

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2854/Mum./2024**  
(Assessment Year : 2011-12)

**Vishal Laxman Kakade**

Bldg. No. 38 15 12, J P Road,  
Andheri (W), Mumbai- 400058  
PAN-BJOPK7133E

..... Appellant

v/s

**ITO- 32(2)(1)**

Ward 32(2)(1), Kautilya Bhavan,  
BKC, Bandra, Mumbai - 400051

..... Respondent

Assessee by : None

Revenue by : Shri Sushil Bhagwat Shendge, Sr. DR

Date of Hearing – 29/08/2024

Date of Order – 03/09/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has an 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)-1, Kolkata, ["Addl./Joint CIT(A)"], for the assessment year 2011-12.

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

*"1. The Assessing Officer WARD 25 (1)(4) Mumbai erred in making addition u/s. 68 of IT Act, 1961 Rs. 18,96,900/- The Appellant has deposited cash in bank which was additional evidence submitted to CIT (A) for source of income and CIT (A) also erred in confirming the addition u/s. 68 and raised incorrect disputed tax demand of Rs. 7,97,670/-*

*2. The Assessing officer has not issued and served properly notice u/s. 148 and or section 142(1) of IT ACT 1961. No show cause notice for the proposed addition was made.*

*3. The Learned CIT (A) also erred in not admitted additional evidence under rule 46A of IT Rules, 1962 and has dismissed the Appeal.*

*4. On the facts and circumstances of the case section 68 is not applicable to the assessee / appellant at all."*

3. The brief facts of the case are that the assessee did not file any return of income for the year under consideration. Subsequently, on the basis of the information received, it was noticed that the assessee has deposited cash of more than Rs.10 lakhs in the savings bank account during the year under consideration. As the assessee did not disclose the same and to verify the source of fund and mode of transaction, notice under section 148 of the Act was issued and proceedings under section 147 of the Act were initiated. Since the notice issued under section 148 of the Act was returned by the postal authority with the remark "left", the said notice was served by affixture. Even thereafter, there was no response from the assessee. Subsequently, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and sent by speed post to the assessee. The said notices were also returned by the postal authorities. Since the assessee was not traceable, to gather information notice under section 133(6) of the Act was issued to the Hindustan Co-operative Bank Ltd. In response to the said notice, the bank supplied a copy of the statement and account opening application. Based on the said information, it was noticed that the assessee frequently deposited cash in his savings bank account aggregating to Rs.18,96,900, during the year under consideration. As the assessee did not respond to the notices issued under sections 148, 143(2),

142(1), and show cause notice issued under section 274 r/w section 271(1)(b) of the Act, the Assessing Officer ("AO") proceeded to assess on best judgment basis under section 144 of the Act and treated the entire cash deposits of Rs.18,96,900 to be unexplained cash credit under section 68 of the Act.

4. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on the basis that the assessee has furnished no satisfactory explanation with supporting documentary evidence to explain the source of deposits of 18,96,900 in the bank. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. When this appeal was called for hearing, neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. Therefore, we proceed to decide the present appeal on the basis of documents available on record and submissions of the learned Departmental Representative. From the perusal of the synopsis forming part of the paper book, we find that the assessee is in the business of supplying labour for collecting waste for the Principal Contractor, namely NGOs, trusts and co-operative societies for the Municipal Corporation of Greater Mumbai. In the synopsis, it is further submitted that in the appellate proceedings before the learned CIT(A), the assessee filed additional evidence regarding the source of deposit and contended that cash deposits made were on account of business receipts. It is further submitted that the assessee also furnished the details before the AO in the remand report proceedings, however, the remand report is not communicated through the portal. From the perusal of the submission dated

28/11/2023 addressed to the Income Tax Officer, Ward No. 32(2)(1), Mumbai, forming part of the paper book from pages 15-16, we find that the assessee submitted the names of clients to whom it had supplied labour for waste collection. Further, the assessee furnished the bank statement of the Hindustan Co-operative Bank Ltd for the period from 01/04/2010 to 31/03/2011. The assessee also furnished a copy of the cash book with respect to the cash of Rs. 17,83,300 received from the clients during the year under consideration. The assessee also submitted that since the presumptive profit under section 44AD of the Act was below the taxable limit, therefore he did not file an Income Tax Return for the year under consideration. The assessee has furnished all the aforesaid details on the record, which forms part of the paper from pages 17-32. It is evident from the record that these details have not been considered by any of the lower authorities. Further, it is not evident from the record whether any remand report was furnished by the AO to the learned CIT(A).

6. Since the assessment was also concluded under section 144 of the Act on the best judgment basis, we are of the considered opinion that in the interest of justice, the assessee be granted one more opportunity to represent its case on merits before the AO. Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the jurisdictional AO for *de novo* adjudication after consideration of all the details/submissions as filed by the assessee in support of its claim. No order shall be passed without affording reasonable opportunity of hearing to the assessee. As the matter is being restored to the file of the jurisdictional AO for adjudication afresh, the other grievances raised by the assessee in the present appeal do not call for

adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 03/09/2024

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 03/09/2024**

**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