

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

BEFORE SHRI. NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3210/Mum./2024
(Assessment Year : 2017-2018)

Mr. Rakesh Heeralal Ameta

327-279, RSC-41, Sector-7,
Charkop, Mumbai – 400067.
PAN-ALPPA3893B

..... Appellant

v/s

Income Tax Officer,

Ward – 33(1)(6), Mumbai- 400007

..... Respondent

Assessee by : Shri. Paresh Kapasi

Revenue by : Smt. Mahita Nair

Date of Hearing – 13/08/2024

Date of Order – 10/09/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 25/04/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18.

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

1. *"The Hon'ble CIT (A), NFAC, Delhi, erred in law and on facts in upholding an addition of Rs. 70,97,778/- made by the Assessing Officer as unexplained*



credit under section 69A r.w.s. 115BBE of the 1. T. Act, 1961, in respect of the cash deposited by the Appellant during FY2016-17.

2. *The Hon'ble CIT(A) erred in law and on facts in merely echoing the view of the AO without appreciating the submissions of the Appellant that the source of such cash deposits in bank account was the Appellant's Cash collection from debtors and cash sales.*
3. *The Ld. CIT (A) erred in law and on facts in not considering the submissions of the Appellant in proper perspective.*
4. *The Ld. CIT (A) erred in law and on facts in not giving sufficient opportunity of being heard to the Appellant and hence the principles of natural justice are violated.*

The Appellant prays that reliefs on the aforesaid grounds be allowed and the Appellate Order of Ld. CIT (A) be modified accordingly.

5. *The Appellant hereby also prays that penalty proceeding u/s 270A, 271 AAC and 272A(1)(d) to be dropped.*
6. *The Appellant hereby prays that the Interest u/s. 234A, 234B & 234C to be dropped."*

3. The only grievance of the assessee is against the addition of Rs. 70,97,778 made under section 68/69A of the Act as unexplained credit.

4. The brief facts of the case are that the assessee is an individual and for the year under consideration did not file his return of income under section 139 of the Act. Therefore, notice under section 142(1) of the Act was issued to the assessee asking to prepare a true and correct return of income in respect of which the assessee is assessable under the Act. However, the assessee failed to furnish its return of income in response to the notice issued under section 142(1) of the Act. On the basis of the information received from the Income Tax department, it was revealed that the assessee has made cash deposits during the demonetisation period, i.e. from 09/11/2016 to 30/12/2016, however has not filed its Income Tax Return for the assessment year 2017-18. Accordingly, notice under section 142(1) of the Act was issued to the assessee along with a questionnaire seeking details such as (i) source of cash deposit with supporting documents, (ii) accounting statements – profit



and loss account, balance sheet for the assessment years 2015-16 and 2016-17, (iii) bank statements for all the bank accounts severally or jointly held in assessee's name for this financial year 2016-17, (iv) Form No. 26AS for the financial years 2015-16 and 2016-17, (v) agreements of sale/purchase of immovable properties, if any, (vi) global report of share transactions if the assessee is trading in shares, etc. However, it was noticed that the assessee did not furnish any details in response to the aforesaid notice. During the assessment proceedings, notices under section 133(6) of the Act were sent to the assessee's bankers - Cosmos Bank and HDFC Bank. In response to the notice issued under section 133(6) of the Act, the Bank sent the assessee's KYC and bank statement, which revealed that the assessee made deposits total amounting to Rs. 73,21,778 during the financial year 2016-17, out of which deposits amounting to the Rs. 18,24,500 were made during the demonetisation period. During the assessment proceedings, a show cause notice was issued to the assessee asking to explain the nature and source of the above cash deposit and also to explain why the cash deposited/credited for the year should not be treated as from undisclosed sources and an addition be made. However, the assessee again failed to comply with the show cause notice. Accordingly, the Assessing Officer ("AO") proceeded to complete the assessment on a best judgment basis and vide order dated 15/12/2019 passed under section 144 of the Act treated the entire amount credited to the bank account of the assessee amounting to Rs. 73,21,778 as unexplained money under section 69A of the Act and added the same to the total income of the assessee.



5. The learned CIT(A), vide impugned order, after taking into consideration the fact that the amount of Rs. 2,24,000 is routed through the bank account granted partial relief to the assessee, however, sustained the addition in respect of the balance amount of Rs.70,97,778. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee filed its written submission on 26/11/2019 before the AO in response to the notice issued under section 142(1) of the Act along with the details as sought by the AO, such as computation of total income, and financials including balance sheet and profit and loss account along with schedules, details of bank accounts, bank statements, bank summary of current account and saving account, details of cash, etc. In this regard, the learned AR referred to the aforementioned written submission which forms part of the paper book from pages 39-14. The learned AR further submitted that the assessee is in the retail business of pharmacy by way of a proprietary concern in the name of "*Green Cross Pharma*". The learned AR submitted that the AO while passing the assessment order did not consider the aforesaid submissions and proceeded to complete the assessment under section 144 of the Act. It was further submitted that the medicines are sourced from manufacturer companies and distributor channels and supplied to patients and doctors on demand. The learned AR further submitted that the assessee is also regularly



filing the VAT return and referred to the copy of the same, forming part of the paper book from pages 52-121. By referring to the bank summary of the current account maintained with Cosmos Co-operative Bank Ltd, the learned AR submitted that during the year the assessee deposited cash amounting to Rs.51,39,515 and received a commission from PharmEasy amounting to Rs.3,15,517. On the other hand, the learned DR submitted that the AO did get the opportunity to examine the aforesaid details and the learned CIT(A) did not call for any remand report.

7. We find that various details as forming part of the paper book filed by the assessee were neither considered by the AO nor by the learned CIT(A). Therefore, in view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after the necessary examination of all the details filed by the assessee. We direct the assessee to furnish all the documents/evidence in support of its claim and also cooperate in the assessment proceedings. We further direct that no order shall be passed without affording reasonable opportunity of hearing to the assessee. Accordingly, the impugned order is set aside and the grounds no.1-4 raised by the assessee are allowed for statistical purposes.

8. Ground no.5 raised in assessee's appeal pertains to the levy of penalty, which is premature at this stage. Therefore, ground no.5 is dismissed.



7. Ground no.6 pertains to the levy of interest under sections 234A, 234B and 234C of the Act, which is consequential, and therefore needs no separate adjudication.

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

Order pronounced in the open Court on 10/09/2024

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 10/09/2024

Karishma J. Pawar, (Stenographer)

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