

IN THE INCOME TAX APPELLATE TRIBUNAL "K(SMC)" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

And

SHRI SUNIL KUMAR SINGH, JM

ITA No. 2314 & 2315/Mum/2024

(Assessment Year: 2010-11 & 21011-12)

Mohanlal Magna ram Ghanchi Vs. Income Tax Officer,
Gala KD Compound Ward 5
2nd Galli Near Mahavir School Valsad
Charkop Gujarat
Kandivali (w)
Mumbai

(Appellant)

(Respondent)

PAN No. AIMPG4469R

Assessee by : Shri Jagadeesh Chaudhary
Revenue by : Shri Rajnish Yadav , SR DR

Date of hearing: 24 July 2024
Date of pronouncement : 29 July 2024

ORDER

PER PRASHANT MAHARISHI, AM:

- 1) These are the two appeals filed by the assessee against the appellate order passed for assessment year 2010 – 11 and 2011 – 12 involving similar facts wherein the learned assessing officer has passed the assessment order ex parte under section 144 read with section 147 of the income tax act on account of deposit of the cash in bank accounts of the assessee where assessee did not remain present before the learned assessing officer as well as before the learned CIT – A.
- 2) For assessment year 2010 – 11 assessee is aggrieved by the confirmation of the addition of Rs. 19,50,040/- being cash

deposited in the bank account and for assessment year 2011 – 12 assessee is aggrieved by confirmation of the addition of Rs. 1,828,925 being cash deposited.

- 3) Assessee is carrying on job work business of imitation jewelry as an individual. For assessment year 2010 – 11, assessee filed his return of income on 5/1/2012 declaring a total income of Rs. 153,270/-. Subsequently, the case was reopened with issuance of notice under section 148 of the income tax act, 1961 on 25/3/2017. The assessment was completed under section 144 read with section 147 of the income tax act determining the total income at Rs. 2,103,310/-.
- 4) The addition was made by the learned assessing officer of the unexplained cash credit of Rs. 19,50,040/- being cash deposited in the bank account of Rs. 1,570,461/- and other deposit of Rs. 379,572/- claimed of the assessee was that it has been earned by him on his business of imitation jewelry and labour job done on jewelry. The assessment was completed under section 144 of the income tax act because of the reason that assessee did not appear and did not submit the information provided for to the assessing officer which resulted into an ex parte assessment order. During the course of assessment proceedings almost 6 notices were issued to the assessee, but assessee did not respond. Therefore, the learned AO made enquiry with the bankers of the assessee by issuing a notice under section 133 (6) of the act wherein it was found that the assessee has two bank account with the ICICI bank. In one bank cash amount of Rs. 103,500 and in another bank cash of Rs. 1,466,961/- was deposited along with other deposits of Rs. 378,800/- thus the total deposit of Rs. 18,45,766/- was made during the year. The learned assessing officer added this sum.
- 5) Assessee preferred an appeal before the learned CIT – A wherein also the assessee was issued 5 opportunities, but assessee did not remain present and therefore the learned CIT – A passed an ex

parte order confirming the action of the learned CIT – A. Therefore, the assessee is in appeal before us.

- 6) Before us, The relative of the assessee stated that he wants an adjournment. However at the time of filing adjournment request, it was stated that as the assessee has not remain present before the learned assessing officer as well as before the learned CIT – A as assessee is a small businessman, therefore in the interest of justice we would like to set-aside the issue back to the file of the learned assessing officer with an opportunity to the assessee to represent his case before the AO once again. This was agreed upon by him.
- 7) The learned departmental representative vehemently stated that though the assessee has been granted enough opportunity before the learned assessing officer and before the learned CIT – A but he did not avail any of the opportunity which has resulted into the assessment wherein the addition of all bank deposits made by the assessee in his to bank accounts were made. In substance it was stated that there is no alternative left with the lower authorities but to pass an ex parte order but however even if one more opportunity is given to the assessee, looking to the nature of the business and this smallness of the amount, he submits that assessee may be directed to remain present before the jurisdictional assessing officer within a time bound manner.
- 8) We have carefully considered the rival contention and perused the orders of the learned lower authorities. We find that for both the years the assessee was found to have deposited cash in his bank account and such cash, in absence of any explanation before the assessing officer, were added to the total income of the assessee. Assessee is carrying on the business of imitation jewelry and small job work. The amount deposited is also small compared to the business stated by the assessee. Further, it may be possible that looking to the smallness of the business, the assessee may not be aware about the intricacies of the law. Thus, As the assessee did not

get any opportunity of explaining his case before the learned lower authorities, in the interest of justice, looking into the business of the assessee, looking at the smallness of the amount deposited, we restore the matter back to the file of the learned assessing officer with a direction to the assessee to submit the details of cash deposit in the bank accounts within 90 days from the date of receipt of this order. If the assessee submits any details within that period, the learned assessing officer may examine and decide the issue on the merits of the case after giving an opportunity of hearing to the assessee.

- 9) Facts for assessment year 2011 – 12 are also identical, therefore, the appeal of the assessee is also restored on merit to the file of the learned assessing officer with a similar direction as provided in for assessment year 2010 – 11.
- 10) In the result both the appeals filed by the assessee are allowed with above direction for statistical purposes.

Order pronounced in the open court on 29 July 2024

Sd/-

(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:29.07 .2024

Sudip Sarkar, Sr.PS/Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent

3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai