

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
SANDEEP SINGH KARHAIL, JM**

ITA No. 3653/Mum/2023
(Assessment Year: 2012-13)

Jignesh P Domadia B-502 Padmavati Nagar, Din Dayal Upadhyay Marg, Near Croma, Mulund (W), Mumbai – 400 080	Vs.	ITO-29(1)(5) Mumbai
PAN/GIR No. AEQPD 4401 A		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Satyaprakash Singh
Respondent by	:	Shri Rajesh Meshram
Date of Hearing	:	05.11.2024
Date of Pronouncement	:	08.11.2024

ORDER

Per Om Prakash Kant, A M:

This appeal by the assessee is preferred against the order dated 11.09.2023, passed by the learned Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre, Delhi (in short ‘Id.CIT(A)’) for the Assessment Year (‘A.Y.’ for short) 2012-13, raising the following grounds:

1 *The order dated 11/09/2023 bearing No. ITBA/NFAC/S/250/2023-24/1055952386[1] Passed under section 250 of Income Tax Act 1961 by the Hon'ble CIT(Appeal), National Faceless Appeal Centre [NFAC], Delhi, is unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.*

2 *On the facts and in circumstance of the case and in law, the Commissioner of Income Tax, Appeals has erred in confirming the addition on account of estimation of lower Gross Profit without considering the submission made by the appellant from time to time during the course of Assessment Proceedings.*

3 *On the facts and in circumstances of the case and in law, the Commissioner on Income Tax, Appeals has erred in confirming the addition of Rs. 24,42,422/- on account of cash deposits*

in the bank account with Sahebrao Deshmukh Co-Operative Bank Ltd; even though the same was properly accounted in regular books of accounts maintained by the Appellant.

4 On the facts and in circumstances of the case and in law, the Honourable CIT Appeal has erred in confirming the addition of Rs.2,86,50,000/- in account of undisclosed receipts even though all the transaction were duly recorded in the books of accounts.

2. Briefly stated facts of the case are that the assessee, an individual, was proprietor of M/s. Vardhman Traders, which was engaged in the business of trading of papers. For the year under consideration, the assessee filed return of income on 28.09.2012, declaring total income at Rs.5,35,186/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income Tax Act, 1961 (in short 'the Act') were issued and complied with. The Id. A.O. completed the scrutiny assessment u/s. 143(3) of the Act on 26.03.2015, wherein he made additions, **firstly**, addition to cover low gross profit rate amounting to Rs.21,07,856/-, **secondly**, addition for unexplained cash deposit in the bank amounting to Rs.24,42,422/- and, **thirdly**, addition for unexplained cash credits in the bank account amounting to Rs.2,86,50,000/-.

3. On further appeal, the Id. CIT(A) allowed part relief on the issue of addition *qua* low gross profit, while on other two issues, he upheld the finding of the Assessing Officer.

4. Aggrieved, the assessee is in appeal before the Income Tax Appellate Tribunal (in short 'Tribunal'), raising the grounds as reproduced above.

5. Before us, the Id. Counsel for the assessee filed a copy of the written submission before the Id. CIT(A). Ground no. 1 of the appeal of the assessee is general in nature and, therefore, we are not required to adjudicate the same specifically.

6. Ground no. 2 of the appeal of the assessee relates to the addition sustained by the ld. CIT(A) in respect of the low gross profit rate shown by the assessee. Briefly stated, the facts *qua* the issue in dispute are that the gross profit declared by the assessee was found by the ld. A.O. as low, as compared to the preceding assessment year. The assessee explained that low gross profit during the year was due to sale of spoiled/damaged stock of papers etc to scrap dealers. The assessee produced some invoices issued by such scrap dealers, but the ld. A.O. asked for the entire list of the parties to whom such stock was sold and from whom such stocks was purchased. The ld. A.O. was of the view that it was not known from the records that the assessee had already purchased damage low-cost goods which otherwise would result in higher profit. The ld. A.O. rejected the books of accounts of the assessee and estimated the gross profit rate. The ld. A.O. observed that the gross profit ratio for A.Y. 2011-12 i.e. the immediately preceding assessment year, was 14.32% on the purchases, therefore, he applied the gross profit rate of 14.40% and gross profit was estimated at Rs.69,57,732/-. After subtracting the gross profit declared by the assessee, the ld. A.O. made an addition of Rs.21,07,856/-.

7. On further appeal, the ld. CIT(A) though sustained rejection of the books of accounts but as far as the application of the gross profit is concerned, the ld. CIT(A) recomputed the gross profit ratio on the sales which was worked out to 7.08% as against gross profit rate of 4.27% shown by the assessee and, therefore, he sustained the disallowance for difference of 2.81 % and corresponding to which gross profit of Rs.21,07,866/- was sustained by the ld. CIT(A).

8. Before us, the Id. Counsel for the assessee without prejudice to the objection that there were no defects in the books of accounts of the assessee for justifying rejection of the books of accounts. he submitted that if the average gross profit rate of preceding three years is taken for computing the gross profit rate to be invoked on the sales of the year under consideration, assessee was having no objection. In our opinion, the contention of the Id. Counsel for the assessee is fair and reasonable. The average of gross profit rate of three years give a better estimate, which take care of ups and down of market from year to year. Accordingly, we accept the contention of Id counsel same and restore the matter back to the Id. A.O. for applying the average gross profit rate of preceding three assessment years on the sales turnover for the year under consideration and worke out the gross profit for the year under consideration and make addition accordingly. Ground no. 2 of the appeal is accordingly allowed partly for statistical purpose.

9. Ground no. 3 relates to addition of Rs.24,42,422/- which consists of addition of Rs.2,01,500/- and addition of Rs.22,40,922/-. The relevant finding of the Id. CIT(A) is reproduced as under:

17. The Ground No. 2 is regarding addition on account of unexplained cash deposits at Rs.24,42,422/-. This addition has two components. First relates to non-disclosure of bank account in Sahebrao Deshmukh Co-operative (SDC) Bank Ltd., wherein there was a cash deposit of Rs.2,01,500/-. The AO stated that as per cash book this cash was not taken into consideration and the assessee as per reconciliation submitted for cash book had reflected difference of Rs.1,95,500/-. This remained unexplained and accordingly, addition of Rs.2,01,500/- deposited was made. The appellant explain this by stating that there was also cash withdrawal of Rs.6,50,000/- from the said account. However, the appellant has not established how this withdrawal is linked to incoming cash, the source and nature of which remained unexplained.

18. Further, the second component of addition relates to unexplained cash deposits of Rs.22,40,922/-. The appellant submitted details as under:-

<i>Source</i>	<i>Amount</i>
<i>Cash deposits</i>	<i>83,70,000/- in bank</i>
<i>Op Cash</i>	<i>17,500/-</i>
<i>Cash Sales</i>	<i>45,19,317/- from scrap sales</i>
<i>Cash recd. From various parties</i>	<i>8,48,000/- (Cash Sales)</i>
<i>Cash withdrawals</i>	<i>28,52,683/- (after claiming expenses)</i>
<i>cl. cash</i>	<i>63,000/-</i>
<i>Shortfall</i>	<i>1,95,500/-</i>

The AO observed that cash book and bank statement were not matching and despite several opportunities including show cause, the appellant failed to explain the source and nature of cash deposits. The AO held that mere filing of cash book is not sufficient to establish the veracity of the cash deposits. The appellant insists on cash book whereas he has not discharged the onus of explaining the difference in bank statement and cash book of Rs.22,40,922/- after considering the explanation of cash deposits of Rs.83,70,000/- in bank and the cash withdrawals.

10. The ld. CIT(A) has sustained the addition of Rs.2,01,500/- and Rs.20,40,922/- mainly for the reason that no new facts are brought before him and the assessee failed to explain the source and nature of the cash deposits before the ld. A.O. The ld. CIT(A) has noted that the assessee failed to discharge the onus of difference in the bank account statement and cash book.

11. Before us, the ld. Counsel for the assessee submitted that the assessee is willing to file reconciliation of the cash deposits with the cash flow and also to explain all the entries of the cash flow along with the necessary documentary evidence. In view of facts and circumstances of the case and in the interest of justice, we feel it appropriate to provide one more opportunity to the assessee to explain the source of the cash deposit along with the entries in the cash book. Accordingly, the finding of the ld. CIT(A) on the issue in dispute is set aside and matter is restored back to the file of the ld. A.O. for considering in accordance with the law after due verification of the evidences in support of the cash deposit by the assessee. The ground No. 3 is allowed for statistical purpose.

12. Ground no. 4 of the appeal of the assessee relates to addition of Rs.2,86,50,000/- invoking section 69 of the Act. The facts in brief *qua* the issue in dispute are that one of the bank statements of the assessee was not filed before the ld. A.O. and, therefore, the ld. A.O. called for the bank statement invoking authority u/s. 133(6) of the Act. The ld. A.O. found that there were credits of Rs.2,86,50,000/- apart from cash deposit of Rs.2,01,800/- . Before the ld. CIT(A), the assessee contended that balance of this bank account was Nil and, therefore, same could not become part of the balance sheet. Further regarding the source of the credit, the assessee submitted that all those were business related advances and since the sales could not materialize, thus advances were returned back to the parties. Before us, the ld. Counsel for the assessee submitted that relevant details could not be provided before the ld. CIT(A) and, therefore, the ld. CIT(A) held all the unexplained cash credit by observing as under:

26. The appellant has not been able to establish that such credit entries in the SDC Bank account relate to business activity and represent business receipts forming part of total turnover and or being advance for business but returned back due to cancellation of purchase/ sale. The appellant could not produce any evidence and it is surprising that all cancelled deals are taking place through this bank account whereas major sale / purchase are taking place through other banks. Thus, the source of credits in the bank account remained unexplained and hence, the addition of entire credits at Rs.2,86,50,000/- is, accordingly, sustained. Hence, this ground of appeal is rejected.

13. Before us, the ld. counsel for the assessee submitted that the credits are advance received in respect of the business transactions, but due to paucity of time before the ld. CIT(A), the same could not be filed and the ld. CIT(A) did not provide sufficient time for filing of those details. Accordingly, he submitted that one more opportunity might be provided to the assessee.

14. In view of the facts and circumstances of the case, we feel it appropriate to set aside the finding of the Id. CIT(A) on the issue in dispute and restore the matter back to the file of the Id. A.O. for deciding afresh after considering the submission/documentary evidence by the assessee. Hence, ground no. 4 of the appeal of the assessee is accordingly allowed for statistical purpose.

15. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 08/11/2024.

Sd/-
(Sandeep Singh Karhail)
Accountant Member

Mumbai; Dated : 08/11/2024
Roshani, Sr. PS

Sd/-
(Om Prakash Kant)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai