

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H (SMC)" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3977/MUM/2024
(Assessment Year: 2017-2018)**

Manjul Chandrakant Garadia

24, Kailash Jyot No.1, Derasar Lane,
Ghatkopar East, Mumbai – 400077.

Maharashtra.

[PAN:AAAPG8800G]

..... **Appellant**

Income Tax Officer Ward 27(2)(2),

Room No.414, Tower No.6,
Vashi Railway Station Commercial Complex,
Vashi, Navi Mumbai – 400793
Maharashtra.

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Tarun Ghia

For the Respondent/Department : Shri Uodal Raj Singh

Date

Conclusion of hearing : 06.11.2024

Pronouncement of order : 28.11.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 27/06/2024, passed by the Additional/Joint Commissioner of Income Tax (A)-1, Kolkata, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 18/12/2019, passed under Section 143(3) of the Act for the Assessment Year 2017-2018.

2. The Assessee has raised following grounds of appeal :

"1. *On facts and circumstances of the case and in law, learned*

assessing officer has erred in adding to the total income the cash deposits of demonetised notes into his saving bank account to the extent of Rs.9,14,000/- made in the month of December, 2016. Learned Commissioner of Income Tax-Appeals has erred in confirming the addition.

2. *On facts and circumstances of the case and in law, learned assessing officer has erred in applying provisions of section 68 and treating unexplained cash credit the cash deposits of demonetised notes into his saving bank account to the extent of Rs.9,14,000/- made in the month of December, 2016. Learned Commissioner of Income Tax-Appeals has erred in confirming the addition.*
3. *On facts and circumstances of the case and in law, action of Ld Assessing Officer of the above addition of Rs.9,14,000/- is not tenable as the department had accepted the cash balance in audited balance sheet of the appellant as on 31.03.2016 Rs.56,97,493/-. Learned Commissioner of Income Tax-Appeals has erred in confirming the addition.*
4. *On facts and circumstance of the case and in law, action of Ld Assessing Officer of the above addition of Rs.9,14,000 is not tenable, as the said deposit was out of the opening cash balance of Rs.56,97,493/- and out of the said opening balance, Ld. Assessing Officer accepted as genuine cash deposit of Rs.27,96,000/- in bank account in November, 2023 and closing cash balance Rs.16,47,597/- as on 31.03.2017. Learned Commissioner of Income Tax Appeals has erred in confirming the addition.*
5. *On facts and circumstances of the case and in law, Ld. Assessing Officer had erred in adding Rs.90,300/- on the reasoning of undervaluation of closing stock. Learned Commissioner of Income Tax-Appeals has erred in confirming the addition.*
6. *On facts and circumstances of the case and in law, while making addition of Rs.90,300/- on the reasoning of undervaluation of stock, Ld Assessing Officer has disregarded the fact that appellant has been following consistently valuing stock by the same method and therefore for the same reason even the opening stock was undervalued. Learned Commissioner of Income Tax Appeals has erred in confirming the addition.*

7. *On facts and circumstances of the case, Ld. Assessing Officer had erred in adding Rs.1,23,117/- on account of notional interest in respect of interest free temporary loans given by the appellant to private limited company of his brother in law and to the wife of the appellant. Learned Commissioner of Income Tax Appeals has erred in confirming the addition "*

3. In view of the statement made by the Learned Authorised Representative for the Appellant, Ground No.5 and 6 raised in the present appeal are dismissed as being not pressed in view of the smallness of the amount involved. The facts relevant for adjudication of Ground No. 1 to 4 and 7 pressed by the Appellant, in brief, are as follows:

3.1 The Assessee, an individual resident, filed return of income for the Assessment Year 2017-18 declaring total income of INR.463,980/- on 05/09/2017. The case of the Appellant was selected for regular scrutiny. During the Assessment proceedings, the Assessing Officer noted that the Assessee was running a proprietorship under the name and style of M/s. Radhika Impex and during the relevant previous years was engaged in the business of importing and trading in dry fruits. The Assessing Officer noted that he Appellant had made cash deposits aggregating to INR.37,10,000/- in his Bank Account during demonetisation period (i.e. 09/11/2016 to 30/12/2016) details of which are as under:

S.No.	Dates	Amount (INR)
1	13/11/2016	15,00,000/-
2	15/11/2016	12,96,000/-
3	23/12/2016	4,67,000/-
4	27/12/2016	2,00,000/-
5	28/12/2016	53,500/-
6	29/12/2016	1,72,500/-
7	30/12/2016	21,000/-
Total		37,10,000/-

4 The Appellant was asked to provide explanation in relation to the above cash deposits. The Appellant explained that the Appellant had sufficient cash in hand to make the cash deposits in bank account

which was duly disclosed in the audited books of accounts. It was submitted that as on 31/03/2015 the Appellant had cash-in-hand of INR.51,96,594/- whereas as cash-in-hand with the Appellant as on 31/03/2016 was INR.56,97,493/-. The aforesaid cash-in-hand were duly disclosed in the Books of Accounts which were audited by the tax auditor. Vide letter, dated 13/11/2019, the Appellant submitted that the business transactions were generally undertaken by the Appellant through banking channel only and that the Appellant used to maintain cash-in-hand for the purpose of business opportunity. During the demonetisation period, the Appellant had deposited amount held as cash-in-hand in the Bank Account on different dates. It was contended by the Appellant, before the Assessing Officer that there was no bar in depositing the cash into Bank Account on different dates during the demonetisation period and the Appellant has deposited cash step by step keeping in view its own security and safety. The aforesaid explanation offered by the Appellant was rejected by the Assessing Officer observing that no prudent person would hold on to Specified Bank Notes (SBNs) in large numbers during the demonetisation period. The Assessing Officer was of the view that the Appellant should have deposited the SBNs on a single day as one-time deposit and not on different dates. Therefore, according to the Assessing Officer the conduct of the Appellant had failed to satisfy the 'Human Probability' test. Therefore, the Assessing Officer concluded that the deposits made from 23/12/2016 to 30/12/2016 aggregating to INR.9,14,000/- were in the nature of unexplained cash credits. Thus, invoking the provisions treating under Section 68 of the Act, the Assessing Officer made an addition of the said amount and held that the same would be chargeable to tax at the rate of 60% in terms of Section 115BBE of the Act. The Assessing Officer noted that the Appellant had granted interest-free loans of INR.10,00,000/- to Rayh Healthcare Pvt. Ltd., a private company belonging to his brother-in-law and had also

granted interest-free loans, at regular intervals, to his wife. Therefore, the Assessing Officer made an addition on account of disallowance of interest of INR.1,23,117/- holding the same to be proportionate interest cost on the aforesaid interest-free-loans incurred by the Appellant during the relevant previous year. Thus, the Assessing Officer made the aforesaid additions vide Assessment Order dated 18/12/2019, passed under Section 143(3) of the Act.

5 Being aggrieved, the Appellant preferred an appeal before the CIT(A) challenging the addition/disallowance made by the Assessing Officer. The CIT(A) upheld the addition of INR, 9,14,000/- made by the Assessing Officer under Section 68 of the Act in respect of cash despoits observing that despite opportunities having been granted, the Appellant had failed to offer any plausible explanation for holding cash-in-hand even though the major part of the business expenses were made through banking channels. The Appellant had failed to prove the source and nature of transaction and therefore failed to discharge the onus cast upon the Appellant under Section 69 of the Act. The CIT(A) also declined to grant any relief in relation to addition of INR.1,23,117/- made by the Assessing Officer in respect of proportionate interest cost of interest free loans granted by the Appellant. Thus, the CIT(A) dismissed the appeal vide order dated 27/06/2024.

6 Being aggrieved, the Appellant carried out the issue before the Tribunal on the grounds reproduced in paragraph 2 above.

7 We have heard both the sides and perused the materials on record.

Ground No. 1 to 4

8 On perusal of the audited financial statements pertaining to Financial Year 2015-16 relevant to Assessment Year 2016-17, we find that as per the audited financial statements of the Appellant, the Appellant

had cash-in-hand of INR.51,96,594/- and INR.56,97,493/- as on 31/03/2015 and 31/03/2016 respectfully. Neither the Assessing Officer nor the CIT(A) has disputed the fact that the aforesaid cash-in-hand was duly disclosed in the audited financial statements of the Appellant. The sole reason for disallowance made by the invocation had been in treating under Section 68 of the Act that the Assessee made disallowance of cash in the bank Accounts on different dates. We note that the Appellant had made deposits in his bank Account on seven occasions out of which the Assessing Officer had accepted deposits made on first two occasions and had made addition in respect of deposits made between 13/11/2016 to 30/12/2016 only. In our view, the additional in respect of cash deposits has been made by the Assessing Officer ignoring the clear material on record which shows sufficient cash-in-hand with the Appellant for making the cash despts. The Assessing Officer had made the disallowance on the basis of clear conjunctions and surmises without taking into consideration the duly audited financial statements placed on assessment records by the Appellant. We note that in appeal, the CIT(A) has confirmed the addition made by the Assessing Officer under Section 68 of the Act by placing reliance in provisions under Section 69A of the Act. In our view the approach adopted by the Assessing Officer and CIT(A) cannot be countenance. The authorities below have failed to bring on record any material to controvert the submissions made by the Appellant and/or to cast any doubt about the bonafides of the explanation furnished by the Appellant. Further, even the veracity of the duly audited financial statements of the relevant periods (showing availability of cash-in-hand) furnished by the Appellant has not been doubted by the Assessing Officer and the CIT(A). In the aforesaid facts and circumstances we hold that the addition of INR.9,14,000/- made in respect of cash deposits cannot be sustained and is, therefore, deleted. Ground No. 1 to 4 raised by the Appellant are allowed.

Ground No. 7

- 9 On perusal of order passed by the authorities below we find that during the assessment processing the Assessing Officer noted that the Appellant had paid interest INR.7,12,606/- on loans/overdrafts availed during the relevant previous year. On the other hand, the Appellant had advance interest-free loans of INR.10,00,000/- to Rayh Healthcare Pvt. Ltd. a private company belonging to his brother-in-law. Further, the Appellant had also granted interest free loans to his wife. Therefore, the Assessing Officer disallowed interest to the extent of INR.1,23,117/-. In appeal the CIT(A) declined to interfere with the disallowance made by the Assessing Officer, therefore being aggrieved, the Appellant has carried out the issue before the Tribunal.
- 10 During the course of hearing before us, the learned Authorised Representative for the Appellant submitted that the Appellant had sufficient own funds to grant interest free loans. In this regard, the Appellant relied upon the Capital Account for the Financial Year 2016-17 [placed at page 3 of the Paper Book]. On perusal of the same, we find that the Appellant had sufficient capital/funds to advanced interest-free loans. The balance of the proprietors capital account as on 01/04/2016 and 31/03/2017 stood at INR.17,97,149/- and INR.19,40,905/- respectively. Thus, the Appellant had sufficient interest free own funds available for granting interest free loans.
- 11 We further note that the Financial Expenses incurred by the Appellant during the relevant previous year pertained to overdraft facilities and bank charges. As per Schedule 16 forming part of Financial Statements of the Appellant for the relevant period reads as under:

Schedule `16' Financial Expenses

Bank Charges	69,677	2,95,591
Overdue Interest	-	1,66,531
Interest on Bank O/D	7,12,606	6,70,877
	7,82,283	11,32,999

From the above it is clear that the interest expenses were incurred in relation to the Bank Overdraft Facility. Therefore, there is no material on record to support the conclusion drawn by the Assessing Officer that interest-bearing borrowed funds were utilized by the Appellant for granting interest-free loans.

- 12 In view of the above, we hold that the addition of INR.1,23,117/- made on account of disallowance of interest cost cannot be sustained and is, therefore, deleted. Ground No. 7 raised by the Appellant is allowed.

Ground No. 5 and 6

- 13 In paragraph 3 above, Ground No. 5 and 6 have already been dismissed as being not pressed in view of the smallness of account.
- 14 In result, the appeal preferred by the Assessee is partly allowed.

Order pronounced on 28.11.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated :28.11.2024
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai