

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND

SHRI RAHUL CHAUDHARY, JM

ITA No. 1467/Mum/2024

(Assessment Year: 2017-18)

Gopal Bholanath Bharwad
C-101, Radha Krishna,
S.V. Road, Dahisar East,
Mumbai-400 068

Vs.

Income Tax Officer
Ward 32(1)(5)
Kautilya Bhavan,
Bandra Kurla Complex,
Mumbai-400 051

(Appellant)

(Respondent)

PAN No. AWVPB1659F

Assessee by : Shri Gopal Bholanath Bharwad,
AR

Revenue by : Mrs. Beena Santosh, DR

Date of hearing: 24.06.2024

Date of pronouncement : 26.07.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 1467/Mum/2024 is filed by Mr. Gopal Bholanath Bharwad for A.Y. 2017-18 against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 31st January, 2024, wherein the appeal filed by the assessee against the assessment order dated 25th December, 2019, passed under Section 143(3) of the Income-tax Act, 1961 (the Act), by the Income Tax Officer, Ward 32(1)(5), Mumbai, was partly allowed. The assessee was granted seven different opportunities by the learned CIT (A), which were not availed and therefore, the order of the learned Assessing Officer so far as the additions were confirmed.
02. Aggrieved assessee has raised following grounds of appeal:-

"1) The Commissioner of Income-tax (Appeals), NFAC [CIT(A)], erred in confirming the action of the Assessing Officer in assessing total income at Rs 85,64,690 as against the income declared by the Appellant of Rs 7,64,570

2) The CIT(A) erred in confirming the action of the Assessing Officer of making additions of Rs 76,64,910 as unexplained cash credit under section 68 of the Income-tax Act, 1961 ('the Act').

3) The CIT(A) erred in confirming the action of Assessing Officer in making addition of Rs 1,35,210 (Rs 9,01,399-Rs 8,11,069) as unexplained cash credit under section 68 of the Act."

03. The brief facts of the case shows that the assessee is an individual, who filed his return of income declaring total income of ₹7,64,570/- on 29th March, 2018. Case of the assessee was selected for scrutiny and notice under Section 143(2) of the Act was issued on 14th August, 2018 as the assessee did not comply. A show cause notice was issued on 28th November, 2019, raising 25 points. The assessee replied to only six points and in the reply submitted assessee provided month wise details of cash received for recharge, cash withdrawals, cash expenses, cash deposits and closing balances. The assessee also produced the bank account with Cosmos bank but did not produce the bank statement of other banks. The learned Assessing Officer found that assessee has deposited cash of ₹76,64,910/- in his Cosmos bank and DCB Bank account during demonetization period. The learned Assessing Officer found that assessee is a commission

agent of mobile recharge; however did not give names of the mobile recharge coupon or balance providing companies. The assessee is also found a distributor but did not give information about top ten sale parties. Therefore, the learned Assessing Officer made an addition of ₹76,64,910/- under Section 68 of the Income-tax Act, 1961 (the Act) read with section 115BBE of the Act and determined the total income of the assessee at ₹85,64,690/- by assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) on 25th December, 2019.

04. Aggrieved by the assessment order, the assessee preferred the appeal before the National Faceless Appeal Centre. The learned CIT (A) issued seven different notices to the assessee, however, assessee made written submission on 6th September, 2022. The assessee also submitted that balance details are under compilation. This was in response to notice dated 24th August, 2022. Thereafter almost one and half years later one more notice was issued which were not complied with by the assessee and appellate order was passed on 31st January, 2024, wherein the addition of ₹76,64,910/- was confirmed.
05. The learned CIT (A) held that without copy of the bank account it is difficult to determine the profit of the assessee. This is also so because of non availability of books of account. Therefore, he held that assessee failed to counter the findings of the learned Assessing Officer and accordingly, additions were confirmed.



06. Assessee aggrieved with the same is in appeal before us. The assessee was representing own case before us and submitted about the business of the assessee and stated that he is a distributor and retailer of prepaid recharge voucher. He collects money in cash for providing recharge voucher to its customer and therefore, assessee has to deposit cash in his bank account and consequently the cheques are issued to the telecom company. Thus, the amount of cash deposited is business receipt of the assessee and payment made to the telecom company is the expense. He further submitted that all cash deposited is not in specified bank notes. But still the Assessing Officer has made an addition under Section 68 of the Act. The learned Assessing Officer did not consider the amount paid by the assessee as deductible purchase of payment made to telecom companies. He further submitted that assessee has offered income of ₹7,64,570/- out of the above transactions and therefore, no further addition is required to be made. He further submitted that there is a small difference of ₹1,35,210/- as per form no.26AS which has been added at the rate of 15%. With respect to the non-appearance before the learned CIT (A), he submitted that the appeal of the assessee was filed in 2020, January, and thereafter due to Covid-19 no compliance could be made. He further stated that in response to the last notice dated 24th August, 22, the assessee made part compliance on 6th September, 2022. Thereafter, suddenly on 5th January, 2024, another notice was issued fixing the date of hearing on 12th January, 2024, wherein the assessee requested for adjournment, however, without any intimation about the



rejection of the adjournment request of the assessee, the appellate order was passed on 31st January, 2024, upholding all the additions. He therefore submitted that proper opportunity of hearing was not granted to the assessee. Further, he promised that looking to the nature of the business and size of its operation an opportunity should be available to the assessee to present his case.

07. The learned Departmental Representative submitted that the assessee has also not furnished complete details before the learned Assessing Officer and before the learned CIT (A) also despite 7 opportunities assessee did not furnish the complete information. Therefore, there is no infirmity in the order of the learned lower authorities.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. It is accepted fact that the assessee is engaged in sale of recharge voucher of various telecom companies. The assessee receives the sale consideration mostly in cash. This cash is deposited by the assessee in his bank account. From the bank account the assessee issues cheques to the various telecom companies. Therefore, to determine the total income of the assessee it is necessary to grant the deduction of sum paid to the telecom companies from the sale consideration. It is also clear that assessee has offered income of ₹7,64,570/-. It is true that assessee on many occasions did not furnish the complete information before the learned Assessing Officer and also before the learned Commissioner of Income-tax (Appeals). So far as the opportunities before the learned CIT (A) are concerned



out of the seven opportunities, five opportunities were given during COVID period. On the last occasion, assessee applied for adjournment. The result of his application was not intimated to the assessee but an appellate order passed dismissing the appeal on 31st January, 2024, upholding all the additions. Looking to the nature of business and smallness of the size of operation coupled with the difficult times of COVID-19, in the interest of justice, the assessee deserves one more opportunity of substantiating his income. In view of this, all the grounds of appeal of the assessee are restored back to the file of the learned Assessing Officer with direction to the assessee to explain the cash deposit in bank account and to substantiate his income disclosed in the return. The learned Assessing Officer on examination of the details, after granting opportunity of hearing to the assessee, may decide the issue on merit.

09. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 26.07.2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.07.2024

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