

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 734/MUM/2024
Assessment Year: 2011-12**

Dilip Kumar Bhimraj Mehta, 47, Old Sonawala Building, C.P. Tank Road, Charni Road, Mumbai 400 004 (PAN : AAHPM1480H)	Vs.	Income Tax Officer, Ward- 19(1)(4), Mumbai
(Appellant)		(Respondent)

**ITA No.715/MUM/2024
Assessment Year: 2011-12**

Income Tax Officer, Ward- 19(1)(4), Mumbai	Vs.	Dilip Kumar Bhimraj Mehta, 47, Old Sonawala Building, C.P. Tank Road, Charni Road, Mumbai 400 004 (PAN : AAHPM1480H)
(Appellant)		(Respondent)

Present for:

Assessee : Shri R.S. Sharma, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 18.06.2024
Date of Pronouncement : 08.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the assessee and the Revenue are against the order of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058937927(1), dated 20.12.2023, passed against the assessment order by the Income

Tax Officer, Ward – 19(1)(4), Mumbai, u/s. 144 r.w.s. 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 19.12.2018 for Assessment Year 2011-12.

2. Grounds taken by the assessee and Revenue are reproduced as under:

ITA No. 734 /MUM/2024 (by the assessee)

“1. CIT(A) has erred in confirming the addition of Rs. 67,76,993 u/s 68 of the Income Tax Act, 1961 by believing that all the credits in bank account is income of the assessee whereas is in fact the assessee had also taken unsecured loan from parties Chandresh Mehta, Arun Mehta etc for which confirmations & supportings were submitted to the CIT(A) & assessing officer.

2. CIT(A) has erred in confirming the addition of Rs. 67,76,993 u/s 68 of the Income Tax Act, 1961 by believing that all the credits in bank account is income of the assessee whereas is in fact the assessee had also received advance from debtor named P B Metal Corporation for which confirmations & supportings were submitted to the CIT(A) & assessing officer.

ITA No. 715 /MUM/2024 (by the Revenue)

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has ignored the fact that Assessment proceedings were initiated on receiving the creditable information from the DDIT Inv.), Unit -4(3) Mumbai of Income Tax Department that huge debits/credits transactions in the tune of Rs. 3,95,73,958/ were made through two accounts of Federal Bank Limited, one account belongs to the assessee?”

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has ignored the fact that Assessment proceedings were initiated on receiving the creditable information that amounts received on transfer amounting to Rs. 3,95,73,958/ in assessee's Bank account transactions were transferred to other entities on the same day which raise suspicion on the genuineness of transactions?"

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has ignored the fact that assessee has failed to comply to the various notices/letters/show cause notices issued to the assessee to submit any bills/tax invoices/supplementary evidences to substantiate his transactions made through Federal Bank Limited Accounts, but failed to produced any documents/submissions, till date of passing the Assessment order?"

4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has ignored the fact that in the absence of any submissions and on the basis of available materials it has been sound that total credits in the bank

account does not commensurate with assessee's total receipts as mentioned in the bank account?"

5. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has not appreciated the decision in the case of CIT Vs Reayala Corporation (P) Ltd (Mad) 215 ITR 883 and Kanchwalia Gems Vs JCIT(SC) 288 ITR 10, wherein it was held that giving an opportunity of being heard to the assessee, can pass order on the Best Judgment Order u/s 144 of the Act?"

6. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in admitting the written submission along with fresh documentary evidences filed by the appellant during the appellant proceedings without asking remand report from Assessing Officer, as prescribed in rule 46B of Income-Tax Rule, 1962?"

3. Brief facts of the case leading to filing of these appeals in the instant case are that the appellant, an individual carrying on the business of trading in iron and related metals in the name and style of Mis. Dilip Metal Corporation, filed his return of income on 29-09-2011 reporting total income at Rs.3,13,910/- Subsequently, case was reopened by way of issuance of notice u/s. 148 of the Act based on the information received from the DDIT(Inv), Mumbai indicating huge credit/debit transactions in the assessee's bank accounts maintained with Federal Bank Ltd which are as under:

S.No.	F.Y.	Name of the Bank	Account No.	Amount of total credit (Rs.)
1.	2010-11	Federal bank Ltd	12850200015794	2,83,38,658/-
2.	2010-11	Federal bank Ltd	12850100068406	1,12,35,300/-
			Total	3,95,73,958/-

3.1. After issuing statutory notices from time to time, ld. AO observed that the total receipts as shown in the return of income was only Rs.2,15,61,665/- as against the total credits in the bank accounts at Rs: 3,95,73,958/- and thus made addition of entire amount of Rs.3,95,73,958/- while completing the impugned assessment.

3.2. Aggrieved by the said order, assessee went in appeal before the ld. CIT(A).

4. Before ld. CIT(A), detailed explanations alongwith corroborative documents were placed on record. Assessee submitted that out of the two bank accounts, one of the bank account with No.12850100068406 did not belong to him but is related to Mr. Sumermal Bhimraj Mehta, his brother. In respect of the other account, it was submitted that it was fully disclosed in the books of accounts and income relating to the transactions in the said bank account was duly reported in the income tax return filed by him. Ld. CIT(A), after duly verifying the submissions and records of the assessee came to a factual conclusion that the aforesaid account in the name of Mr. Sumermal Bhimraj Mehta did not belong to the assessee and therefore transactions in the said account cannot be taxed in the hands of the assessee. He thus deleted the addition of Rs.1,12,35,300/- pertaining to this account. We note that while giving this finding in para 8 and 9, ld. CIT(A) inadvertently mentioned the incorrect bank account number which should be read as 12850100068406. This fact is evident from the relevant portion of the bank statement reproduced in para 8, wherein the correct account number is mentioned, belonging to Mr. Sumermal Bhimraj Mehta. The relevant extracts in para 8 and 9 are reproduced:

8. The bank account statement bearing account No.12850200015794 which is available on record clearly indicates that the impugned account does not belong to the appellant. Relevant portion indicating this position is reproduced as under:-

FEDERAL BANK YOUR PERFECT BANKING PARTNER			
Name	: SUMERMAL B MEHTA	Branch Name	: MUMBAI / CRAWFORD MARKET
Communication Address	: SIDDHESH JYOTI TOWER E WING, FLAT NO 2801/2802, MUMBAI, MAHARASHTRA	Branch Sol ID	: 1285
Address Last Updated On	: 28-06-2013	Account Number	: 12850100068406
Regd. Mobile Number	: 919520131664	Customer ID	: 1345339
Email ID	:	Account Open Date	: 24-10-2001
Type Of Account	: Savings Account	Account Status	: ACTIVE
Scheme	: SB FED SMART	Mode of Operation	: SINGLE
IFSC	: FDRL0001285	Joint Holders	: NIL
MICR Code	: 400049004	Nomination	: Not Registered
SWIFT Code	: FDRLINBBIBD	Currency	: INR
Effective Available Balance	: 14948.77	Date of Issue	: 23-12-2022

Statement of Account for the period 01-04-2010 to 31-03-2011

Date	Value Date	Particulars	Tran Type	Tran Id	Cheque Details	Withdrawals	Deposits	Balance	Cr/Dr
		Opening Balance						25148.63	CR
03-04-2010	03-04-2010	ECS/INW/BULK/0000359515491	TRF	S19814951		9802.00		15346.63	CR
05-04-2010	05-04-2010	BY INST 43264 : MICR CLEARING ZON	CLG	S20105115			91350.00	106696.63	CR

9. From the above, it is evident that the total credits in this account No. 12850200015794 arrived at by the AO in the hands of the appellant do not actually pertain to the appellant and belongs to one Mr. Sumermal Bhimraj Mehta. The AO has not provided any reasons why the transactions in the said account are to be taxed in the hands of the appellant in his individual capacity. Under the circumstances, out of the total addition of Rs.3,95,73,958/-, a sum of Rs.1,12,35,300/- is deleted. To this effect, the appellant succeeds and the ground No.1 is allowed in favour of the appellant.

5. From the above stated facts, corroborated by documentary evidences on record, we do not find any reasons to interfere with the fact based finding arrived by Id. CIT(A) in respect of deleting the addition of Rs.1,12,35,300/-.

6. In respect of the other bank account, the fact that this account bearing No.12850200015794 has been disclosed in the books of

accounts and all the transactions in the said account forms part of the business income reported by the assessee in his return of income was put to test before the authorities below. In this respect, the closing balance of this account is found to be duly reported in the audited balance sheet of the assessee as noted by the ld. CIT(A). The authorities below observed that the total credit in the bank account is Rs.2,83,38,658/- whereas the total turn over reported by the assessee in his profit and loss account is Rs.2,15,61,665/-. Ld. CIT(A) observed that the difference between two amounts remained explained, amounting to Rs.67,76,993/- (2,83,38,658 – 2,15,61,665) and thus directed the ld. Assessing Officer to treat this as unexplained credit. Accordingly, out of the total addition of Rs.2,83,38,658/- relief was given for Rs.2,15,61,665/-.

6.1. In this respect, ld. Counsel for the assessee submitted that there are frequent debits/credits in the current account which are in respect of not only sales transactions but also relating to receipt of cheques, advances, dishonour of loans issued to vendors, etc. To corroborate this, it was submitted that assessee had received an unsecured loan of Rs.27,50,000/- during the year which was credited to the said bank account of the assessee. For this, he referred to Annexure-C of the Tax Audit Report in Form 3CD placed in the Paper Book, wherein disclosures relating to receipt of loan during the year and repayment thereof are reported.

6.2. In respect to transactions relating to unsecured loans, ld. Counsel referred to confirmation letters placed in the paper book to demonstrate that there were several transactions of receipt and payment on account of unsecured loans, more particularly in the case of P.B. Metal Corporation. According to him, these transactions on account of

unsecured loans cannot be treated as part of sales turnover for taxing it as income in the hands of the assessee. Ld. Counsel referred to the bank statement, pointing out the loan transaction with the lenders which also forms part of the total credit of Rs.2,83,38,658/-, hence cannot be subjected to income-tax. Furthermore, ld. Counsel referred to the observations in the impugned assessment order whereby in para -3, he had accepted that assessee had shown total receipts of Rs.2,15,61,665/- in its return of income, hence the same is undisputed. Thus, in respect of the balance amount which the ld. CIT(A) has sustained the addition, the same pertains to transaction of loans, stop payment instructions by the drawers of the cheques which were deposited by the assessee in his account, and later got reversed.

7. We have gone through the submissions made before us and material placed on record. We note that the total credits in the bank account of the assessee contain entries not only in respect of sale transactions but also relating to other transactions in the nature of loans, cheque returns, etc. as claimed by the assessee. However, it is difficult to discern as to the exact amount which relates to transactions other than sales. Accordingly, we find it appropriate to remit the issue relating to addition sustained on account of difference of Rs.67,76,993/ to the file of ld. Assessing Officer for the limited purpose of verification so as to ascertain the correctness of amounts other than sales transactions reported by the assessee in his return. We also direct the assessee to furnish a reconciliation statement to justify the claim made by it for the difference which has been sustained by the ld. CIT(A). Needless to say, that assessee be given reasonable opportunity of being heard in this respect. Once the ld. AO is satisfied on this account, claim of the assessee be accepted in accordance with the provisions of law.

Accordingly, grounds taken by the assessee in respect of addition of Rs.67,76,993/- in his appeal are allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

9. In ITA No.715/Mum/2024, Revenue is in appeal contesting the entire amount of Rs.3,95,73,958/- relating to credit transactions in both the accounts. In ground No.6 of its appeal, Revenue has contended that assessee had filed fresh documentary evidence which were admitted without calling for remand report from the AO in terms of Rule 46A of the Income Tax Rules, 1962. We note that the additional documentary evidence which were filed by the assessee were in respect of loan transactions during the year to demonstrate that credits appearing in the account belonging to the assessee not only had transactions relating to sales but also other transactions of loans, cheque return, etc. for which the addition was sustained by the Id. CIT(A) for the difference of Rs.67,76,993/-. On this aspect of the case, the matter has already been remitted to the file of Id. AO for limited purposes for verification as stated above. Accordingly, the contention of the Revenue on accepting the evidence without asking for a remand report from the AO is taken care of. Further, in respect of revenue contesting on the credit transactions in the account which does not belong to the assessee, we have already held in favour of the assessee upholding the findings arrived at by Id. CIT(A). Thus, the contentions raised by the Revenue in this respect fails.

10. In the result, appeal of the Revenue is partly allowed.

11. In the result, appeal of the assessee is allowed and appeal of the Revenue is partly allowed for statistical purposes.

Order is pronounced in the open court on 08 August, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 08 August, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai