

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT, JUDICIAL MEMBER

ITA No. 3223/Mum/2024 (A.Y.2012-13)

Mr. Mohammadali Gulam Rasoal Shaikh

R. No. 4, 2nd floor, Hari Jairam Building,
Moulana Azad Road, Jacob Circle,
Byculla, Mumbai 400 011

PAN No.: CREPS9674R

..... Appellant

Vs.

ITO Ward 20 (2) (1)

Piramal Chamber,
Lalbaug Parel,
Mumbai – 400 011

..... Respondent

Appellant by	:	None
Respondent by	:	Shri Anoop Hiwase, Ld. AR
Date of hearing	:	13/08/2024
Date of pronouncement	:	11/09/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 29.05.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

- 1) *That the Assessment order Dated 25/12/2019 passed under section 143 (3) r.w.s. 147 of the Income tax Act 1961 by the income tax officer is against the Law and facts on the File in as much as had, has gravely carried in computing total income of Rs. 49,95,470/- Against the return of Income of Rs. 4,79,500/-*
- 2) *That the assessment order dated 15/12/19 under section 143 (3) r.w.s. 147 of the Income tax Act 1961 by the Income tax officer is against the Law and Facts on the file in as much as he was not justified to resort to the assessment proceeding under section 143 (3) of the Act and accordingly the notice issued u/s. 148 of the Act is bad in law.*
- 3) *That the assessment order date 15/12/2019 passed under section 143 (3) r.w.s. 147 of the income tax act 1961 by the Learned Income tax officer ward 21 (2) (3) Mumbai is against the law and facts on the file in as much as he was not justified to add back a sum of Rs. 45, 15,793/- deposited by assessee from sales of jeans a cash balance available with him by responding the provisions of section 68 of the Act on the ground the genuine and credit worthiness of the relapse has allegedly not proved.*
- 4) *The assessing officer arithmetically not calculated cash and cash withdrawal from bank to of cash ascertain the peak figure not justified.*
- 5) *The Assessing office should have calculate the taxable income i.e. not profit chargeable to the income tax under section 44AD of the Act on the peak figure on net cash deposit.*
- 6) *The Assessee craves to Leave or amend any of the ground of appeal at the time of hearing of the appeal before.*

2. The brief facts of the case are that the assessee individual is a non filer of return u/s. 139 of the Act. In this case the assessee has not filed his return of income for A.Y. 2012-13. As per the AIR information in this case, the assessee has deposited cash of Rs. 45, 15,973/-. In his saving accounts operated with ICICI Bank during the year under consideration. Since, the assessee has not filed his return of

income for A.Y. 2012-13, the source of cash deposited with the bank account remains unexplained. Therefore the AO has reason to believe that the Income Chargeable to tax has been escaped assessment within the meaning of section 147 of the Act for the failure on the part of the assessee to file his return of income and disclose fully and truly all material facts necessary for assessment for the previous year relevant to the A.Y. 2012-13. Hence, the assessee's case was reopened u/s. 147 of the Act by recording the reasons. Notice u/s. 148 of the Act was issued on 12.3.2019. In response to the notice u/s. 148 of the Act, the assessee filed his return of income declaring total income at Rs. 4, 79,500/- on 27.11.2019.

2. The assessee is an individual engaged in the business of manufacturing and trading of jeans and as per the assessee the money deposited mentioned (supra) is basically the sale proceeds of the product he is dealing with. The assessee filed return in compliance to section 148 of the Act declaring income u/s. 44AD of the Act i.e. 8% on gross turnover. The AO was not convinced with the reply of the assessee and added back the whole amount of cash deposit, i.e. Rs. 45,15,973/- in his total income. The assessee being aggrieved with this order preferred an appeal before the Ld. CIT (A), who in turn dismissed the appeal of the assessee. The assessee being further aggrieved preferred the present appeal before us.

3. We have gone through the order of the AO, order of Ld. CIT (A) and perused the records. It is observed that the fact that the assessee involved in the

business of manufacturing and trading of jeans is not under challenge and there is no counter to it by the Revenue. Now for sake of clarity we are reproducing herein below the submissions of the assessee before the AO vide his letter dated 24.12.2019 as under:-

“1. Source of Income: The assessee is engaged in the manufacturing jeans. Initially when the assessee has started the business he was no familiar with income tax law and maintenance of proper books of accounts and hence whatever cash after sales of product received by the assessee has been deposited in to the bank.

2. Party wise purchase and sales details. As explained in point No. 1 the assessee has not maintained proper books of accounts and hence the return has been filed under presumptive taxation u/s. 44AD of the Act. The assessee has filed return after applying 8% on gross turnover. So, no need to maintain party wise purchase and sales.

3. The business of assessee is genuine due to the fact that the assessee has filed latest ITR and Tax audit report for A.Y. 2018-19, filing of tax audit reports proof that the turnover of the assessee is above Rs. 2 crore with maintaining of books of accounts including purchase and sales invoices.

4. We are hereby attaching license under trademark registry Act in the name of MD Garments.

4. In response to the above submissions of the assessee the AO is of the view that *“The assessee's reply has been carefully considered, however the same is not acceptable for the reason elaborately discussed as under: The assessee has not filed his return of income though he had made cash deposit of Rs. 45, 15,973/- and other receipts as credited in the bank account. On receipt of the notice u/s. 148 of the Act, the assessee has filed return declaring total income of Rs. 4,79,500/- The assessee's contention is that he has carried out the business of manufacturing and trading of jeans and has filled return after applying 8% on gross turnover for taxation u/s. 44AD of the Act.*

The assessee's contention is not acceptable for the reason that the assessee has not voluntarily filed his return of income for A.Y. 2012-13 and disclosed the source of cash deposit. Further, the existence of retail business of the assessee has not been proved by the assessee.

The assessee could not establish a single instance of purchase and sale. The purchases and sales have not been explained by the assessee. And the assessee failed to furnish even a single invoice of purchase and sale produced by the assessee during the course of assessment proceedings to substantiate the claim of the assessee that he was doing the retail business. Further, the assessee was not able to establish correlation between debit and credit entries in the bank account deposited with necessary evidences. Vide show cause, notice 18.12.2019, assessee was requested to substantiate the above issues and as to why the cash deposit of Rs. 45, 15,973/- should not be added to his total income. However, assessee has not filed any reply on this issue.

5. We have considered the version of the AO alongwith the submission of the assessee vide para 3 clause 3 & 4, wherein the assessee claimed that he has filed ITR and tax audit report for assessment year 2018-19 with a turnover reached upto Rs. 2 crores alongwith books of account and relevant vouchers of sales and purchase. This fact submitted by the assessee to establish his business model and existence of the business is verifiable from his returns and financial of the succeeding year. The AO instead of verifying the same simply brushed aside the explanation of the assessee which is not tenable. In view of this fact that assessee has submitted his ITR and tax audit report for assessment year 2018-19 with a turnover reached upto Rs. 2 crores alongwith books of account and relevant vouchers of sales and purchase, we deem it fit to restore the matter back to the file of jurisdictional AO with the direction to verify the claim of the assessee about nature of the business and existence of the same in succeeding year. It is categorically directed that if the explanation of the assessee found to be correct, Revenue has to accept the return filed by the assessee in compliance to the notice issued u/s. 148 of the Act and also to accept the results declared by the assessee u/s. 44AD of the Act. The assessee is directed to cooperate with the authorities

below and come forward with the relevant documents like VAT registration number, copy of ITR, copy of audited balance sheet and other relevant documents to substantiate his claim as made before the AO. **Based on above grounds raised by the assessee are allowed for statistical purposes.**

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11th day of September 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 11/09/2024

Sr. PS (Dhananjay)

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai