

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-‘C’ BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 1059/Bang/2024
Assessment Year : 2015-16

M/s. Star Ceramics, 1326, 4 th Block, Municipal Complex Santhe Maidana, Chitradurga, Karnataka – 577 501. PAN: ACMFS4946F	Vs.	The Income Tax Officer, Ward – 1, Chitradurga.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Richa Bakiwala, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Department

Date of Hearing	:	26-06-2024
Date of Pronouncement	:	26-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 25.03.2024 passed by NFAC, Delhi for A.Y. 2015-16 on following grounds of appeal.

Grounds of Appeal		Tax effect relating to each Ground of appeal
I.	The order of the Ld. CIT (A) is opposed to the law, facts and circumstances of the case.	N.A.
II.	The order is passed against the principle of natural justice and thus, liable to be quashed.	N.A.
III.	The learned CIT (A) has erred in making of addition under section 69 of the Act since there has been no payment outside in the books of account of the Appellant.	5,40,571
IV.	Without prejudice to the above, the learned CIT(Appeals) erred by altering the applicability of tax provisions from section 68 to section 69 of the Act. This is in contravention of the powers under section 251(1)(a) of the Act which restricts only confirming, reducing, enhancing, or annulling the assessment but not modifying the provision of law qua the item of which the assessment was made.	
V.	The learned CIT (Appeals) has erred in passing of the order without taking into consideration the legitimacy of the submissions being made by M/s. Mehta Finance which says that they were in receipt of cash from the Appellant in lieu	

	of providing accommodation entry suggesting accommodation entries being made with Star Ceramics.	
VI	The impugned order of the learned CIT(A) has been passed only on relying on the details submitted by Mehta finance as to parties to whom the cheques were issued in lieu of cash. No addition based on mere sworn statement shall be made if not corroborated by sufficient independent evidence.	
VII	The learned CIT(A) should have considered whether the voucher specifically specifies the appellant's name and authorized signature of the appellant to justify whether cash was received in exchange for which cheques were issued by Mehta finance.	
VIII	The learned CIT(A) has not appreciated the fact that the Assessing Officer failed in providing for copy of the seized material which is being used against the Appellant which is mandated under the prescribed format for faceless assessment.	
IX	The learned CIT(A) ought to have considered the fact that the addition cannot be made merely based on submission made by M/s. Mehta Finance without any corroborative evidence.	

X	The learned CIT(A) erred in confirming the order of the Ld. Assessing Officer without providing the appellant with an opportunity to cross examine M/s. Mehta Finance	
XI	The learned CIT(A) erroneously confirmed the order of the Ld. Assessing Officer wherein the appellant was never provided with the copy of the seized materials of its perusal.	
XII	The Appellant craves leave to add, alter, substitute, and delete any or all the grounds of appeal urged above.	
Total tax effect		Rs 5,40,571/-

2. Brief facts of the case are as under:

2.1 The assessee filed the return of income u/s. 139(1) on 29.09.2015 declaring total income of Rs.70,450/-. There was information available with the department that assessee obtained accommodation entry by way of DD / Cheque / RTGS from one Mehta Finance. It is noted that, there was search and seizure action u/s. 132 conducted on the premises of Mehta Soni group of cases at the premises of Mehta Finance Nava Bajar, Tower Road. It was found that Mehta Finance received cash from various persons against which DD/Cheques were issued and, the assessee was one such party from whom cash was received by Mehta Finance.

2.2 Based on the details that were submitted/gathered during the assessment proceedings of Mehta Finance of having received cash of Rs. 8,58,515/- from assessee in lieu of providing accommodation entry, the assessment was reopened in case of assessee u/s. 148 of the act on 31.03.2021. Statutory notices u/s. 142(1) was issued calling upon assessee to furnish explanation.

The Ld.AO has noted that assessee failed to explain the cash transaction and therefore the same was added back in the hands of the assessee as unexplained u/s. 68 of the act.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before Ld.CIT(A).

2.3 The Ld.CIT(A) after considering the facts noted that there was delay of 4 months in filing the appeal which stood condoned. Subsequently various notices were issued which was served on the mail ID as per form 35. However, none appeared nor any communication was furnished in respect of the same. The Ld.CIT(A) thus upheld the addition made by the Ld.AO. However noted that the Ld.AO quoted a wrong section in the assessment order which is not fatal to the assessee.

2.4 The Ld.CI(T(A) confirmed the addition made by the Ld.AO by invoking section 69 of the act by observing as under:

“6.3 Grounds no. 4 to 9 relate to the addition of Rs. 8,58,515/- u/s 68. The AO has referred to information received during the search in the case of Mehta Finance

wherein Shri Dipak Rasiklal Mehta mentioned the appellant as one of the parties from whom cash of Rs. 8,58,515/- had been received. Shri Dipak Mehta also stated that the DD cheque/RTGS was issued as per the directions of the person who came with the cash. There is clear cut evidence that cash of Rs. 8,58,515/- had been received from the appellant, which represents unexplained investment of the appellant. In the order the AO has mentioned section 68. As against this from the perusal of the order it is clear that the evidence was with regard to payment of cash to the entry provider. The assessee has contended against the reliance of the AO on section 68. I hold that merely quoting a wrong section in the order by the AO is not fatal to the assessee and no relief is due to the assessee on account of the mistake made by the AO in quoting section 68 instead of 69. The issue is payment of cash outside the books to Shri Dipak Mehta and not receipt or credit on this amount in the books. Thus the amount of Rs. 8,58,515/- is liable to be taxed as unexplained investment during the year under consideration. On the issue of supplying of copy of material and cross examination no evidence has been led in the appeal that such a request was even made during the assessment proceedings. The addition of Rs. 8,58,515/- is hereby upheld and grounds no. 4 to 9 are dismissed.”

2.5 Aggrieved by the order of Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. At the outset, the Ld.AR submitted that, no notice u/s. 252(1A) was issued to assessee intimating the change of section under which the addition was confirmed by the Ld.CIT(A). The Ld.AR also submitted that he does not have any knowledge about the said finance company who is alleged to have issued cheques / DD/ RTGS against the cash that is allegedly have been found to be paid by assessee.

3.1 The Ld.AR submitted that there is no sworn statement that was tendered to the assessee, based on which the addition is

made in the hands of the assessee. The Ld.AR prayed that, the assessment order was passed u/s. 144 of the act, and therefore the evidences in support of assessee's contention could not be filed during the assessment proceedings. He thus prayed for a remand of this matter for fresh consideration in the interest of justice.

3.2 On the contrary, the Ld.DR submitted that assessee has not appeared before both the authorities which shows the careless approach of assessee. He thus prayed for the addition to be confirmed.

3.3 In respect of the addition having sustained u/s. 69A of the act by Ld.CIT(A), the Ld.DR relied on the decision of *Hon'ble Karnataka High Court* in case of *Fidelity Business Services India Pvt. Ltd. vs. ACIT* in *ITA No. 512/2017* vide decision dated *23.07.2018* wherein a view has been taken that the *Tribunal* has powers to sustain the addition made u/s. 69A of the act which was changed by the Ld.CIT(A).

4. I have given a careful consideration of the rival submissions of both sides based on the record placed before me. I am of the view that the impugned addition can be examined within the parameters of section 69A of the act as that would be the proper provision of law. I agree with the decision relied by the Ld.DR squarely applies to the facts of the present case.

4.1 Admittedly assessee has not appeared before both the authorities below. However, justice needs to be substantially rendered. In the interest of justice, we remit the issue back to the Ld.AO with the direction to examine the issue afresh and we also direct that the assessee has to explain the nature/source of credits appearing in the bank statement of assessee by way of supportive documents. I also direct that the Ld.AO may afford the assessee right to cross examine the persons from whom information was received, based on which the impugned addition was made in the hands of assessee.

Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

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

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 26th June, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore