

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No. 4861/Mum/2024
(Assessment Year :2009-10)**

Pankaj Khemka B-5/8, Society, Dayaldas Road, Vile Parle, East, Mumbai – 400057.	Pyarelal Sukumar	Vs.	ITO, Ward 25(3)(2), Mumbai (New Ward 34(3)(2), Mumbai), BKC Bandra (East), Mumbai Kautilya Bhavan, BKC, Bandra (East), Mumbai – 400051.
PAN/GIR No. ADTPK2915N			
(Appellant)		..	(Respondent)

Assessee by	Shri. Bhupendra Shah
Revenue by	Shri. Krishna Kumar (Sr. DR)
Date of Hearing	30/10/2024
Date of Pronouncement	07/11/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 13/08/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 147 for A.Y.2009-10.

2. In the grounds of appeal assessee has raised the following grounds:-

'1. In the facts and the circumstances of the case and in law, the learned A.O. erred in passing the order u/s 143(3) r.w.s 147 and therefore rendering the whole reassessment bad in law on the basis of presumption and surmises and that to after a gap of four years.

2. In the facts and the circumstances of the case and in law, the learned A.O. erred in making addition of Rs. 6,23,20,835/- by way of alleged unexplained cash credit u/s 68 deposited in HSBC Bank by disregarding the submissions made by him.

3. In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(1)(c) and also charged interest u/s 234B,C and D.

4. In the facts and the circumstances of law, the Ld Commissioner of Income Tax(A) erred in confirming all the mentioned grounds without granting video conferencing and rejecting all submissions made."

3. The brief facts are that in this case information was received from DDIT (INV), Ahmedabad wherein it was mentioned that assessee has entered into large financial transaction and accordingly, notice u/s.148 was issued on 31/03/2016 to assess the income for A.Y.2009-10. In response to the notice u/s.148, assessee filed return of income declaring total income at Rs.1,49,700/- which was on account of some commission received. As per the information, assessee has received the credit entry amounting to Rs.6.23 Crores from various entities which had been routed through his bank account with HSBC of a proprietorship concern M/s. Riddhi Siddhi Silks. In response to the notice assessee submitted that he is completely unaware of any such entries nor does he have bank account details. Assessee requested to the AO to furnish the bank account details

and accordingly, ld. AO provided the bank statement with HSBC bank. In response to the notice assessee submitted and stated as under:-

"I state that through a common friend I was introduced to one Mr Ashish Agarwal from Ahmedabad who had fraudulently obtained my signatures on the blank cheque book from me. I was totally unaware of the transactions running into Rs. 6.2 Cr made by him till I received the impugned notice form DDI Ahmedabad in respect of said transactions. I have never visited HSBC bank to open any bank account on 20.03.2009. I have never owned or taken on lease any property on lease in Ahmedabad. I am not aware of any address mentioned in the bank statements. The said Sh. Ashish Agarwal died of Cancer in 2015. His address in Ahmedabad was 412, New Cloth market, Ahmedabad and his phone no. was 09687540000."

4. Ld. AO then summoned the assessee u/s.131 and his statement was recorded wherein he reiterated that he was not aware that the bank account was opened in his name and Mr. Ashish Agarwal from Ahmedabad had fraudulently obtained his signatures through some of his kown friends and lured him for some business proposition and he was unaware that his bank account has been opened and was misused for carrying out such transaction. He further, submitted that he is a very small employee in a private firm having salary income of less than Rs.20,000/- and therefore, there is no way he could have carried out such huge transaction. However, the ld. AO in absence of any documentary evidence has added back the entire credit entries of Rs.6,23,20,835/-.

5. The Id. CIT(A) also has confirmed the said addition observing and holding as under:-

”3.2. At the time of the appeal, the assessee made similar argument that the said Ashish Agarwal fraudulently obtained blank cheque books of the bank account after getting them signed by the appellant. The amount deposited in the bank account was never known to the appellant. Therefore, it was misused by Ashish Agarwal for his own purposes, never known to the appellant.

3.3. The argument of the assessee is not at all acceptable. The assessee is an independent businessman and the compulsion or circumstances, under which he issued signed blank cheques to Shri Ashish Agarwal was not explained. He claimed that he came to know of the transactions only during the assessment proceedings by that time Ashish Agarwal was no more. This stand of the assessee is also not acceptable, as, when he knew that a bank account in his name is standing and operated by that Ashish Agarwal, if it was not through the pure consent of the assessee, he should have brought the matter to the Police Authorities and the case of cheating/fraud should have been filed by him before the Law Enforcing Authorities. Filing a notarized affidavit denying the transactions is, therefore, considered as an afterthought and benefits must have reached the assessee for the transactions made in the bank account.

3.4. As an alternative plea, the assessee claimed that such bank account was used to layer accommodation entries to some unknown beneficiaries and therefore, at the best, he can be assessed with the commission charged for such transaction.

3.5. The assessee's argument is not accepted again, as the assessee could not produce the details of such beneficiaries who received the benefits of such transactions. Facts remains that assessee's account was credited with a sum of Rs. 6,23,20,835/- and it is only he who has to come up with actual facts of the transactions. In case of his inability to explain the transactions, the amount credited in his bank account remains unexplained and therefore, I do not intend to interfere with the action of the AO by

treating the entire credit in the bank account as Unexplained Cash Credit u/s. 68. The assessment is, therefore, sustained and the appeal of the assessee is dismissed.”

6. Before us, Id. Counsel for the assessee Shri Bhupendra Shah stated that he is appearing *pro bono* looking to the fact that the assessee is a very poor person deriving meagre salary income from small private firm. He pointed out that, from the perusal of the bank statement itself it can be seen that there are huge transfer cheque entries and on the same day or next day the same cheque is transferred to some firm M/s Silver Shine Export and only withdrawal made during the year is only Rs.11,00,000/-. He reiterated that assessee was unaware of such bank account or transaction because same was done by one Mr. Ashish Agarwal from Ahmedabad who has fraudulently obtained signatures and blank cheque books. Once the case was reopened and notice was sent, assessee tried to contact Mr. Ashish Agarwal, however at that time he was suffering from cancer and eventually he died and therefore, he could not get any confirmation or information from the said person. He had no other way to prove his innocence. Thus, the entire credit entries in the bank account cannot be added. Without prejudice, he submitted that even if the assessee bank account is treated to be some kind of activity for providing any accommodation entry to other some parties, at the most commission income should be charged in view of the judgment of Hon'ble Bombay High Court in the case of **PCIT vs. Alag Securities Pvt. Ltd.**

7. On the other hand, ld. DR submitted that it was onus of the assessee to prove that his bank account was misused and some fraud has been committed by some other person because the bank account is in the name of the assessee and therefore, assessee has to explain the nature of credit entries.

8. On perusal of the material placed on record, it is seen that entire basis for addition is the aggregate of all the deposits made during the year through cheque in the bank account with HSBC in the name of Riddhi Siddhi Silks, Mr. Pankaj Pyarelal Khemka i.e. assessee. Aggregate deposits in the bank account was Rs.6,23,20,835/- and there were equivalent withdrawals of Rs.6,22,81,480/- giving the credit balance of Rs.39,354/-. Further it is seen that there was no opening balance and there are deposits through some cheques and immediately thereafter, the same amount has been transferred to some entity named Silver Shine Export. The pattern of deposits and withdrawals itself shows that there is some kind of transaction for some export business. Two withdrawals were for Suman Finstock Pvt. Ltd. which assessee was not aware. Further, there are also some cash withdrawls which is of Rs.11 lakhs. Once there are deposits and corresponding withdrawals thorough cheques and the transfer of amount from one account to other, the entire deposit cannot be treated as income of the assessee. The corresponding withdrawlas has to be seen. Even if assessee's plea is not substantiated that this account was opened fraudulently by some Shri Ashish Agarwal and now that he has already died and assessee cannot prove his bonafide, then also if at all it can be

inferred that it could be some kind of undisclosed business. Thus, the proper course would be that whatever withdrawal has been made should have been added or some kind of net profit can be applied. The reason being if the amounts have been deposited through some transfer entry of cheque and same cheque has been issued to some other firm, then without giving benefit of the withdrawals and transfer through cheque, the entire deposit cannot be added. Looking to the facts and circumstances of the case it would be appropriate to apply net profit rate of 1% on the entire deposits. Thus, addition is sustained to the extent of net profit rate of 1%.

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

Order pronounced on 7th November, 2024.

Sd/-
(GIRISH AGARWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 07/11/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai