of the Act. The assessee being aggrieved with this order of the AO, preferred an appeal before the Ld. CIT (A), NFAC, Delhi, who in turn partly allowed the appeal of the assessee by reducing the addition to Rs. 5,14,942/- against the addition of Rs. 10,29,885/- being unexplained expenditure and Rs. 11,86,800/- against the addition of Rs. 14,83,500/- being unexplained cash deposit. The assessee being further aggrieved with this order of Ld. CIT (A) preferred the present appeal before us.

4. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith the grounds taken before us. It is observed that Form No. 16 issued by the employer M/s. Destimoney Securities Pvt. Ltd. confirms gross salary of Rs 18,92,291/- out of which an exemption of Rs. 3,46,686/- and Rs. 2,500/- was given against HRA and tax on employment respectively. The net taxable salary was Rs. 15, 43,105/- against which a TDS was deducted amounting to Rs. 2, 71,675/-. This figures are cross verifiable with the bank statement of the assessee maintained with Dhanlaxmi Bank Ltd. and Form No. 26AS issued by the Income Tax Department. The AO took the gross figure for the purpose of taxation as there is no valid return filed by the assessee u/s. 139 or 148 of the Act. It is an established position of law that proceedings u/s. 148 of the

Act are for the benefit of the department and not for the assessee, but any income which is being considered under the proceedings of section 148 of the Act, the expenses /rebates /deductions etc. directly connected with such income has to be allowed. In view of this legal proposition, the income chargeable under the head 'Salary' will be as shown in Form No. 16 issued by the employer i.e. Rs. 15,43,105/- and the same is entitled to claim TDS of Rs. 2,71,675/- deducted by the employer u/s. 192 of the Act. The facts discussed by us (supra) are not under challenged by either of the parties. The only legal question was there before us to be examined whether the assessee is entitled to claim Rs. 3,46,686/- and Rs. 2,500/- against HRA and tax on employment respectively alongwith claim TDS of Rs. 2,71,675/- deducted by the employer u/s. 192 of the Act or not. This question we adjudicate in the favour of assessee by revising the figure of salary chargeable to tax at Rs. 15, 43,105/- (after claiming HRA and tax on employment). This chargeability of salary is fastened with a right of the assessee to claim TDS amounting to Rs. 2, 71,675/- deducted by the employer u/s. 192 of the Act. Based on above, an addition to the extent of Rs. 15,43,105/- made by the AO is confirmed and amount exceeding this is deleted alongwith benefit of TDS is also granted to the assessee. **In view of this, ground no. 2 raised by the assessee is partly allowed.**

5. Ground no. 1 pertains to cash deposit in bank account by the assessee amounting to Rs. 14,83,500/-. On this issue, we need to consider the provisions of section 44AA of the Act which exempts the salaried employees from compulsory maintenance of books of accounts. The assessee himself confirmed vide ground 1 (f) – “No books of accounts are required to be maintained by the Appellant and therefore

invoking the provisions of section 69A of the Act are not tenable in law." Here the assessee only one hand confirmed that no books of accounts are being maintained by him on the other hand while explaining cash deposits made by him, he furnished a cash flow statement starting from April 2012 till March 2013. By this cash flow statement, assessee shown an opening balance of Rs. 5,17,000/- and thereafter various cash withdrawals from HDFC A/c No. 9445 and 8756 and Dhanlaxmi A/c No. 7630. It is observed that during the year under consideration, assessee withdrawn Rs. 3, 43,900/-, Rs. 55,800/-, Rs. 6,38,900 and Rs. 7,35,400/- from HDFC a/c No. 9445, HDFC a/c No. 8756, Dhanlaxmi a/c No. 7630 and Axis Bank respectively. This issue requires a detailed verification at the end of the Assessing Officer looking at the various withdrawals made by the assessee vis-a-vis cash deposit from various banks.

6. Based on above, addition on account of cash deposit is restored back to the file of AO and AO is directed to verify each and every transaction of cash withdrawal from various bank account maintained by the assessee and prepare a summary of cash withdrawal, house hold expenses in cash and then deposit in the various bank accounts here it is pertinent to mention that while doing this working the opening balance of cash in hand has to be ignored as the assessee himself has confirmed about non maintenance of books of accounts. On this issue, assessee is directed to cooperate before the AO without seeking any adjournment and furnish all the relevant documents to authenticate his claim about deposit of cash out of cash withdrawn by him. **In these terms, ground no. 1 raised by the assessee is allowed for statistical purposes.**

7. Ground no. 3 pertains to addition of Rs. 10, 29,885/- in respect of amount paid for credit card bills. On this issue, we have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith various bank accounts furnished. It is observed that there is no allegation on the assessee that any payment against credit card dues were ever made in cash rather all the payments against dues of various credit cards were made through various bank accounts maintained by the assessee. As the bank accounts are being scrutinized with reference to the salary received by the assessee and cash deposited by him, no allegation of unexplained expenditure can be sustained against him. **Based on above, ground no. 3 is allowed and AO is directed to delete the addition of Rs. 10, 29,885/-.**

8. **In the result, appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 26th day of June, 2024.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 26/06/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai