

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

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.4313/Mum./2023
(Assessment Year : 2011-12)

Harbhajansingh Bawansingh Heer,

B/3, Poonam Apartment,
Orlem Church Malad,
West Mumbai, Mumbai-400064.

PAN -AARPH6232L

.....Appellant

v/s

ACIT - 17(1),

Mumbai-400020

..... Respondent

Assessee by : Shri Satyaprakash Singh

Revenue by : Shri R.R.Makwana, Sr.DR

Date of Hearing - 06/08/2024

Date of Order - 08/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 03/10/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds:-

1. *"The order dated 03/10/2023 bearing No.ITB/NFAC/S/250/2023-24/1056732294(1) passed under section 250 of Income Tax Act, 1961 by the Hon'ble CIT[Appeal], National Faceless Appeal Centre [NFAC], Delhi, is unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.*
2. *On the facts and in circumstances of the case and in law, the Hon'ble CIT[A] has erred in confirming the addition of Rs.17,75,292/- on account of cash deposit in the bank, even though same is fully explainable with documentary evidence.*
3. *The appellants craves leave to add to, amend or alter the above grounds as may be deemed necessary."*

3. The only grievance raised by the assessee is against confirmation of addition of INR 17,75,292 on account of cash deposit in the bank account.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and is proprietor of M/s Heer enterprises. For the year under consideration, the assessee filed his return of income on 31/03/2013 declaring a total income of INR 2,00,203. On the basis of the AIR information that the assessee has deposited cash of INR 17,75,292 in his saving bank account, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 27/03/2018. Thereafter, statutory notices under section 142(1) along with questionnaire were issued to the assessee. However, there was no compliance on the part of the assessee to the aforesaid notices. Accordingly, after multiple opportunities and initiation of penalty proceedings under section 271(1)(b) of the Act, the Assessing Officer ("AO") proceeded to complete the assessment on best judgment basis under section 144 of the Act on the basis of information available on record. Since the assessee could not explain the nature and

source of cash deposits to the tune of INR 17,75,292 in its account maintained with ICICI Bank, the AO proceeded to treat the same as unexplained investment and added the same to the total income of the assessee under section 69 of the Act.

5. In appeal before the learned CIT(A), the assessee vide its submission dated 17/07/2023 provided bank account statement of the ICICI Bank. From the perusal of the bank statement, the learned CIT(A) observed that the cash deposited by the assessee in its bank account maintained with ICICI Bank is from sales which were done in the name and style of M/s Heer Enterprises. Before the learned CIT(A), the assessee also submitted copies of sample bills of M/s Heer Enterprises to substantiate its claim of sales and in turn the resulting cash deposits. Upon perusal of the said bank statement, the learned CIT(A) observed that the assessee has made several transactions with the account in the name of M/s Heer Enterprises, which means some bank account in the name of M/s Heer Enterprises also exists. Accordingly, vide notice dated 11/09/2023, the learned CIT(A) directed the assessee to furnish the copy of all the bank accounts including the current accounts of M/s Heer Enterprises. In response to the aforesaid notice, the assessee vide its response dated 16/09/2023 sought an adjournment till 1st week of October 2023. However, the learned CIT(A) granted the adjournment till 21/09/2023. From the perusal of the impugned order we find that another opportunity was granted by the learned CIT(A) to the assessee to furnish its reply/details on or before 29/09/2023, however the assessee failed to furnish any information. Since

sufficient time was granted, the learned CIT(A) proceeded to decide the appeal on the basis of material available on record. In view of the fact that the assessee failed to provide the bank account statement of M/s Heer Enterprises and related details, the learned CIT(A) upheld the addition of INR 17,75,292 being the cash deposits in the bank account of the assessee. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ("learned AR") submitted that vide response dated 16/09/2023 the assessee requested for an adjournment till 1st week of October 2023. However, the learned CIT(A) did not grant sufficient time to the assessee as sought, and instead passed the order on 03/10/2023 affirming the addition of INR 17,75,292 on account of cash deposits in the bank account of the assessee.

7. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities, and submitted that the impugned addition has rightly been upheld by the learned CIT(A) in absence of details being furnished by the assessee.

8. Having considered the submissions and perused the material available on record, it is evident that the learned CIT(A) has passed the order in absence of details being furnished by the assessee. Now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the addition made by the AO. During the hearing, the learned AR undertook that the assessee will furnish all the necessary details pertaining

to the cash deposit to the tune of INR 17,75,292 in his bank account, if the matter is restored. In view of the above, we are of the considered opinion that in the interest of justice and fair play, the assessee be granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to set aside the impugned order on this issue and restore the matter to the file of the learned CIT(A) for *de novo* adjudication of this issue on merits, with a direction to the assessee to file all the details as may be required by the learned CIT(A) for complete adjudication. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. The assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 08/08/2024.

Sd/-

**[RENU JAUHRI]
ACCOUNTANT MEMBER**

MUMBAI, DATED: 08/08/2024

Amit Kumar (Sr. PS on Tour)

Sd/-

**[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai