

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.1069/Mum/2024
(Assessment Year :2014-15)**

Shri Vinod Tilakraj Saigal A-01, A-Wing Hill Crest 16 th Road, Bandra (W) Mumbai-400 050	Vs.	Income Tax Officer Wd-23(3)(1), Mumbai
PAN/GIR No.AADPS1746A		
(Appellant)	..	(Respondent)

Assessee by	Shri Prakash Jhunjunwala
Revenue by	Ms. Kakoli Ghosh
Date of Hearing	27/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 11/01/2024 passed by Addl. / JCIT-2, Coimbatore for the quantum of assessment passed u/s.143(3) for the A.Y.2014-15.

2. The assessee is aggrieved by confirming of addition on account of cash deposits made in the bank account of Rs.21,50,000/- u/s.69.

3. The brief facts are that assessee is engaged in two business under different trade as proprietary concern M/s. Standard Ice Cream Centre and M/s. Pretty Women. The assessee has filed its return of income on 26/07/2014 declaring total income at Rs.5,10,820/-. As per AIR information, AO noted that assessee had deposited cash of Rs.21,50,000/-in his bank account maintained with Bank of India. In response to the show-cause notice assessee submitted that assessee is having overdraft bank account having O/D limit of Rs.20,00,000/- and cash deposit is out of withdrawal of cash amount of Rs.30,50,000/- from Bank of India. The details of withdrawals from the period 04/02/2013 to 29/01/2014 had been shown at Rs.30,50,000/-. However, the ld. AO noted that assessee deposited Rs.10,00,000/- on 27/08/2013, Rs.8,50,000/- on 28/08/2013 and Rs.3,00,000/- on 03/12/2013. Thus, he noted that assessee was only having Rs.10,50,000/- as on 27/08/2013 i.e. the date on which cash was deposited. Though he acknowledged that assessee is in such a business where only the cash transactions are involved, however, it would be incorrect to say that assessee has withdrawn the amount from the O/D account only to re-deposit the same into the bank account. The assessee before the ld. AO filed a revised computation of income. He submitted that these cash deposits in the OD account is out of sale of fruits/ice

creams and the net profit from the same has been considered @8% which is offered for tax as per revised statement of income. However, the ld. AO rejected assessee's contention and added the entire cash amount of Rs.21,50,000/- as deposit in the bank account.

4. The Ld. First Appellate Authority too has confirmed the said addition after observing as under:-

8.4. The submissions made, the grounds of appeal, and the summary of bank accounts are carefully examined. The following points emerge

a). The appellant has made up to deposited Rs. 20.00000 in CENT 17.09.2013 but withdrawals 17.09.2013 is Rs 250,000 @ nilly Therefore the nexus between cash withdrawals and deposits of the same is not established considering the time difference and that there is no continuous trail.

b). The appellant has slated that one of the source for cash deposits is realization of cash sales of Rs. 40,29,953/- made in M/s Standard Ice cream center. As per the summary of cash deposits furnished the transfer from M/S standard ice cream is only Rs. 2,46,800/- The appellant has not clearly established that the funds have flown out of business receipts except a summary Without any supporting evidence this claim is not maintainable.

c). The appellant has also claimed that cash of Rs. 8 Lakhs accumulated out of withdrawals from earlier years is also available for cash deposit in AY 2014-15. This claim is also not acceptable for the reason that if cash of 8 Lakhs is already available, why would the appellant being a businessman, withdraw from his O/D Account Rs. 2.5 Lakhs on 02.05.2013 only to deposit back Rs. 10 Lakhs on 27.08.2013 paying interest on O/D account. In Para 3.3 of the Assessment Order the AO has pointed out that the assessee has withdrawn only to redeposit in the same account. The appellant has not satisfactorily explained that the withdrawn cash was available on hand.

d). The appellant has in Ground no. 1 stated that the provisions of Section 69 of IT Act are not applicable to the appellant since he is covered u/s 44AD of IT Act and that the cash deposits in bank account cannot be held as investments. The provisions of section 69 of IT Act are reproduced as under:

"Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, If any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the AO, Satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

In section 69 of the IT Act the term "investments" is inclusive. It includes cash deposits also. Further section 69 does not differentiate between a case where books of accounts are maintained and a case where books of accounts are not maintained/ or not required to maintain. The onus is on the appellant to offer an explanation to the satisfaction of the Assessing Officer. The Assessing Officer in the Assessment order has brought out valid reasons as to why the explanation provided by the appellant was not satisfactory.

e) *The case laws relied on by the appellant have been carefully and respectfully noted. The appellant case is distinguishable in that all the decisions have been rendered with respect to additions made under section 68 where as in the appellant case the additions have been made under section 69. Section 68 comes into play where a sum is found credited in the books of accounts maintained by the assessee. In the assessee's case additions have been made under section 69 where the keyword "Books of Accounts", **If any** has been included. This makes section 69 applicable in cases where the assessee is not maintain books of account or not obliged to maintain books of accounts as under 44 AD of the Act.*

5. The Id. Counsel for the assessee submitted that the cash deposits are out of sales from his proprietary concern and

whenever assessee had to purchase material, it used to deposit the cash to issue bank draft or cheque. It is not that cash withdrawal from the sales has been re-deposited, it was the sales made by the assessee which was deposited and it was withdrawn for purchases. The assessee being a small retailer selling Ice creams and fruits has been showing income under presumptive rate of taxes u/ 44AD. Thus, the entire cash deposits are out of business of the assessee only. Therefore, assessee had offered the cash deposit as business income and offered net profit rate of 8% which has been provided under the statute.

6. On the other hand, ld. DR strongly relied upon the order of the ld. AO and ld. CIT(A).

7. After considering the finding given in the assessment order as well as the appellate order and the materials referred to before us, we find that assessee had made total cash deposits Rs.23,50,000 during the year and there are withdrawal of cash Rs.20,50,000/- during the year. Cash deposits have been stated to be out of sales from the proprietary business of selling Ice creams, fruits and vegetables. The assessee had offered the entire cash sales during the year from the retail outlets at Rs.40,29,953/- which includes cash deposits in the bank account of Rs.23,50,000/- on which assessee had offered net profit rate of 8%. If Rs. 23,50,000/- is part of sales only and assessee had no other source of income other than this business and admittedly, sales are in cash, therefore, all the cash deposits have to be treated as business receipts and on such business

receipts, net profit rate of 8% should be applied. Therefore, we direct Ld. AO to apply net profit of 8% on the cash deposits.

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

Order pronounced on 28th June, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 28/06/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai