

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)  
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 799/Mum/2024 (A.Y. 2017-18)

Aijaz Atique Baig 13 Ghas Bazar Station Road, Bandra East, Mumbai-400 051  PAN : AEEP1589D (Appellant)	Vs.	ITO Ward 23(1)(1) 1 <sup>st</sup> Floor, R.No. 106, Matru Mandir, Tardeo Mumbai-400 007.  (Respondent)
--	-----	--

Assessee by	Shri Mohammed Shadab Khan
Department by	Shri R.R. Makwana
Date of Hearing	19.08.2024
Date of Pronouncement	22.10.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above said appeal, the only issue to be decided is whether all cash deposits made by the appellant are taxable as unexplained income u/s. 69A of the Income Tax Act (the Act for short) 1961.

2. Originally, an order u/s. 144 of the Act was passed by the learned Assessing Officer (Ld. AO for short) in this case as the appellant did not furnish required details and income was assessed at Rs. 2.06 crores. Subsequently, the appellant filed a petition under section 154 of the Act before the Ld. AO stating that the cash deposits in his bank accounts does not match with the amount added in the assessment order. Taking into consideration the application u/s. 154 of the Act, the Ld. AO has passed an assessment order and made an addition of Rs. 10.27 lakhs only under section 69A read with section 115BBE of the Act. The appellant has submitted that they are engaged in purchase and sales of sari business and

all the cash deposits are nothing but sales proceeds, and the same are deposited into three bank accounts mentioned by the Ld. AO in his assessment order. The Ld. AO has observed that the appellant has got three bank accounts i.e. Bombay Mercantile Cooperative Bank, Central Bank of India and State Bank of India and the total cash deposits in all the three bank accounts amounting to Rs. 15.77 lakhs and Rs. 5.5 lakhs was returned and hence net cash deposits of Rs. 10.27 lakhs was added by the Ld. AO while finalizing the assessment.

3. The learned Commissioner of Income Tax (Appeals) [Ld. CIT(A) for short] with whom appeal was filed by the appellant and the same was heard by him. The Ld. CIT(A) confirmed the addition of Rs. 10.27 lakhs adjudicating that there is no mistake in the assessment order passed by the Ld. AO.

4. Aggrieved by this addition made by the Ld. AO and confirmed by the Ld. CIT(A), further appeal was filed before the ITAT with following grounds of appeals :-

The Learned Commissioner of Income Tax (Appeals), National Faceless Appeals Centre, Delhi (NFAC) , seriously erred in law and on the facts and in the circumstances of the case, in confirming the Impugned Rectified Order, passed by the Learned Income Tax Officer ,Ward 23(1)(1), Mumbai, Dated : 19-12-2019 / 24-12-2029 passed U/ss. 154 r.w.s. 144 of the Income Tax Act,1961, under DIN : ITBA/COM/F/17/201920/022978736 (1) , Assessing Alleged Income at Rs. 10,27,132/-, being Alleged Addition on account of Alleged Cash Deposited treated as Alleged Income U/S.69A r.w.s. 115BBE of the Income Tax Act,1961, thereby resulting in Alleged Disputed Demand of Rs. 12,85,401/- .

The above Impugned Rectified Order U/s. 154 r.w.s. 144 of the Income Tax Act, 1961, to Rectify the Order Originally passed, on the ground that, some other Assessee's order was uploaded, was passed with a view to replace or supplement the Original Impugned Order Dated : 18-12-2019, passed U/s. 144 of the Income Tax Act,1961, under DIN : ITBA/AST/S/156/2019-20/1022593376(1), in which Alleged Income Assessed was Rs. 2,06,35,906/-, being Alleged Addition originally made on account of Alleged Cash Deposited treated as Alleged Income U/S.69A r.w.s. HSBBE of the Income Tax Act,1961, resulting in Alleged Disputed Demand of Rs. 2,58,24,828/-, admittedly pertaining to some other Assessee, not relevant to Your Appellant.

5. During the proceedings before the Bench, ld. AR of the appellant has submitted that all the cash deposits are nothing but sale proceeds of his sari business and all the sales cannot be treated as income or profit. Under section 44AD, presumptive taxation provisions are applicable as turnover is less than Rs. 40 lakhs and net profit @ 8% is to be applied in his case. But the fact remains that the Ld. AR of the appellant could not produce required details of purchase and sales etc. It was submitted before the Bench that the appellant is a very small business man and hence section 44AD may be applied and profits are to be computed accordingly.

6. Ld. DR has argued that the appellant has not produced any details with regard to purchase of Sari and details of sale proceeds, business expenditure etc. and hence entire cash deposits are to be treated as income as done by the Ld. AO under section 69A of the Act.

7. Heard both sides. The fact remains that the Revenue has originally assessed an income at Rs. 2.06 crores and then reduced the same to Rs. 10.27 lakhs under section 154 order. The appellant has filed 3 to 4 sale invoices to show that he is engaged in Sari business. During the proceedings before the Bench Ld. AR of the appellant has agreed that 15% of the total turnover as his net profit and case may be closed as the appellant is a very small businessman.

8. Accordingly, it is decided that 15% of the total cash deposits is treated as his income because they may not get more than 15% net profit in this line of business as submitted by Ld. AR of the appellant. At the same time, it is seen from the balance sheet filed by the appellant that he had assets worth Rs. 90 lakhs out of which Rs. 50 lakhs deposits and the remaining immovable properties were also purchased and appellant has always filed return of income with Nil taxable income, it is decided as follows :-

- i) The Ld. AO is directed to compute 15% of cash deposits Rs. 10.27 lakhs as net profit after all deductions relating to the business. In other words, no other deduction would be allowed to the appellant.
  - ii) To separately tax other income of Rs. 1,67,649/- and bank interest of Rs. 13,117 with applicable tax rate (apart from 15% net profit as mentioned in (i)).
  - iii) Give deduction under Chapter VIA as claimed by the appellant before the Bench for the first time like LIC premium of Rs. 13,365/- under section 80C of the Act and bank interest under section 80TTA to the extent of Rs. 10,000/- after verification.
9. The Ld. AO is directed to pass the order on the above lines.
10. Appellant's appeal is partly allowed.

Order pronounced in the open court on 22<sup>nd</sup> October, 2024.

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Sd/-  
(Omkareshwar Chidara)  
Accountant Member

Mumbai : 22.10.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS