

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1351/MUM/2024
(Assessment Year: 2017-18)**

Mamsa Co-op Industrial Estate Ltd.,
97/K, Ground Floor, Mamsa Co-op Soc Ltd,
Morland Road, Maharashtra - 400008
[PAN: AAAJM1112F]

..... **Appellant**

Vs

Commissioner Of Income-tax (A)
Ward 20(2)(1), Piramal Chambers,
Mumbai - 400012

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Marlon Rego
Shri Amir Bohra

For the Respondent/Department : Shri Himanshu Sharma

Date

Conclusion of hearing : 02.07.2024
Pronouncement of order : 19.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 20/02/2024, passed by the Ld. Commissioner of Income Tax, Appeals - ADDL/JCIT(A) Ranchi, [hereinafter referred to as 'the **CIT(A)**'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 10/12/2019, passed under Section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').

2. The Assessee has raised following grounds of appeal in ITA No. 1351/Mum/2024:
1. *On the basis of facts and circumstances of the case and in law, the Ld. Assessing Officer and Hon'ble Ld. Commissioner of Income tax (Appeals) erred in appreciating the legal position where the appellant had two PAN No. one the old PAN No. AAAJM1112F was in status of municipality/local body in which system does not allow deduction u/s 80P of Income tax Act was applied for cancellation. The society filed return of income on new PAN No. AAHAM6283F on 23/06/2018. The Ld. AO has passed an assessment order under section 144 of the Act on old PAN No. In such scenario, the order is illegal and void ab initio.*
 2. *On the basis of facts and circumstances of the case and in law, the order u/s 250 passed by the Hon'ble Commissioner of Income tax (Appeals) is bad in Law and against the principle of natural justice therefore needs to be quashed.*
 3. *On the facts and circumstances of the case an in law, the Ld. CIT(A) has failed to appreciate the facts that no fresh additional evidences have been produced at appellate stage so as to invoke provision of Rule 46A (1) of the Income Tax Rules, 1962.*
 4. *On the basis of facts and circumstances of the case in law, the Hon'ble Ld. Commissioner of Income Tax (Appeals) has failed to appreciate the facts the evidences produced at appellant stage are already mentioned in the assessment order.*
 5. *That the appellant craves permission to add, amend alter or vary all or any of the ground of appeal on or before the date of hearing of the appeal."*
3. We have heard both the sides and perused the material on records. Since all the grounds are connected, the same are taken up together hereinafter.
4. The relevant facts in brief are that the Appellant is co-operative society registered under Maharashtra Co-operative Societies Act, 1960. The object of the Appellant is to maintain and repair building of industrial units.

5. It has been contended on behalf of the Appellant that, initially, the Appellant had applied for and was allotted Permanent Account Number (PAN) AAAJM1112F wherein the status of the Appellant was mentioned as Municipality/Local Body. It was contended on behalf of the Appellant that after changes of income tax return filing utility for ITR 5 pertaining to Assessment Year 2017-18 on account of which the Appellant was not able to claim deduction under Section 80P of the Act in respect of interest received from Co-Operative Bank. Therefore, the Appellant applied for a new PAN in status of 'Body of Individual' and was allotted new PAN AAHAM6283F.
6. For the Assessment Year 2017-18 no return was filed under old PAN [AAAJM1112F]. Therefore, case of the Appellant was selected for scrutiny being a non-filer since as per the Actionable Information Monitoring System (AIMS) of Income Tax Business Application (ITBA) cash deposit of INR 10,42,990/- was reported during the demonetization period (i.e. 08/11/2016 to 30/12/2016).
7. Accordingly, notice dated 08/03/2018, was issued under Section 142(1) of the Act requiring the Appellant to file return of income for the Assessment Year 2017-18 under Old PAN which was not complied with. Therefore, summon was issued under Section 131 of the Act on 13/06/2018.
8. On 25/06/2018, the Appellant filed application for surrender of Old PAN, and thereafter, filed reply to notice issued under Section 142(1) of the Act stating that (a) the Appellant had applied for cancellation of PAN; and (b) filed return of income under new PAN but forgotten to mention the details of cash deposits in the same. However, the Appellant shall file revised return to include the details of cash deposits. Vide separate

letter, dated 05/07/2018, the Appellant furnished the following documents before the Assessing Officer - copy of cash transaction details, copy of return filed under new PAN, copy of pass-book, copy of bank deposit slip book and details of members.

9. The Assessing Officer has noted that despite giving opportunities revised return was not filed by the Appellant under new PAN and no return was filed under old PAN. Therefore, the Assessing Officer issued show-cause notice, dated 20/09/2019. In response, the Appellant uploaded details/documents in which discrepancy was found by the Assessing Officer on account of mismatch of name and PAN number. Therefore, the Assessing Officer rejected the details and made addition of entire amount of cash deposit of INR 10,59,440/- in the hands of the Appellant.
10. In appellate proceedings before the CIT(A), when the Appellant placed reliance on the aforesaid detail/documents, the CIT(A) declined to consider the same on the ground that the same were additional evidence which were not before the Assessing Officer and the Appellant had failed to move application for admission of additional evidence and provide cogent reasons why the same should be admitted. According to the CIT(A), since the Appellant had failed to make out a case for admission of additional evidence, the same details/documents were not taken into consideration by the CIT(A) and the appeal was dismissed.
11. Before us, it was it was contended by the Appellant that all the documents/details were filed before the Assessing Officer and the same were not in the nature of additional evidence. We note that the Appellant has placed on record reply letter, dated 05/07/2018, whereby the documents/details on which reliance was placed by the Appellant before CIT(A) were filed with the

Assessing Officer. We also note that Assessing Officer has recorded in the assessment order that in response to show-cause notice, dated 20/09/2019, the Appellant had furnished details of persons from whom cash was received towards building repair and maintenance. In our view, the CIT(A) failed to appreciate the aforesaid facts and proceeded on the incorrect assumption that since the assessment order has been passed under Section 144 of the Act no details/documents were filed before the Assessing Officer. Therefore, the order of CIT(A) dismissing appeal, holding that the details/documents relied upon by the Appellant to be additional evidence which cannot be relied upon during the appellate proceedings, cannot be sustained. At the same time on perusal of the details of cash deposits furnished by the Appellant we find that the Appellant had not provided PAN detail pertaining to 38 cash deposit transactions. Further, more than one cash deposits were reflected in the name of one person. However, in our view, mere repetitive entries cannot be the sole basis of rejecting the entire details. Since the cash deposits pertain to repair and maintenance the repetitive deposits could be on account of recurring payments or on account of same person owning more than one units. Further, we note that while the Assessing Officer has recorded in response to notices sent to the depositors that no confirmation were received from the depositors, the Appellant was not confronted with either the aforesaid facts or discrepancies in the details filed. In this regard it was contended by the Learned Departmental Representative that the Appellant did not co-operate in the assessment proceedings. Given the totality of the facts and circumstances of the present case, we are of the view that it would be in the interest of justice to remand this issue back to the file of Assessing Officer for adjudication. Accordingly, we set

aside the addition of INR 10,59,440/- made by the Assessing Officer invoking provisions of Section 69A read with 115BBE of the Act and direct the Assessing Officer to adjudicate the issue afresh after carrying out proper inquiry and verification. The Appellant is directed to furnish all details and documents before the Assessing Officer on which the Appellant wishes to place reliance in explain the nature and source of cash deposits. In terms of the aforesaid, Ground No. 2, 3 and 4 raised by the Appellant are allowed for statistical purposes.

12. As regards Ground No. 1 raised by the Appellant is concerned, we note that the Appellant had contended that the assessment order passed under Old PAN is void ab-initio. In our view, the aforesaid ground is devoid of any merit. We have noted herein above that the Appellant held two active PAN at the same time. Admittedly, there were cash deposits during monetization period under Old PAN but no return was filed. It is only after the summons were issued under Section 131 of the Act on 13/06/2018 that the Appellant filed return of income under New PAN on 23/06/2018, and moved application on 25/06/2018 for surrender of Old PAN. Even in reply letter, dated 05/07/2018, the Appellant had stated that return filed under new PAN would be revised to include the details of cash deposits. The conduct of the Appellant does not inspire confidence and the reason provided for obtaining new PAN (instead for applying for modification/amendment of the Old PAN) are also not convincing. Be that as it may, we note that the Assessing Officer has not raised any concern in relation to the same. In our view, the assumption of jurisdiction by the Assessing Officer and passing of the Assessment Order under the old PAN cannot be flouted. The notice under Section 142(1) was issued when the Old PAN was active and the Appellant had not moved any

application for cancellation of Old PAN. Further, no ground to such effect was raised before the CIT(A). We note that, even before, it is not the case of the Appellant that at the relevant time the PAN stood cancelled. In view of the aforesaid, we do not find merit any merit in Ground No. 1 raised by the Appellant and the same is dismissed.

13. In result, in terms of paragraph 12 and 13 above, the appeal preferred by the Assessee is partly allowed.

Order pronounced on 19.07.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.07.2024

Poonam Mirashi
Stenographer

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai