

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 2875/MUM/2024
Assessment Year: 2011-12

Amratlal and Dhirajlal and Co., 412, Shaikh Memon Street, Crawford Market, Mumbai - 400 002 (PAN : AAAFA2000Q)	Vs.	Deputy Commissioner of Income Tax - 23(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Himanshu Gandhi, CA
Revenue : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 06.08.2024
Date of Pronouncement : 28.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1060963906(1), dated 15.02.2024 passed against the assessment order by the Assistant Commissioner of Income Tax - 18(1), Mumbai, u/s. 147 r.w.s. 144 of the Income-tax Act (hereinafter referred to as the "Act"), dated 17.12.2018 for Assessment Year 2011-12.

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

"1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the action of Ld AO of issuing notice u/s 148 on the

presumption that Return of Income was not filed by the appellant for AY 2011-12 and hence, notice issued u/s 148 is bad in law, null and void. Not Pressed

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of Ld AO of not disposing off the appellant objection that proceedings u/s 148 may be dropped, as the appellant had filed the original return of income for A.Y. 2011-12, which was also subjected to scrutiny assessment u/s 143(3), and hence the assessment order passed u/s 147 is bad in law, null and void.

3. On the facts and circumstances of the case and in law, the Li. CIT(A) has erred in confirming the action of assessment order u/s 144 ignoring the original return of income filed and the assessment order passed u/s 143(3), even after the same was brought to his notice, and hence the assessment order is bad in law and invalid.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of Ld AO in assessing income of Rs. 8,37,197/- on account of payment made by Konkan Railways Corporation Ltd.

5. On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in confirming the action of Ld AO in assessing cash deposits in ICICI bank of Rs. 98,94,249/- as unexplained income u/s 694.

6. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld AO in initiating the penalty proceedings u/s 271(1)(b) of Income Tax Act, 1961.

7. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld AO in initiating the penalty proceedings u/s 271(1)(c) of Income Tax Act, 1961.

8. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld AO in initiating the penalty proceedings u/s 271F of Income Tax Act, 1961.

3. There is a delay of 35 days in filing the present appeal before the Tribunal for which an affidavit is placed on record to explain the delay so caused. In the said affidavit, it is stated that assessee had one PAN no. 'AAHFA8103H', on which all the filings and compliances under the Act were done. Case of the assessee was assessed u/s. 143(3) for the return filed by it against this stated PAN for which assessee went in appeal before the ld. CIT(A). Against the order of the ld. CIT(A), Revenue went before the Tribunal, which was dismissed vide order dated 31.02.2017.

3.1. There was another PAN of the assessee allotted vide number 'AAFA2000Q', which it had surrendered on 30.06.2017. Case of the assessee was re-opened with reference to this another PAN by issuing notice u/s. 148, dated 28.03.2018 alleging deposit of cash by the assessee in its ICICI Bank account and receipt of certain contract fees for which assessee had not filed its return. Facts relating to two PAN and surrender of one by the assessee was brought to the knowledge of the ld. Assessing Officer. However, assessment was completed on 17.12.2018 against the second surrendered PAN by making additions as alleged. Thus, assessee submitted that owing to two PANs, certain confusion arose to keep track of the proceedings which led to the delay of 35 days in filing the present appeal. Considering the facts and circumstances as explained by the assessee, we find it appropriate to condone the delay and take up the matter for adjudication.

4. From the perusal of the assessment order, we note that ld. Assessing Officer had observed that assessee is a non-filer of its return for Assessment Year 2011-12. Based on information generated from the ITD system, assessee was involved in various cash deposits of Rs. 2 lakh or more for which notice u/s. 148 was issued dated 28.03.2018. Assessee did not file its return of income in response to the said notice. Another notice u/s. 142(1) was issued dated 13.10.2018. Ultimately, ld. Assessing Officer issued show cause notice for completing the assessment u/s.144 since there was no response from the assessee. Assessee replied to the show cause notice and submitted that it had two PANs, one of which was surrendered long back and was not in use. It had filed its regular return of income which was subjected to assessment and thus requested to drop the proceedings u/s.148 of the Act. On this submission, ld. Assessing Officer acknowledged that assessee had provided the copy of application, dated 30.06.2017 surrendering its PAN 'AAFA2000Q'.

4.1. In the course of assessment proceedings, ld. Assessing Officer called for the details and documents from ICICI Bank Ltd. in respect of deposit of cash and from M/s. Konkan Railway Corporation Ltd. in respect of TDS by exercising powers u/s. 133(6) of the Act. From the information so received, ld. Assessing Officer observed that M/s. Konkan Railway Corporation Ltd. had paid Rs.8,37,197/- to the assessee on which TDS was done. According to him, this income was not reported , since return was not filed. Addition was made in the hands of the assessee. In respect of information received from ICICI Bank, ld. Assessing Officer observed that assessee had made cash deposit of Rs.98,94,249/- in its current account. Since, no details were submitted in this respect, ld. Assessing Officer held it to be unexplained cash deposit and added it as unexplained income u/s. 69 of the Act. Aggrieved, assessee went in appeal before the ld. CIT(A).

5. In respect of issue relating to assessee having two PAN, one being surrendered by it on 30.06.2017 i.e., after six years of the relevant Assessment Year are already stated above while dealing with condonation of delay in filing the present appeal.

6. On the legal issues raised by the assessee before the Ld. CIT(A), he took note of the facts relating to two PANs with the assessee. He observed that there is no evidence that issues relating to deposit of cash and in respect of income which led to the reopening of the present case were subjected to enquiry and examination while completing the assessment under section 143(3) under the different PAN. In the present case, Ld. Assessing Officer had the information that assessee under the other PAN “AAAF A2000Q” had deposited cash in its bank account and had received income from Konkan Railway for

which return had not been filed. According to him, there was a prima facie belief formed on the basis of material on record that income chargeable to tax had escaped assessment. Ld. Assessing Officer at that point had no information regarding the return filed under a different PAN. He observed that reason to believe did not require the Assessing Officer to finally ascertain the fact by legal evidence or conclusion for forming the prima facie belief. Further, even after the issue of notice under section 148, when this information surfaced out, there are no evidence before the Assessing Officer that deposit of cash had been examined in the original assessment made under section 143(3) under a different PAN and that the income received from Konkan Railway had been duly disclosed in the said return and TDS thereon has been correctly accounted for. Ld. CIT(A) found no infirmity in the initiation of proceedings under section 147 by issue of notice under section 148 by holding that Assessing Officer had sufficient material on record for him to form the prima facie belief that income had escaped assessment. Accordingly, grounds raised challenging the reopening were dismissed.

7. Before us, vide ground No. 1 and 2, assessee has contested the reopening for which similar submissions are made as made before the Ld. CIT(A). We have perused the observations and finding arrived at by Ld. CIT(A) on this issue as discussed above and find no reason to interfere with the same. Accordingly ground No. 1 and 2 raised by the assessee before the Tribunal are dismissed.

8. In respect of ground 3 raised before us, Ld. CIT(A) noted that assessee did not bring any material in the assessment proceeding apart from the income tax return and assessment order passed under section 143(3) to show that cash deposits were examined in the said

proceedings and that the income received from Konkan Railway had been disclosed in that return and TDS thereon was correctly accounted for. Since there was no compliance at the end of the assessee in respect of the two issues which led to the reopening of the present case, Ld. CIT(A) justified the completion of assessment under section 144 by the Ld. Assessing Officer since he was left with no other option. In this regard, having gone through the material placed on record furnished before us to controvert the aforesaid observations, we find no reason to interfere with the findings arrived at by the Ld. CIT(A). Accordingly ground No. 3 is dismissed.

9. In respect of ground 4 and 5 raised before us, Ld. CIT(A) noted that assessee had furnished the evidence as additional evidence without complying with the provisions of Rule 46A of the Income-tax Rules, 1962 (the Rules) for their admission and consideration. He thus, did not consider the evidences so furnished by the assessee and dismissed the grounds raised on these two issues.

10. Before us ld. Counsel of the assessee placed on record a paper book containing 114 pages substantiating the claim made in the present appeal. Case of the assessee is that it had been already assessed to tax, for which the matter went in appeal upto the Tribunal, but under a different PAN which it had been using regularly. There was another PAN which it had surrendered and duly intimated the Department for the same. Entire issue in the present appeal revolves around the second PAN which had been surrendered. In this respect, assessee claims that the two issues which have been raised for the purpose of reopening have already been duly reported in its return assessed to tax u/s 143(3). However, authorities below have held against the assessee since it could not establish this by cogent

documentary evidences. Assessee has placed its audited financial statements and bank statement of ICICI Bank as well as copy of ledger of Konkan Railway in its books of account to demonstrate its case which have not been considered by the authorities below. In the interest of justice and fair play, in the given set of facts and circumstances, we find it proper to remit the matter back to the file of Jurisdictional Assessing Officer (JAO) to verify and examine the records as furnished by the assessee in support of its claim and consider the same to delate with the two issues in accordance with the provisions of law. Needless to say, assessee be given reasonable opportunities of being heard. Accordingly, ground nos. 4 and 5 are allowed for statistical purposes.

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

Order is pronounced in the open court on 28 October, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 October, 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