

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3442/MUM/2024  
(Assessment Year: 2016-17)**

**Ms. Nipa Kashyap Patel**

A-40, Dhiraj Kunj, Dadabhai,  
Bajaj Road,, Vileparle West  
Mumbai – 400056  
Maharashtra.  
[PAN:AQRPP8023D]

..... **Appellant**

Vs

**Assistance Commissioner of Income**

**Tax 25(3), Mumbai**

Room No.253, 2<sup>nd</sup> Floor,  
Kautilya Bhavan, BKC,  
Bandra (East),  
Mumbai – 400051  
Maharashtra.

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Rajeev Waglay  
For the Respondent/Department : Shri Ajay Singh

**Date**

Conclusion of hearing : 04.10.2024  
Pronouncement of order : 17.10.2024

---

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Assessee is directed against the order, dated 15/05/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 06/12/2019, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2015-16.

2. The Appellant has raised following grounds of appeal :

- "1. *Confirming the addition of Rs.79,53,025 u/s. 68 of I.T.Act, 1961 on the ground that the Appellant had failed to give the details of source of cash deposits.*
2. *Confirming the above addition without properly appreciating the fact that cash deposit were made out of cash balance available with the Appellant as also the cash withdrawals made by the Appellant.*
3. *not considering the cash summary tendered by the Appellant (and produced on page 14-19 on the Appellant order dated 15.5.2024) in its proper perspective which would have shown that all the cash deposits were duly explained.*
4. *not considering the fact that the accounts of the Appellant were duly audited u/s. 44AB of the Income Tax Act, 1961 and the books of accounts were not rejected by the assessing officer.*
5. *confirming the above addition by making observations which were not related at all to the case of the Appellant displaying the haphazard manner in which the order was passed.*
6. *confirming the above addition without properly applying the 'Peak Credit Theory'*

*And hence, the addition of Rs.79,53,025/- u/s. 68 of the I. T. Act, 1961 deserves to be deleted in toto"*

3. The relevant facts and brief are that the Appellant filed return of income for the Assessment Year 2016-17 on 12/10/2016 declaring 'Nil' income. The case of the Appellant was selected for regular scrutiny under Computer Assisted Scrutiny Selection (CASS) and assessment was completed under Section 143(3) of the Act on 28/11/2018 at 'Nil' income. Subsequently, information was received by the Assessing Officer that during the assessment proceedings pertaining to the husband of the Appellant, reliance was placed by her husband on the bank statement of the account jointly

maintained by him with the Appellant at Vijaya Bank, Brach Vile Parle, Mumbai wherein cash deposits of INR 96,00,000/- were made. In this connection, statement of the Appellant was also recorded under oath under Section 131 of the Act wherein the Appellant claimed that cash deposits made in the aforesaid saving bank account were from her past savings and current withdrawals. The Assessing Officer was of the view that the statement made by the Appellant was not corroborated by documentary evidence. Since the Appellant had admitted in her statement recorded under Section 131 of the Act that she has deposited cash of INR 96,00,000/- in the aforesaid joint account held by her with her husband which was not corroborated by documentary evidence, the Assessing Officer formed a belief that income had escaped assessment and therefore, re-assessment proceedings under Section 147 of the Act were initiated in the case of the Appellant. The aforesaid re-assessment proceedings culminated into Assessment Order, dated 06/12/2019, passed under Section 143(3) read with Section 147 of the Act wherein the Assessment Officer made addition of INR 96,00,000/- under Section 69A of the Act in the hand of the Appellant. The Assessing Officer was of the view that the Appellant had failed to explain the cash deposits in the joint account held by her with her husband since the Appellant had failed to furnish supporting evidence to discharge the primary onus cast upon the Appellant under Section 69A of the Act to explain the source of cash. The Assessing Officer also noted that for the Assessment Year 2016-17, the Appellant had filed return of income claiming loss of INR 39,33,979 while for the Assessment Year 2015-16, the Appellant had business income and income from other sources aggregating to INR 2,69,100/- only.

4. Being aggrieved by the above addition of INR 96,00,000/- made by the Assessing Officer, the Appellant carried the issue in appeal

before the CIT(A). It was contended on behalf of the Appellant that sufficient cash was available with the Appellant for making deposits during the relevant previous year. It was contended on behalf of the Appellant that as on 01/04/2015 the Appellant had opening cash balance of INR 52,47,711/- which was duly reflected in the books of accounts maintained by the Appellant. The deposits made during the relevant previous year were sourced from the aforesaid cash-in-hand available on the first day of the relevant previous year. In addition, the Appellant had made withdrawals during the relevant previous year and parts of the deposits made in the joint bank account were sourced from such cash withdrawals. In support the Appellant placed before the CIT(A), the cash summary for the period commencing from 01/04/2015 to 31/03/2016. The aforesaid submission made by the Appellant did not find favour with the CIT(A). The CIT(A) agreed with the Assessing Officer and concluded that Appellant had failed to substantiate the source of cash deposits. However, vide order dated 15/05/2024, the CIT(A) granted partial relief to the Appellant by applying peak credit theory and thereby restricting the addition of INR 96,00,000/- made by the Assessing Officer to the extent of INR 79,53,025/- holding the same to be maximum cash available to the Appellant for circulation during the relevant previous year.

5. Being aggrieved with the order passed by the CIT(A). the Appellant is before Tribunal on the grounds reproduced in paragraph 2 above.
6. We have heard both the sides and perused the material on record. The primary contention advanced on behalf of the Appellant hinges upon the submissions that the Appellant had opening cash balance of INR 52,47,711/-. It was contended on behalf of the Appellant that CIT(A) had, despite reproducing the summary of cash statement filed by the Appellant in the order impugned, failed to take the same

into consideration. It was further submitted that the return filed by the Appellant for the immediately preceding Assessment Year 2015-16 has been accepted and the availability of cash-in-hand as on the last date of the relevant previous year 2014-15 was not in dispute. However, on perusal of record we find that the aforesaid submissions made by the Appellant are not supported by any material on record. As observed by the CIT(A), the summary of cash deposits and withdrawals on which reliance was placed by the Learned Authorized Representative for the Appellant is not supported by corresponding supporting documents such as bank statement, income tax return pertaining to Assessment Year 2015-16, and financial statements. On the other hand we note that the Orders passed by the authorities below are silent on this issue. The details of cash deposits and withdrawals for the relevant previous year 2015-16 have been reproduced by the CIT(A) in the order impugned according to which cash-in-hand of INR 52,47,711/- was available with the appellant as on 01/04/2015. Accordingly, given facts and circumstances of the present case we deemed it appropriate to remand the issue pertaining to addition of INR 96,00,000/- under Section 68 of the Act back to the file of Assessing Officer with the directions to adjudicate the same a fresh after granting Appellant reasonable opportunity of being heard. The Appellant is directed to file all documents/details and supporting evidence explaining source of cash deposits of INR 96,00,000/- including relevant financial statements, bank statement, ledger accounts and return of income to substantiate the availability of cash in hand of amounting to INR 52,47,711/- as on 01/04/2015. It is clarified that in case the Appellant fails to furnish the aforesaid documents/supporting evidence and/or fails to enter appearance before Assessing Officer, the Assessing Officer at liberty to decide the issue on merits on the basis of material forming part of the assessment record. In terms of aforesaid, Ground No.2 and 3 are

allowed for statistical purposes while all the other grounds raised by the Appellant are dismissed as being infructuous.

7. In result, in terms of paragraph 6 above, the present appeal preferred by the Assessee is treated allowed for statistical purpose.

Order pronounced on 17.10.2024.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 17.10.2024  
*Milan,LDC*

**आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai