

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2379/MUM/2024
Assessment Year: 2013-14**

Deputy Commissioner, Central Circle – 7(1), Mumbai	Vs.	TriKesh Trade Link Pvt. Ltd., 211, 2 nd Floor, 113-114, TPS-14, Block A, Sumel Business Park-6, Near Dudheshwar Road, Dudeshwar Tavdipura S.O, Ahmedabad – 380004 (PAN : AACCT1818J)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Sharwan Kumar Jha, Advocate
Revenue : Shri Biswanath Das, CIT DR

Date of Hearing : 29.08.2024
Date of Pronouncement : 13.11.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A)-49, Mumbai vide order No. ITBA/APL/S/250/2023-24/1061416386(1), dated 23.02.2024 passed against the assessment order by the Assessing Officer, Central Circle 7(1), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.03.2022 for AY 2013-14.

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

1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the appeal of the assessee despite the fact that assessee could not prove the nature and source of cash credits in his Bank Account.

2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the appeal of the assessee despite the fact that assessee could not prove the creditworthiness and the genuineness of the transactions.

3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the appeal of the assessee despite the fact that assessee could not prove any satisfactory explanation about the nature and source of the amount credited in its books of accounts. Therefore, the assessee held that the amounts totaling to Rs.180,17,02,391/- found credited in the books of accounts of the assessee during the year under consideration as unsecured loans are nothing but accommodation entries.

3. Brief facts are that assessee is engaged in the business of Bullion and Jewellery. It filed its return of income on 30.09.2013 reporting total loss at Rs.4,05,536/-. Originally case of the assessee was assessed u/s.143(3) vide order dated 29.03.2016 at an assessed total income of Rs.5,95,00,000/-. Subsequently, information was received from DDIT(Inv.)Unit-7(4), Mumbai through Insight Portal of the Department about unexplained credit in the bank account of the assessee amounting to Rs.19,14,000/- from Access Diamond Pvt. Ltd. In the same information, it was also mentioned that high value non cash deposits amounting to Rs.179,97,88,391/- has been made in the case of Access Diamond Pvt. Ltd. within a period of one month.

3.1. In the course of reassessment proceedings, ld. AO called for details and supporting documents to explain the credits in the bank account of the assessee of Rs.19,14,000/- in cash and of Rs.179,97,88,391/- otherwise than by cash. On page 3 of the impugned assessment order under the heading "unexplained cash credits", it is noted that a notice u/s.142(1) dated 24.11.2022 was issued asking the assessee to provide supporting documentary evidences explaining the credits in its bank account. However, assessee did not submit any documentary evidences to explain the genuineness of the credits in the bank account as noted by ld. Assessing Officer. Another show cause

notice dated 27.03.2022 was issued for which also assessee failed to reply. Ld. Assessing Officer thus, observed that assessee failed to explain the nature and source of the amounts credited in its bank account. According to him, assessee had failed to establish identity of source of income, genuineness of transaction and creditworthiness. He also noted that assessee failed to provide details like name, PAN, address of the parties who credited the amount in its bank account. Having not satisfied with the explanations furnished by the assessee, addition was made u/s. 68 of the Act. Ld. AO alternatively mentioned that the amount so credited in the bank account of the assessee is unexplained money u/s. 69A of the Act.

3.2. Claim of the assessee in respect of the addition so made is that these transactions do not relate to it. In this respect, it was asserted that ld. AO has neither verified the bank statements nor the books of accounts of the assessee. Assessee claims to have made its written submissions on 21.03.2022 in which details pertaining to the submissions made in the original assessment proceedings u/s.143(3) were referred to. Ld. CIT(A) in his order in para 14.5, observes that assessee had filed a submission on 29.03.2022 in which explanations in respect of credits were furnished. Ld. CIT(A) also observed that in the said submission assessee had stated about filing of loan confirmations. Ld. CIT(A) thus noted that assessee had replied to the notices issued by the ld. Assessing Officer, thus, holding observation of ld. Assessing Officer as factually incorrect, about assessee not furnishing any details during the assessment proceedings.

3.3. On the above stated contradictory observations of both, ld. Assessing Officer and ld. CIT(A), their respective orders were perused. We find that ld. Assessing Officer has categorically noted about assessee

not furnishing its reply along with supporting documentary evidences to establish the genuineness and source of credits in the bank account. According to the ld. Assessing Officer, credits in the bank accounts of the assessee remained unexplained towards their nature and source and hence were added as income of the assessee. Contrary to the observations of the ld. Assessing Officer, we note that ld. CIT(A) observed that assessee had furnished its reply on 29.03.2022 in response to show cause notice issued by ld. Assessing Officer dated 27.03.2022. In the said submission, assessee had stated about furnishing of loan confirmations, as observed by the ld. CIT(A). Further, we note that ld. CIT(A) observed about furnishing of statement of bank accounts by the assessee.

4. Before us ld. Counsel for the assessee reiterated the facts and placed reliance on the findings arrived at by ld. CIT(A). Per contra, ld. CIT DR placed reliance on the order of ld. AO.

5. We have heard both the parties and perused the material on record. We have gone through the observations and findings arrived at by ld. CIT(A) as well as ld. Assessing Officer, discussed above. Before us, ld. Counsel has solely relied on the observations and findings of ld. CIT(A) without putting on record any paper book to corroborate the material which was verified and examined to give relief to the assessee, since observations by ld. Assessing Officer are contrary to this effect. Further, it is a case of high pitch assessment and ld. CIT(A) ought to have given an opportunity to the ld. Assessing Officer to give his views on the material on which he placed reliance to give relief to the assessee by calling a remand report from him. In the given set of facts and circumstances, we find it appropriate to remit the matter back to the file of ld. CIT(A) for *denovo* adjudication of the issues raised at the first

appellate stage by passing a speaking order after giving a reasonable opportunity of being heard to the ld. Assessing Officer by way of calling for remand report from him. Needless to say, that assessee also be given reasonable opportunity of being heard. Accordingly, grounds raised by the Revenue are allowed for statistical purposes.

6. In the result, appeal of the Revenue is allowed for statistical purposes.

Order is pronounced in the open court on 13 November, 2024

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 13 November, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai