

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4584/MUM/2023
Assessment Year: 2012-13**

Dhiren Anantari Modi Flat No.6, Sahyog CHS LTD, M.G. Cross Road, No.3, Kandivali (W), Mumbai 400067 (PAN : AFOPM2083A)	Vs.	Income Tax Officer, Ward – 33(1)(4), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Nishit Gandhi
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 13.06.2024
Date of Pronouncement : 27.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1057104555(1), dated 16.10.2023 passed against the assessment order by Income Tax Officer, Ward-33(1)(4), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 31.03.2015 for Assessment Year 2012-13.

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

ON MERITS:

2.1 *In the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition of Rs 4,48,282/- made u/s 69C of the Income Tax Act, 1961 ["the Act" for short] by the Ld AO on account of alleged credit card expenses non reconciled with AIR*

2.2 *While affirming the said addition the Ld. CIT (A) failed to appreciate that*

- i. *The addition is made despite the repeated submission of the Assessee that no such unexplained expenditure is incurred by the Assessee and in any case no claim for such expenditure is also made against taxable income,*
- ii. *The addition is simply based on AIR information, which according to the Appellant is incorrect and wrongly attached to his PAN and despite such submissions and repeated requests the correct information on the basis of which the addition is made is not furnished to the Assessee, and,*
- iii. *In any case, the said addition is simply made on the basis of assumptions, surmises and conjectures, based on some extraneous and irrelevant considerations*

3.1 *In the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition of Rs.5,86,000/- made u/s 68 by the Ld. AO in respect of cash deposited in the bank account of the Assessee*

3.2 *While doing so, the Ld. AO failed to appreciate that the addition is incorrectly made without appreciating the correct facts and submissions and also that the provisions of section 68 are not applicable in the present case no such addition could have been made in the hands of the Appellant*

4.1 *In the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition of Rs 1,59,10,000/- made u/s 68 by the Ld AO on account of opening balance of loans [Rs 1,53,70,000/-] and the loans taken during the relevant year [Rs 1,00,000/- plus Rs 4,40,000/-]*

4.2 *While doing so the Ld CIT(A) failed to appreciate that*

- i. *The addition has been incorrectly made by the Ld. AO in contravention of the provisions of the Act and the extant law,*
- ii. *The Opening balance of loans [Rs 1,53,70,000/-] brought forward from earlier years could not have been added u/s 68 of the Act since the provisions of section 68 are not at all applicable to loans taken in earlier years [years other than the previous year].*
- iii. *In respect of the Loans taken during the year of Rs. 5,40,000/- the same have been incorrectly added u/s 68 since the Appellant had furnished all the details as he could and for the balance he had requested the Ld. AO to carry out the necessary verification at his end as the parties were not co-operating, but the Ld. AO took no action on the same,*
- iv. *The addition has been made simply on the basis of surmises and assumptions while applying section 68, as if, the same is mandatory and thereby incorrectly interpreting section 68*

5.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of Rs.60,000/- in respect of travelling expenditure incurred by the Appellant based on irrelevant and extraneous considerations while ignoring the relevant considerations and without appreciating that the same was allowable under the provisions of the Act

5.2 Without prejudice to the above, the Ld. CIT(A) erred in not restricting the said disallowance of Rs. 60,000/- to reasonable amount

3. We will take up the grounds seriatim. Ground no.1 is general in nature and therefore need not be adjudicated upon.

4. In ground No.2, addition of Rs.4,48,282/- in respect of credit card expenses has been challenged. Ld. Assessing Officer held these expenses as unexplained u/s.69C of the Act since assessee could not prove the source, for incurring these expenditure. Before the ld. Assessing Officer, assessee had asked for bifurcation and details of the said expenditure, since addition has been made on the basis of AIR information. The details could not be provided to the assessee. Before the ld. CIT (A), assessee submitted that she was not able to reconcile the expenses since the credit card was used commonly in the family. It was also submitted that assessee has not claimed any deduction in respect of these expenditure and therefore there is no question of making an addition for the same. After considering the submissions of the assessee, ld. CIT(A) observed that in absence of details and proper explanation on the nature and source of expenditure incurred through credit card, the addition made by ld. Assessing Officer is justified.

4.1. Before us, ld. Counsel for the assessee prayed for remanding the issue back to the file of ld. Assessing Officer, before whom all the required details and explanations shall be furnished for verification. However, ld. Sr. DR objected on the said prayer.

4.2. Considering the observations of the authorities below and facts of the case, in the interest of justice and fair play, we find it appropriate to accept the prayer so made by the assessee. We remit this issue back to the file of the ld. Assessing Officer for verification of the documents and explanations from the assessee and adjudicate afresh, considering the same in accordance with the provisions of the law. Accordingly, this ground of appeal is allowed for statistical purposes.

5. Ground No.3 is in respect of addition of Rs.5,86,000/- made u/s. 68, towards deposit of cash in the bank account. On this issue, ld. Assessing Officer observed that assessee had filed only self-made statements and thus could not prove the sources of such deposit of cash in the bank account. Before the ld. CIT(A), assessee submitted the copy of cash book and stated that cash is deposited out of withdrawal from bank and receipt of consulting fees in cash which was duly reported in the profit and loss account and offered to tax in the return of income. Ld. CIT(A) had called for remand report from the ld. Assessing Officer on the submissions made by the assessee. In the remand report, ld. Assessing Officer observed that assessee did not furnish any details in respect of consultation fees claimed to be earned during the year in cash. Also, assessee did not furnish any details and documents in respect of withdrawal of cash from bank, which was available for subsequent deposit. In the rejoinder, assessee submitted that, assessee had received consultancy fees in cash to the extent of Rs.3,74,850/- which was included in the commission income of Rs.4,01,308/- credited in the profit and loss account. For the balance deposit of cash in bank account, it was claimed that it is from withdrawals and opening balance of cash in hand.

5.1. After considering the submissions of the assessee, ld. CIT(A) observed that in absence of details and proper explanation as to nature and source of cash deposited in the bank account, there is no reason to defer from the findings of ld. Assessing Officer. The addition was thus sustained.

5.2. Before us, ld. Counsel for the assessee prayed that the issue be remitted back to the file of ld. Assessing Officer, before whom assessee would ensure to furnish all the relevant documentary evidences alongwith with explanation to justify the deposit of cash in bank account, which have not been taken into consideration in proper perspective at the first appellate stage. Ld. Sr. DR objected on the prayer so made.

5.3. From the observations of the ld. CIT(A), we note that there are no findings on the submissions made by the assessee, both in the remand proceedings as well as rejoinder to the remand report. Considering the prayer made by the ld. Counsel and assurance given to the Bench, in the interest of justice and fair play, we find it appropriate to accept the prayer so made and remit the matter back to the file of ld. Assessing Officer for the purpose of verification of the documentary evidences and explanation from the assessee and consider the same for *denovo* adjudication on the issue, in accordance to the provisions of law. Accordingly, this ground of appeal is allowed for statistical purposes.

6. Ground No.4 is contested by the assessee on the addition of Rs.1,59,10,000/- made u/s.68, in respect of unsecured loans. In this respect, Ld. Assessing Officer observed that in para-5(iv) that unsecured amount of Rs.1,59,10,000/- are reflected in the balance

sheet of the current year. Assessee was asked to submit loan confirmations for this but assessee failed to submit the same. Thus, the said amount was considered unexplained cash receipt and added back to the total income of the assessee.

6.1. Before the ld. CIT(A), assessee strongly submitted that the addition has been made by picking up the figure from the balance sheet of the assessee, which is the closing balance of all the unsecured loans as at balance sheet date i.e., 31.03.2012. Assessee pointed out that out of the total amount of Rs.1,59,10,000/-, only Rs.4,40,000/- was received during the year towards unsecured loans which has been duly reported in item No.24(a) of the tax audit report for the year in Form no.3CD in Schedule A. Assessee also pointed out that the loan of Rs.1,00,000/- was received by cheque during the year from Mona Thakkar. It was thus, prayed that addition to the extent of Rs.1,53,70,000/- could not be added u/s.68, since this represents amount brought forward from earlier years as opening balance and not received during the year as contemplated u/s.68. According to the assessee the fresh credits during the year is of Rs.5,40,000/- only, which at best could be added u/s.68. On the submissions made by the assessee, ld. CIT(A) called for a remand report from the ld. Assessing Officer, before whom it was demonstrated that the loans aggregating to Rs.1,53,70,000/- are carried forward and are old loans appearing in the statement of accounts for AY 2011-12. For the fresh loans of Rs.5,40,000/-, assessee could not furnish loan confirmation letters from the concerned parties, since assessee expressed its inability to procure the same. After considering the submissions made by the assessee, ld. CIT(A) sustained the entire addition of Rs.1,59,10,000/-.

6.2. Before us, Id. Counsel for the assessee evidently demonstrated that amount to the extent of Rs.1,53,70,000/- relates to opening balance of unsecured loans and only Rs.5,40,000/- represents fresh credit received during the year. Thus, according to him what at best can be added u/s 68 is Rs.5,40,000/- only. Ld. Sr. DR placed reliance on the order of the authorities below.

6.3. Perusing the material placed on record and the submissions made by the assessee in the course of remand proceedings as reproduced in the orders of the Id. CIT(A), as well as rejoinder placed before Id. CIT(A), we are in agreement with the submissions made by the Id. Counsel to delete the addition of Rs.1,53,70,000/- which represents opening balance of unsecured loans duly reported in the financial statements in AY 2011-12. For the remaining amount of Rs.5,40,000/-, since assessee has not been able to explain the nature and source of the same which has been received during the year, even though duly reported in tax audit report, we sustain the addition to this extent. Assessee, thus gets partial relief. Accordingly, ground no.4 is partly allowed.

7. Ground No.5 is in respect of disallowance of Rs.60,000/- towards travelling expenditure incurred by the assessee, since the same were not supported with relevant bills and vouchers and could not be verified by the Id. Assessing Officer.

7.1. Before the Id. CIT(A), it was submitted that since Id. Assessing Officer has disallowed the entire business loss and treated it as Nil, the disallowance of Rs.60,000/- towards travelling expenses is included in the said business loss and therefore no separate disallowance is warranted on this account. We note that Id. CIT(A) has

allowed the business loss for which Department is not in appeal and assessee has not been able to submit any relevant bills and vouchers to substantiate its claim towards incurring of expenditure, neither in the remand proceedings nor in the rejoinder before the ld. CIT(A). Accordingly, we do not find any reason to interfere with the disallowance of the said expenses made by the ld. Assessing Officer. Accordingly, ground no.5 is dismissed.

8. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 27 August, 2024

Sd/-

(Narender Kumar Choudhry)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 27 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