

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI SANDEEP GOSAIN, HON'BLE JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 336/Mum/2024
Assessment Year: 2011-12

Mr. Mohamadli Shaikh Room No. 4, Second Floor 107, Hari Jairam Bldg. Maulana Azad Road Jalob Circle Mumbai - 400011 [PAN: CREPS9674R]	Vs	Income Tax Officer, Ward-21(2)(3), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri S.L. Jain, A/R
Revenue by :	Shri Raj Singh Meel, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 18/11/2024
घोषणा की तारीख/**Date of Pronouncement** : 19/11/2024

आदेश/ORDER

PER SANDEEP GOSAIN, JM:

The present appeal by the assessee is preferred against the order dated 27/12/2023, passed by the NFAC, Delhi, [hereinafter 'the Id. CIT(A)'] pertaining to AY 2011-12.

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

"1) That the Assessment order dates passed under section 22/12/2018 passed under section 143 (3) under section 143 r.w.s. 147 of the Income tax Act 1961 by the Id. Income tax officer is against the law and facts on the file in as Much as had has gravely erred in computing total income Rs. 5442630/- against the return income Rs. 2221300/-.

2) The Assessment order dated 26/11/2018 under section 143 (3) r.w.s. 147 of the Act income tax act 1961 by the income tax officer is against the law and facts on the file in as much as he was not justified to the resort to the reassessment proceedings under section 148 and according the notice issued 148 and according the notice issued under section 148 of the act is bad in law.

3) That the assessment order dated 26/11/2018 passed under section 143 (3) r.w.s. 147 of the income tax act 1961 by the learned income tax officer, ward 21 (2) (3)

Mumbai is against the law and facts on the file in as much as he was not justified to add back a sum of Rs. 5221330/- Deposited by assessee from sales jeans a cash balance available with him, by responding the provisions of section 68 on the ground that genuineness and creditworthiness of the receipts had allegedly not proved.

4) The assessing officer Arithmetically not calculated cash Deposit and cash withdraw from the bank to ascertain the peak figure not justified.

5) The Assessing should have calculate the profit chargeable to the under section 44AD on peak figure (Credit Debit)

6) The Assessee craves to loave or ament or after any of the ground of appeal before or the time of hearing."

3. All the grounds raised by the assessee are interconnected and inter-related and relate to challenging the order of the ld. CIT(A) in upholding the additions made by the AO u/s 69A of the Act by re-opening the assessment of the assessee. Therefore, we have decided to adjudicate these grounds through the present consolidated order.

4. We have heard the Counsels for both the parties and carefully perused the material placed on record as well as the orders of the revenue authorities.

5. From the records, we notice that as per the facts of the present case, the assessee had deposited cash of Rs.52,21,330/- in his savings bank account with ICICI Bank Ltd. Since the return of income was not filed by the assessee, the cash deposited by the assessee remained unexplained. Thus, on the basis of reasons to believe, the reopening proceedings were initiated and after providing opportunity of hearing, the order of the assessment was passed u/s 143(3) r.w.s. 147 of the Act, thereby making additions of Rs.52,21,330/- on account of unexplained income u/s 69A of the Act.

5.1. Although the assessee challenged this order before the ld. CIT(A) but the appeal of the assessee was dismissed.

6. Now, before us the assessee has argued that he is in the business of manufacturing and trading of denim jeans under the name and style of M D Garments and the impugned cash deposited in his bank account represent his business receipts but to substantiate the same, the assessee could not place on record any documentary evidence. Further, the existence of the retail business of the assessee has not been proved either before us or before the revenue authorities. As much as, the assessee could not establish a single instance of purchase and sale. The assessee failed to furnish even a single invoice of purchase and sale during the course of assessment proceedings to substantiate the claim that he was doing retail business and moreover, no co-relation between the debit and credit entries in the bank account could be proved by the assessee.

6.1. It is well-settled that the onus of proving the source of deposit is cast upon the assessee and in the present case, the assessee has miserably failed to prove the same and, therefore, it was open to the revenue to hold that it is the undisclosed income of the assessee.

7. However, while going through the case file, we noticed an order of the Co-ordinate Bench of the ITAT in the assessee's own case for AY 2010-11 in ITA No. 335/Mum/2024, wherein also, identical facts were involved except for the variance in quantum.

8. Be that as it may, in the considered view of this Bench, ends of justice would be met in case the present matter is restored back to the file of the AO with a direction to consider the order passed by the Co-ordinate Bench of ITAT in assessee's own case for AY 2010-11 in ITA No. 335/Mum/2024, and also to provide one more opportunity to the assessee to substantiate its claim before the revenue authorities.

9. Therefore, with these directions, we restore the matter back to the file of the AO to decide it afresh in view of our above observations and at the same time, we direct the assessee not to seek any adjournment on frivolous grounds and remain co-operative during the course of proceedings. Before parting, we make it clear that our decision to restore the matter back to the file of the AO, shall, in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law.

10. In the result, appeal of the assessee is allowed for statistical purposes with no order as to costs.

Order pronounced in the Court on 19th November, 2024 at Mumbai.

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 19/11/2024

**S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai