

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRIGIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A No.2425/Mum/2024 - A.Y. 2012-13  
I.T.A No.2426/Mum/2024 - A.Y. 2013-14

<b>Hardik Kantilal Devani</b> 2, Shiv Niwas, Sai Baba Road Jawahar Nagar, Khar (East) Mumbai-400 051 <b>PAN : AIHPD3812A</b>	<b>vs</b>	<b>IncometaxOfficer-23(1)(5), Mumbai</b> Room No.114, Matru Mandir, Tardeo Road, Mumbai
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Mahendra Paste  
Respondent by : ShriP.D.Chougule (Addl. CIT) SRDR  
  
Date of hearing : 05/09/2024  
Date of pronouncement : 10/ 09/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Both the appeals of the assessee were filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Years 2012-13 & 2013-14, date of orders 07.03.2023 & 08.03.2023 respectively. The impugned orders are emanated from the orders of the Learned Income-tax Officer 23(1)(5), Mumbai order passed under section 143(3) read with section 147 of the Act, date of orders 04/12/2019.

2.1 Both the appeals have the same nature of facts and common issue. Therefore, with the consent of the rival parties, **ITA No.2425/Mum/2024** is taken as the lead case.

2.2 The assessee has taken the following grounds: -

**ITA No.2425/Mum/2024 - A.Y. 2012-13**

"1. A

*2 That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Commissioner of Income-tax (Appeals) ['CIT(A)'] under section 250 of the Income-tax Act, 1961 against the impugned order passed by the Learned Assessing Officer ['AO'] under section 143(3) r.w.s. 147 of the Income Tax Act is bad in law and on facts.*

*3 That on the facts and in the circumstances of the case and in law learned CIT(A) has erred both on facts and in law in confirming the order of the AO by treating the entire receipts in the hands of appellant as unexplained money u/s 69A of the Income Tax Act 1956 without finding the beneficial flow of fund in the account.*

*4 That on the facts and in the circumstances of the case and in law learned CIT(A) has erred both on facts and in law in confirming the order of the AO without considering the confession of Mr. Devi Singh that entire credit/debit transactions have been operated/managed by himself and profit/loss earning from such transactions have been belonging to him only and appellant was not at all involve in this account.*

*5 That on the facts and in the circumstances of the case and in law learned AO has erred both on facts and in law in making assumptions & presumptions in making the addition without even knowing the facts from the person who operated the account and earned income thereon.*

*6 That on the facts and in the circumstances of the case and in law learned AO grossly erred in not following proper enquiry procedure before conducting the case.*

*7 That on the facts and in the circumstances of the case and in law learned AO has erred in initiating penalty proceedings u/s. 271 (1) (c) of Income tax act, 1961.*

*8 Your appellant craves to add, amend or alter any of the grounds of appeal on or before the hearing.”*

3. The brief facts of the case are that by invoking section 148 of the Act, the assessee's case was reopened and assessed under section 143(3) read with section 147 of the Act. The assessee had filed its return of income, but the bank account in Kalapur Commercial Co-operative Bank Ltd, bearing A/c no-02620101714 was maintained in the name of M/s H.M. Enterprises, proprietor, remained undeclared. The impugned account was opened in the year 2011. However, as per the assessee, this impugned account was operated by his friend, Mr. Devi Singh Chundawat. During the impugned assessment year, there is a total transaction in the bank account, amounting to Rs.5,34,40,914/- for A.Y. 2012-13 and R.3,09,88,613/- for A.Y. 2013-14. The assessee claimed that the bank account was opened, and the transaction was maintained by Shri Devi Singh Chundawat to give a favour to entities like M/s Sunflower Laces Pvt Ltd and M/s Sunflower Embroidery Pvt Ltd. The assessee stated that the bank account which is in his own name was not maintained by him. But it is maintained by his friend Mr. Chundawat. The Id.AO verified the KYC of bank account which was in the name of assessee and the Id. AO added back the total transaction amount to Rs.5,34,40,914/- under section 69A of the Act as unexplained money with total income of the assessee. Being aggrieved on the assessment order, the assessee filed an appeal before the Id.CIT(A). The Id.CIT(A) passed the appeal order and upheld the assessment order. Being aggrieved, the assessee has filed an appeal before us.

4. The Ld.AR argued and filed a written submission which is kept in the record. The Ld.AR argued that the assessee denied the entire transaction as the account was managed and maintained by his friend, Mr.Devi Singh Chundawat. But the bank account and KYC stood in his own name. The assessment of Mr.Devi Singh Chundawat was completed under section 147 read with section 144 bearing PAN ACAPC8670J, date of order 04/05/2023, order passed by Assessment Unit, Income-tax Department. In the assessment order of Mr.Devi Singh Chundawat, the income was added back amount to Rs.1,96,00,000/- and treated as unexplained money transaction @1% on total transaction. The Id. AR took the plea that transaction was taxed in the hands of Mr. Chundawat. So, the addition of the assessee should be deleted. The Id.AR further argued that there is a reduction of transactions regularly depositing and payment was not considered by the Id.AO. So, the addition of the entire amount is unjustified.
5. The Id.DR vehemently argued and fully relied on the orders of the revenue authorities. The Id.DR drew our attention in paras 6.6 & 6.7 on pages 9 to 10 of the appeal order, which are reproduced as below: -

*“6.6 I am unable to concur with the claims made in this letter. The appellant is disowning the account in his name and also transactions therein in favour of Shri Devi Singh, who in turn is disowning it in favour of entities like Sunflower Laces (P) Ltd and Sunflower Embroidery (P) Ltd. In support of these claims not a shred of evidence has been filed either at assessment or appellate stage.*

*6.7 In this case the amounts credited in the bank a/c no. 02620101714 with Kalupur Co-Operative bank belonged to him. Since he has not explained nature and source of acquisition of such amounts. His only explanation is that it*

*belonged to someone else. This explanation is not valid since no supporting evidence in the form of books of accounts or returns of income has been produced by the alleged owner of the account. Under the circumstances, the addition made by the AO u/s 69A is upheld. Reliance is placed on the decision of the ITAT Mumbai bench in Shri Parbat M. Chamriya Vs Income Tax Officer (ITA No. 3059/Mum/2015). Grounds 2 and 3 are dismissed. Other grounds are general/consequential and are not separately adjudicated.”*

6. We heard the rival submissions and considered the documents available in the record. We find that the bank account bearing Account No.02620101714 with Kalupur Commercial Co-operative Bank Ltd is maintained in the name of assessee and the KYC was also in the name of the assessee. So, the ownership of the bank account cannot be ignored by the assessee during the assessment. The transaction was made by his friend, but the entire transaction has never been explained before any of the authorities below. The Id.AR filed the “recorded statement” of the assessee, dated 12/02/2019, annexed in **APB pages 21 to 23** and confirmed that the assessee has no idea regarding the transaction in the bank account of M/s H.M. Enterprises. In **APB pages 24-25** the affidavit of Mr. Devi Singh Chundawat duly affirmed on 05/06/2024 is annexed. As per the said affidavit the deponent accepted the transaction made by him for earning commission income at nominal rates ranging from 01% to .02%and the said commission was declared during his assessment. We do not accept the affidavit of Mr. Chundawat. The assessee cannot refuse the ownership of the impugned bank account and explanation of transactions of bank account before the revenue. Whatever the tax will be determined, should be offered in assessee’s hand. We are, therefore, of the opinion that interest of justice would be sub served if the impugned appeal order is set aside and the matter is remitted

to the Id. CIT(A) for consideration thereof afresh. We are not recording any opinion on the merit of the case, as it will impair the set aside appeal proceedings. Needless to say, that the Id. CIT(A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defense shall be admitted by the Id. CIT(A) and adjudicated on merits in accordance with law. On the other hand, the assessee should be diligent and co-operative with the Id. CIT(A) in the set aside appeal proceedings. In the appeal of the assessee ground no-1 is typographical mistake, grounds 2 to 6 are allowed for statistical purposes, ground-7 is consequential in nature and ground-8 is general in nature.

Accordingly, **ITA No.2425/Mum/2024** is allowed for statistical purposes.

**ITA No.2426/Mum/2024**

7. Since the facts and circumstances are identical to the appeal in ITA No.2425/Mum/2024, which we have restored to the Id. CIT(A), the decision applies *mutatis mutandis* to this appeal in ITA No.2426/Mum/2024 also and, therefore, ITA No.2426/Mum/2024 is also restored to the file of the Id. CIT(A) with same directions.

8. In the result, both the appeals filed by the assessee in **ITAs No.2425 & 2426/Mum/2024** are allowed for statistical purposes.

Order pronounced in the open court on 10<sup>th</sup> day of September 2024.

Sd/-

(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 10/09/2024

Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai