

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

BEFORE SHRI PRASHANT MAHARISHI, AM

**ITA No. 335/Mum/2024**  
(Assessment Year: 2010-11)

Mr. Mohamadli Shaikh  
Room No.4, Second Floor,  
107, Hari Jairam Bldg, Mauland  
Azad Road,  
Jalob Circle, Mumbai-400 011

Vs.

ITO, Ward 21(2)(3),  
Aaykar Bhavan,  
Mumbai-400 020

**(Appellant)**

**(Respondent)**

**PAN No. CREPS9674R**

**Assessee by** : Shri Akhilesh Deshmukh, AR  
**Revenue by** : Shri R.R. Makwana, DR

**Date of hearing:** 06.06.2024  
**Date of pronouncement** 29.07.2024  
:

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Mr. Mohamadli Shaikh, for A.Y. 2010-11, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 27<sup>th</sup> December, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 22<sup>nd</sup> December, 2017, was dismissed.
02. Therefore, assessee is in appeal before us, raising following grounds of appeal:-



"1) That the Assessment order dated 22/02/2017 passed under section 143 (3) of the Income tax Act 1961 by the Income tax officer is against the law and facts on the file in as much as he has gravely erred in computing total income Rs. 2775833/- against the return income Rs. 213130/-

2) The Assessment order dated 26/11/2018 under section 143 (3) r.w.s. 147 of the Income tax act 1961 by the income tax officer is against the law and facts on the file in as much as he was not justified to resort to the reassessment proceedings under section 148 and according to the notice issued under section 148 of the act is bad in law.

3) That the assessment order dated 26/11/2018 passed under section 143 (3) r.w.s. 147 of the income tax act 1961 by the learned income tax officer, ward 21 (2) (3) Mumbai is against the law and facts on the file in as much as he was not justified to add back a sum of Rs. 2775833/- Deposited by Assessee from sales jeans a cash balance available with him, by responding to the provisions of section 68 on the ground that genuineness and creditworthiness of the receipts had allegedly not proved.

4) The Assessing Officer Arithmetically not calculated cash Deposit and cash withdraw from the bank to ascertain the peak figure not justified.

5) *The Assessing should have calculate the profit chargeable to the under section 44AD on peak figure (Credit Debit)*

6) *The Assessee craves to leave or amend or after any of the ground of appeal before or the time of hearing."*

03. Brief facts of the case is that assessee is an individual who has not filed his return of income but as per AIR information it was noted that assessee has deposited cash of ₹27,75,833/- in his saving bank account with ICICI Bank Ltd. As assessee has not filed return of income the source of the above fund was not known. Accordingly, reasons were recorded and notice under Section 148 of the Income-tax Act, 1961 (the Act) was issued on 30<sup>th</sup> March, 2017. The assessee filed his return of income declaring total income of ₹2,13,130/- on 27<sup>th</sup> April, 2017. The assessee was provided with copies of the reasons but assessee did not raise any objection, therefore, notices under Section 143(2) and 142(1) were issued.
04. During the course of assessment proceedings, it was submitted that assessee is an individual engaged in retail trading of Jeans. Assessee was asked to furnish the source of deposit of cash. According to the learned Assessing Officer the assessee has not furnished any satisfactory explanation therefore, show cause notice was issued on 7<sup>th</sup> December, 2017. The assessee explained that as the assessee was new in the business, he purchased raw materials from local market without any bill and also sold goods and same was deposited in the bank account without raising the bills. The cash deposited in the bank account is out of sales. Assessee asked the learned Assessing Officer to accept the cash deposit as sale receipt. The learned

Assessing Officer found that over and above the cash deposit, there are other deposits also in the bank account. He noted that against the sale of ₹14,19,911/-, assessee has filed return of income of ₹2,13,130/-. During Assessment, assessee increased the sales to ₹38,85,650/- and applied provisions of Section 44AD and worked out net profit of ₹3,36,460/-. The learned Assessing Officer noted that assessee has offered profit at the rate of 8.60% while filing the return of income. The learned Assessing Officer further doubted the existence of retail business of the assessee as assessee could not establish single instances of purchase and sales during the assessment proceedings. Further, assessee was not able to establish the co-relation between the debit and credit entries in the bank account. Accordingly, he held that amount of cash deposited of ₹27,75,833/- in ICICI Bank Ltd. is unexplained cash credit and same was added to the total income of the assessee as per assessment order dated 22<sup>nd</sup> December, 2017, determining the total income of ₹29,88,960/-.

05. Aggrieved by that, assessee preferred the appeal before the learned CIT (A) challenging the reopening of the assessment as well as contesting the addition on the merit. Before the learned CIT (A), the assessee submitted the written submission but the learned CIT (A) confirmed the action of the learned Assessing Officer as assessee failed to furnish any evidences of his trading business. Therefore, the assessee is in appeal before us.
06. After considering the argument of the rival parties and perusing the orders of the learned lower authorities, we find that assessee though did not file any return of income u/s 139 of the Act , but in response to notice under Section 148 of the



Act, filed his return of income declaring total income of ₹2,13,130/-. This income was shown on the total sales of ₹14,19,911/-. Assessee submitted the revised computation of total income and increased the sales to ₹38,85,650/- and worked out net profit of ₹3,36,460/-. The assessee claimed that he has carried out the business of retail trading of Jeans and this is the first year of trading. He also explained purchases and sales both are in cash but could not submit any information or evidence of purchase or sales. Therefore, lower authorities did not believe that assessee was carrying on any retail business. There is a fallacy in the stand of the learned lower authorities because they have accepted the turnover of ₹14,19,911/- as turnover of the assessee for which income under Section 148 of the Act was offered to the extent of ₹2,13,130/-. Therefore, Revenue has accepted the assessee is carrying on the business at least to the extent of turnover of ₹14,19,911/-. As the part of the fact of the business is accepted by the Revenue, there is no reason that why the amount of cash deposited could not be accepted as business income of the assessee when ₹14 lacs is accepted as business income. It is not disputed that this is the first year of the business of the assessee. It is not the fact that assessee has deposited ₹27,75,833/- in his bank account and it remain as balance in the bank account. Therefore, in the above circumstances, we do not find any reason to not to accept that the amount of cash deposit is also not from the business of the assessee. This is also for the reason that there is no evidence of purchase and sales with respect to the turnover of ₹14,09,911/- and also for the turnover of ₹27,75,833/-. Accordingly, we find that the learned lower authorities are not correct in not accepting that the amount of cash deposited is out of the retail trading of Jeans.



07. Now, question arises is that what should be the amount of profit that should be taxed in the hands of the assessee. We find that assessee himself has offered to be taxed at the rate of 8.65%. Therefore, we direct the learned Assessing Officer to tax the income of the assessee at the rate of 8.65% of the amount of cash deposited which amounts to ₹2,40,110/-. In view of this, the addition to that extent is confirmed and balance addition required to be deleted. Accordingly, the orders of the learned lower authorities are reversed to that extent.
08. No other grounds were pressed before us.
09. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.07.2024.

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.07. 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