

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**  
**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.5866/MUM/2019**  
**Assessment Year: 2013-14**

Mohammad Ebrahim Rahim, Flat No.107, A-1 wing, DSK Madhuban Safed Pool, Andheri Kurla Road, Andheri East, Mumbai – 400072 (PAN : AIBPR9015R)	Vs.	Income Tax Officer-26(2)(3), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Haridas Bhat, CA  
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024  
Date of Pronouncement : 09.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A)-38, Mumbai, vide order no. CIT(A)-38/ITO-26(2)(3)/IT-159/2016-17, dated 08.02.2019, against the assessment order passed by Income Tax Officer – 26(2)(3), u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 30.03.2016 for Assessment Year 2013-14.

2. Grounds taken by the assessee are reproduced as under:

*“1. On the facts and circumstances of the Appellant's case and in law the Ln. Comm. of Income Tax (Appeals) erred in passing the order without affording reasonable opportunity of being heard.*

*2. On the facts and circumstances of the Appellant's case and in law the Ln. Comm. of Income Tax (Appeals) erred in, sustaining addition on account of unexplained cash credit of Rs. 1,19,78,926/-.”*

3. We note that it is a recalled matter, disposed of on an earlier occasion owing to non-prosecution at the end of the assessee. The sole issue involved in this appeal relates to addition on account of unexplained cash amounting to Rs.1,19,78,926/-, deposited in the bank account of the assessee.

4. We have heard both the parties and perused the material on record. We have also gone through the paper book, filed in two parts, one containing 35 pages and other 47 pages. It is gathered from the assessment order that ld. Assessing Officer was in receipt of information from RBI giving details of cases with cash deposits exceeding Rs. 5 lakhs and above during the year wherein the assessee figured. During the scrutiny assessment proceedings, ld. Assessing Officer collected information from the bank u/s. 131 and observed that amounts of Rs.67,25,450/- were deposited in the bank account of M/s 7 Ocean Shipping Services and Rs.52,53,576/- in the bank account of M/s. Delma Impex, both being proprietary concerns of the assessee, totalling to Rs.1,19,78,926/-, maintained with the Bharat Co-operative Bank Ltd.

4.1. Ld. Assessing Officer made the addition u/s.69 treating it as unexplained cash of Rs. 1,19,78,925/- deposited in the bank accounts of the assessee since the assessee failed to prove the nature and source of such cash funds. Claim of the assessee is that cash deposits made in the bank accounts are sourced out of the withdrawals of cash made from the bank accounts as well as out of cash sales of agriculture products such as rice and food grains. Assessee submitted that his proprietary concerns are engaged in export of various agricultural products, however the inferior and downgraded quality of rice and food grains damaged due to climate conditions, etc. had been sold in cash to

the households and small shop keepers. In support, assessee had furnished the name of certain parties to whom the agricultural products are stated to have been sold in cash. Assessee also furnished the cash summary wherein cash sales is disclosed by M/s. 7 Ocean Shipping Services at Rs.41,64,621/- and by M/s. Delma Impex at Rs. 32,69,556/-. The remaining cash deposits are stated as sourced out of the cash withdrawn from the bank accounts. During the assessment, the assessee stated that it is not possible to furnish the copies of bills, identity proof of the parties to whom the cash sales had been made.

4.2. Ld. AR submitted that total turnover of the assessee is Rs.4,96,76,336/-. Out of the total turnover disclosed in the audited P&L, the cash sales were of Rs.32,69,556/- in M/s Delma Impex and Rs.41,64,621/-in M/s 7 Ocean Shipping Services. Assessee submitted that total turnover comprised of export and local sales of rice and food grains. The cash sales of food grains and rice made locally were mostly to the households and small shopkeepers on direct basis which cannot be corroborated to any mandated registration certificate number i.e. VAT TIN/Service Tax/Excise and hence production of bills or proof of identity for the same would be a tedious and almost impossible task to perform which was duly explained to the ld. Assessing Officer during the course of the assessment proceedings.

4.3. Assessee pleaded that cash deposited out of cash sales cannot be construed as income as the same has been reflected in the total turnover as per the audited financial statement. Therefore, a margin of the same can utmost be considered as income as per the merit of the case.

5. We note that assessee had not disclosed the date wise withdrawal of cash and subsequent deposit of the same cash in the bank accounts. Assessee had shown drawings of Rs.5,08,472/- from capital account in the balance sheet of M/s. 7 Ocean Shipping Service and drawings of Rs.68,754/- from capital account in the balance sheet of M/s. Delma Impex, for the year ended on 31.03.2013 which is not adequate to prove that cash withdrawn has be re-deposited into the aforesaid bank accounts of the assessee.

5.1. Ld. CIT(A) on the second contention of the assessee that some of the cash deposited in the bank accounts has been sourced from cash sales of rice and food grains, observed from the verification of the documents on record viz., profit and loss account, balance sheet, income tax returns for three assessment years, viz., 2012-13 to 2014-15, audit report in Form 3CD and statement of income of the impugned assessment year and bank statements submitted by the assessee in support of the above claim that they do not demonstrate that rice and food grains have been sold to the local persons and shopkeepers during the impugned assessment year.

6. From the perusal of audited profit and loss account of the two proprietary concerns of the assessee, namely, M/s. 7 Ocean Shipping Service and M/s. Delma Impex for the year ended 31.03.2013, we note that assessee had reported net profit rate of 2.65% in the case of M/s. 7 Ocean Shipping Service and 1.50% in the case of M/s. Delma Impex, on the sales disclosed in the said profit and loss account. Assessee had further submitted that total turn-over shown in the two proprietary firms is Rs.2,30,29,000/- in M/s. Delma Impex and Rs.2,66,47,336/- in M/s. 7 Ocean Shipping Service, totalling to Rs.4,96,76,336/-. It was stated that out of the total turn-over disclosed

in the profit and loss account, cash sales were Rs.32,69,556/- in M/s. Delma Impex and Rs.41,64,621/- in M/s. 7 Ocean Shipping Service. Considering the facts on record and the circumstances of the case, also the plea made by the assessee that entire cash deposited in the bank account out of the cash sales cannot be construed as income, since it is included in the reported turnover and therefore only a reasonable margin on the same may be considered as income, we taking into account the net profit rates reported in the audited profit and loss account deem it appropriate to adopt NP rate of 3.5% on the total deposit of cash to be treated as income in the hands of the assessee. Accordingly, Rs.4,19,262/- is sustained as income component on the amount of Rs.1,19,78,926/-. Ground taken by the assessee is partly allowed.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced on day of 27 September, 2024 under Rule 34 of  
The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 27 September, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai