

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1504/Mum./2024**

**(Assessment Year : 2015-16)**

**Milan Hasmukhlal Mithawala**

D- 410 Mahendra Housing Colony,  
Sant Dnyaneshwar Marg,  
Near Ganesh Mandir Borivali  
East, Mumbai-400066  
PAN – ACSPM6342D

..... Appellant

v/s

**ACIT, Circle-42(1)(1)**

Kautilya Bhavan, BKC, Bandra  
Mumbai-400051

..... Respondent

Assessee by :Shri Rajesh Shah

Revenue by :Shri Ashish Kumar, Sr. AR

Date of Hearing –25/06/2024

Date of Order – 17/09/2024

**ORDER**

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

The present appeal has been filed by the assessee challenging the impugned order dated 14/02/2024, 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 2015-16.

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

*"1(a) On the facts and circumstances of the case, CIT(A) erred in passing an order under Section 250 of the Act without fully considering the facts of the case. The appellant was prevented from submitting the full details due to various reasons.*

*(b) The appellant submits that the opportunity be provided to adduce any evidence to substantiate the case.*

*2(a) On the facts and circumstances of the case, CIT(A) erred in making an addition by way of enhancement of Rs.13,62,000 though no such addition was made separately in the assessment.*

*(b) The appellant submits that the amount was part of the deposits from business and having accepted business receipt, no separate addition be made in respect of the same.*

*(c) The submits that the deposits can be explained.*

*3(a) On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs.13,81,315 in respect of estimated profit @7.3% of the turnover which was not part of the appellant.*

*(b) On the facts and circumstances of the case and in law, the CIT(A) erred in taking the turnover of Rs.1,89,22,120.*

*4(a) Without prejudice to above, on the facts and circumstances of the case and in law, the CIT(A) erred in estimating a profit @7.3% at Rs.13,81,315 as against normal profit earned @2% of the turnover.*

*b) The appellant submits that the addition ought to have been restricted to Rs.3,78,442 being 2% of the turnover.*

*5. The appellant craves leave to add, amend, modify, cancel and or substitute any of the grounds of the appeal."*

3. The brief facts of the case are that for the year under consideration, the assessee did not file his return of income. As per the AIR information, the Assessing Officer ("AO") noted that the assessee had done the following transactions during the year under consideration: –

- (a) Cash Deposit : ₹ 13,62,000*
- (b) Cash transaction in a month: ₹ 17,87,36,600*
- (c) TCS Return : ₹ 12,80,86,702*

4. Accordingly, in view of the facts mentioned above, proceedings under section 147 were initiated and notice under section 148 of the Act was issued on 27/03/2018. Thereafter, notice under section 142(1) of the Act was issued requesting the assessee to submit the details required for completing the assessment. However, the assessee did not reply to the notices issued. Therefore, penalty proceedings under section 271(1)(b) of the Act were initiated and the penalty was levied vide order dated 03/12/2018. In order to grant the final opportunity to the assessee, a show cause notice dated 07/12/2018 was issued to the assessee. On 21/12/2018, a summons was issued to the assessee, and the assessee's statement was recorded on oath on 22/12/2018. The assessee also filed the details of tax collected at the source in his PAN. As per the details filed by the assessee, it was noted that transactions amounting to ₹ 6,14,22,120 were done by several distributors and tax is collected under section 206CA of the Act. The assessee also submitted a letter in which it was stated that a purchase amounting to ₹ 4.25 crores made during the year belongs to Sarvade Wines, however, TCS credit was reflected in the name of the assessee. Further, it was noticed from the profit and loss account of Sarvade Wines that a profit of 7.3% of the purchases was shown. Since the assessee could not explain the nature of the transaction with regard to the remaining amount of ₹ 1,89,22,120 on which TCS was collected, the AO considered 8% of the same, i.e ₹ 15,13,769 as profit on such purchases and taxed the same as business income of the assessee. Further, it was noted that transactions amounting to ₹ 2,58,52,659 were made in the bank account of the assessee, the source of which was unknown. As per the assessee, these

transactions were carried out by the person to whom he had handed over his shop. However, as the assessee was not able to prove that these transactions were not carried out by him, the AO considered ₹ 1,44,07,888, being 8% of ₹ 2,58,52,659 as the business income of the assessee and added the same to his total income.

5. The learned CIT(A), vide impugned order, granted partial relief to the assessee and noted that the bank statement of the assessee's wine shop does not reflect such a high cash transaction of ₹ 17,87,36,600. With regard to the cash deposit of ₹ 13,62,000, the learned CIT(A) held that no explanation and supporting evidence has been given by the assessee as to the nature and source of such cash deposits. Accordingly, the learned CIT(A) directed the AO to bring to tax only the whole of cash deposits of ₹ 13,62,000 as the same is not explained by the assessee. On the issue of transactions appearing in the name of the assessee on which TCS was collected in the name of the assessee, the learned CIT(A) rejected the submission of the assessee that for the last two assessment years, his profit was assessed only at 2% and he never made a net profit of more than 2%. Considering the profit of 7.3% as shown in the profit and loss account of Sarvade Wines and the similarity of the transaction, the learned CIT(A) directed the AO to bring to tax only an amount of ₹ 13,18,315, i.e. 7.3% of ₹ 1,89,20,120. Accordingly, the learned CIT(A) directed the AO to restrict the addition to ₹ 26,80,315 (₹ 13,18,315 + ₹ 13,62,000). 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. The assessee was engaged in the business of proprietary concern which was in the business of trading in wines. As per the assessee, he handed over the wine shop to the licensee on 01/04/2014 due to heavy losses and after handing over the shop he did not do any business. Thereafter, the shops were run by the licensee. In this regard, the following statement was made by the assessee under oath pursuant to summons issued during the assessment proceedings: -

*"Q.11 As per AIR Information, there is cash deposit in your account of Rs. 13,62,000/- and cash transaction of Rs. 17,87,36,600/- during A.Y 2015-16? Please explain source of deposits made and Nature of cash transactions.*

*Ans. As I have said earlier, I was running wine shop and beer shop. The deposits would have been made out of cash sales. I had handed over all my shops to my licensee. At the time of handing over, some stock was also handed over to licensee. The licensee sold the stock and deposited cash in my account, afterwards I made payment to my creditors from my above listed bank accounts. I have submitted statement in regard to all my bank accounts held for A.Y. 2015-16. You can verify my claim from the bank statements submitted by me."*

7. Further, in the aforesaid statement, the assessee submitted that he used to run a wine and beer shop till the assessment year 2014-15. However, presently he does not have any job or business. As regards the TCS return of ₹ 12,18,86,702 in the assessee's PAN, the assessee made the following statement: -

*"Q.12. From the AIR Information, it is seen that there is TCS return of Rs. 12,18,86,702 in your PAN during A.Y. 2015-16, please explain.*

*Ans: As I told earlier I had handed over all my shops to licensee on 01.04.2014 due to heavy loss. After handing over the shops I did not do any business. However, shops are being run by other parties. I had discontinued filing of return as I do not have taxable Income. For this reason, I was not aware of the TCS return. I was not able to pay fees to CA due to my bad financial condition, the CA was not cooperating with me. For this reason I*

*could not do necessary documentation in time. I came to know about the TCS return only after receiving the reason of reopening of my case for scrutiny. When I enquired from my e filing account and downloaded form 26 AS I noticed that there was TCS transaction of Rs. 6,14,22,120/- in my PAN. These transactions have been made by the current shop owners. They have not updated their PAN held with supplier. I have sought shop wise ledger from the distributors, I will submit the same as soon as it is received. Once again I want to slate that transactions do not belong to me."*

8. It is evident from the record that out of the total transaction value of ₹ 6,14,22,120 done in the PAN of the assessee by several distributors, ₹ 4.25 crore was accepted by Shri Namdev Bhimaji Sarvade as a purchase transaction pertaining to Sarvade Wines, and in this regard, relief was also granted to the assessee by the AO. During the hearing, the learned AR placed reliance on the revised Form no.26AS, forming part of the paper book from pages 2-51, as per which the total amount appearing in the PAN of the assessee is ₹ 4,65,52,458.11 as against ₹ 6,14,22,120 as originally appearing in the name of the assessee. Thus, it was submitted that if the amount of ₹ 4.25 crore admitted by Shri Namdev Bhimaji Sarvade as a purchase transaction pertaining to Sarvade Wines is reduced then the balance amount is only ₹ 40,52,458.11, as per the revised Form no.26AS. As regards the cash deposit to the tune of ₹ 13,62,000, as noted above, it is the submission of the assessee that after 01/04/2014, he did not do any business and the shop was run by other parties. Accordingly, as per the assessee, the licensee sold the unsold stock in the shop and deposited the cash in his account. During the hearing, the learned AR placed reliance upon the audited accounts of the assessee for the assessment years 2012-13, 2013-14 and 2014-15, and submitted that its net profit has been 2.25%, 1.40% and (-) 0.41% respectively. Thus. it was submitted that the average

net profit of the assessee for the past three assessment years is below 2%. The learned AR further submitted that even if the amount of ₹ 13,62,000 is considered as cash sales of the assessee the entire amount cannot be considered as income of the assessee and the expenditure should also be accounted for.

9. Therefore, in view of the facts and circumstances of the case as noted above, as regards the addition on account of the amount appearing in the TCS return in the PAN of the assessee, we deem it appropriate to restore the same to the file of the jurisdictional AO for *de novo* adjudication after taking into consideration the revised Form No. 26AS, as placed on record by the assessee. As regards the cash deposited amounting to ₹ 13,62,000 in the bank account of the assessee, we are of the considered view that in the absence of any material contrary to the statement of the assessee that after 01/04/2014 it has no business or job and the amount received from the unsold stock sold by the licensee, to whom the shop was transferred, has been deposited in cash in its account, we find merits in the submission of the assessee that due credit should also be given to the expenditure incurred on the stock. It is further evident from the record that the net profit of the assessee has gradually reduced from 2.25% to (-) 0.41% from the assessment years 2012-13 to 2014-15, thus there is no reason to object to the statement of the assessee that due to heavy losses, he had to hand over the wine shop to the licensee. Such being the facts, we deem it appropriate to direct the AO to consider 2% as the estimated net profit of the assessee during the year under consideration and restrict the addition accordingly in

respect of cash deposited amounting to ₹ 13,62,000 in the bank account of the assessee. Hence, the grounds raised by the assessee are partly allowed for statistical purposes.

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

Order pronounced in the open Court on 17/09/2024

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 17/09/2024**

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.*

By Order

Assistant Registrar  
ITAT, Mumbai