

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA no.2932/Mum./2024

(Assessment Year : 2011-12)

Manjudevi Ranjital Jain

C/O CA Himanshu Gandhi, 16th Floor,
D Wing, Trade World Kamala Mills Compound
Senapati Bapat Marg, Lower Parel,
Mumbai- 400013
PAN-ANHPJ3507H

..... Appellant

v/s

Income Tax Officer Ward 27(2)(1)

Vashi Railway Station Building,
Navi Mumbai- 400703

..... Respondent

Assessee by : Shri. Himanshu Gandhi
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing – 07/08/2024

Date of Order – 28/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/03/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Addl./Joint Commissioner of Income Tax (Appeals), Mysore [*"learned Addl./Joint CIT(A)"*], for the Assessment year 2011-12.

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

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming proceedings under section 147 of Income Tax Act, 1961.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 10,39,700/- being cash deposits as unexplained money u/s 69A of the Income Tax Act, 1961.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to consider that cash deposited is out of opening balance, opening recovery and income earned during the year and offered for tax cannot be treated as unexplained money u/s 69A.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming charging of interest under section 234A, 234B and 234C of Income Tax Act, 1961.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming initiation of penalty proceedings under section 271(1)(b) and 271(1)(c) of the Income Tax Act, 1961.

6. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."

3. The brief facts of the case are that the assessee is an individual and is in the business of reselling ladies' dress materials. On the basis of the information received on I-Tax Net that the assessee has deposited cash in saving bank account and made time deposit amounting to Rs. 10,39,700/- and 10,39,700/- respectively, proceedings u/s 147 of the Act were initiated to verify the same, since the assessee also did not file any return of income for the year under consideration. In response to the notice issued u/s 148 of the Act, the assessee filed her return of income on 11/10/2018 declaring a total income of Rs.1,89,950. In response to notices u/s 143(2) as well as u/s 142(1) of the Act, the assessee submitted a letter of authority, capital account and balance sheet. However, since no details of cash deposits were furnished by the assessee, opportunities were granted to furnish the source of cash deposits and file the details/evidence of business carried out during the year under consideration. However, despite sufficient opportunity and issuance of final show cause notice, the assessee did not make any compliance.

Accordingly, the Assessing Officer ("AO") proceeded to complete the assessment on the basis of material available on record. In order to ascertain the information on the transaction entered into by the assessee, the AO carried out an independent enquiry by issuing notice u/s 133(6) of the Act to Jan Kalyan Sahakari Bank Ltd. requesting details of assessee's cash transactions. In the absence of any details/submissions from the assessee, the AO made an addition of the entire cash deposit of Rs.10,39,700 u/s 69A of the Act. As regards the time deposits, the AO noted that the same pertains to cash deposits and therefore did not make any additions on account of time deposits.

4. The learned Addl./Joint CIT(A), vide impugned order held that the assessee though has attributed the source of receipts to the business activity carried out by her, however, has failed to submit any documentary evidence to verify the genuineness of contention raised. The learned Addl./Joint CIT(A) further held that the assessee has not furnished any evidence proving the activity of business viz. purchase bills, sale bills, books of account, invoice/vouchers, etc. Further, the assessee has also not produced any details of payments made towards the purchase of materials for her business. Accordingly, the learned Addl./Joint CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused material available on record. In the present case, the assessee claims to be engaged in reselling ladies' dress materials and sarees. As per the assessee, she carries out the business described above from her home and there is no formal shop and establishment. Further, there are no employees as family members were

helping her in the business. As per the assessee, she purchases from various wholesalers/retailers on a weekly basis on JANGAD basis (Sale on Approval Basis). It means that goods sold were paid in the next week and the remaining stock was returned to the sellers. As per the assessee, she has no other business and thus, the cash deposited in the bank account was nothing but earnings from business and past savings only. Apart from the aforesaid submissions, the assessee has only furnished a copy of her return of income for the assessment years 2009-10, 2010-11 and 2011-12 on the record, filed by her on a presumptive basis to substantiate her claim. In her submissions before the learned Addl./Joint CIT(A), the assessee submitted that the return filed included gross receipts from the business amounting to Rs.9,56,500. However, in the absence of any documentary evidence such a claim cannot be accepted, as there are also no details of cash in hand at the year-end. As per the assessee for the first time on 09/04/2010, she opened her bank account in Jan Kalyan Sahakari Bank Ltd, and prior to that she was keeping all the cash from the sales with herself.

6. Having considered the aforesaid facts, since the assessee did not file any return of income for the year under consideration and information was received on I-Tax Net that the assessee has deposited cash in savings bank accounts, we are of the view that the AO has correctly initiated proceedings u/s 147 of the Act as there was new and tangible material for re-opening the assessment. In ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd, [2007] 291 ITR 500 (SC), the Hon'ble Supreme Court held that if there is relevant material on the basis of which a reasonable person can form a requisite belief that income

chargeable to tax has escaped assessment, then proceedings u/s 147 of the Act can be validly initiated. As a result, we find no infirmity in the reassessment proceedings initiated by the AO u/s 147 of the Act. Accordingly, ground no.1 raised in assessee's appeal is dismissed.

7. During the hearing, the learned AR placed reliance upon the decision of the Co-ordinate Bench in Jayesh Jagat Parekh Vs ITO, in ITA No. 758/Mum/2024. We find that in the aforesaid decision, vide order dated 28/06/2024, in a similar factual matrix of cash deposits in the bank account of a taxpayer who was engaged in the business of retail sale of ladies' garments, the Co-ordinate Bench restricted to addition to 8% of the unaccounted sales. The relevant findings of the Co-ordinate Bench, in the aforesaid decision, are reproduced as follows: -

"4. We have heard both the appeals and also perused the relevant materials placed on record. It is an undisputed fact that assessee is in the business of retail sale of ladies garments and only source of income is through this business. Further, the sales have been recorded in cash which was regularly deposited in the bank account. Since assessee's turnover was ranging between 25-35 lakhs in a year, he has been showing the profit under presumptive rate of 8% u/s 44AD not only in the past but also in the subsequent years. Even if assessee's explanation that assessee has received cash of Rs. 27,00,000/- from M/s Sarita Exports has been found to be not acceptable in view of various findings given by the Id. AO and assessee could not rebut such finding, then source of these cash is out of business only. Looking to the fact that assessee was showing income from business of retail sale of ladies garments, then the cash deposits could be from unaccounted sales from the business which assessee had not disclosed in the return of income. Accordingly, source of cash deposit of Rs. 32,00,000/- is treated be out unaccounted sales made by the assessee. Admittedly, assessee has been making sales in cash from his small retail outlet for ladies lower garments that the price of such garment is less than Rs. 2,000/- per piece. Thus, it would be better to apply net profit rate of 8% on these unaccounted sales of Rs. 32,00,000/- which works out to Rs. 2,56,000/-. Thus, the addition is restricted to Rs. 2,56,000/- as against addition of Rs. 32,00,000/- made by the Id. AO. The reason for adopting the net profit rate of cash deposit is that assessee does not have any source of income or has made any investment and is only involved in petty retail business. Thus, it cannot be held that assessee had some other unexplained cash from some other sources. Accordingly, the addition is sustained on the basis of application of net profit of

8% on cash deposits as the same is treated as income from business and profession and not to be taxed u/s. 69A r.w.s. 115BBE. Accordingly, the appeal of the assessee is partly allowed."

8. Since the assessee has claimed to have filed her return of income, on a presumptive basis, by showing income from the business of retail sale of ladies' garments, then in the absence of documentary evidence, it can be reasonably presumed that the cash deposits could be from unaccounted sales from the business which the assessee had not disclosed in the return of income. As the aforesaid decision has been rendered in a similar factual matrix, respectfully following the same, we direct the AO to restrict the addition to 8% of the addition of Rs. 10,39,700/- made u/s 69A of the Act. As a result, grounds no. 2 and 3 raised in assessee's appeal are partly allowed.

9. Ground no. 4 raised in assessee's appeal pertains to the levy of interests u/s 234A, 234B and 234C of the Act, which is consequential. Therefore, this ground needs no separate adjudication.

10. Ground no. 5 raised in assessee's appeal pertains to the levy of penalty u/s 271(1)(c) of the Act, which at this stage is premature and therefore, is dismissed.

11. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 28/08/2024

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 28/08/2024

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.

Shubham P. Lohar

By Order

Assistant Registrar
ITAT, Mumbai