

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.1259/M/2024
Assessment Year: 2017-18**

Mr. Imran Ibrahim Badshah, M/s. Salman Collection Shop No.A/2, Ground Floor, Mohatta Mkt, Palton Road, Mumbai, Maharashtra-400 001 PAN: ABZPB1754E	Vs.	I.T.O. Ward 22(1)(1), Formally known as Income Tax Officer-17(2)(1), Mumbai, Income Tax Office, Piramal Chamber, Lower Parel, Mumbai, Maharashtra – 400 013
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bharat Kumar, Ld. A.R.
Revenue by : Shri V.K. Chaturvedi, Ld. Sr. D.R.

Date of Hearing : 09.12.2024
Date of Pronouncement : 09.12.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 22.01.2024, impugned herein, passed by the National Faceless Appeal Centre/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. In the instant case, as per information available in the AIMS module, the Assessee has deposited the amount of Rs.16,84,100/- as cash during the demonetization period i.e. 08.11.2016 to 31.12.2016 in his bank account maintained with SVC Co-operative Bank Ltd. , however

for the assessment year under consideration, failed to file his return of income. Consequently, the case of the Assessee was reopened u/s 147/148 of the Act by issuing the notice dated 23.09.2019 u/s 148 of the Act, in response to which the Assessee has filed his return of income along with computation of income.

2.1 On perusing the computation of income, it was seen by the Assessing Officer (AO) that the Assessee is engaged in the business of imitation jewellery and had declared his income of Rs.8,67,094/- the gross profit @ 8% of gross receipt of Rs.1,08,38,664/- u/s 44AD of the Act. The AO, on enquiry, revealed that the Assessee has furnished the computation of income for receipt of Rs.1,08,38,664/- u/s 44AD of the Act, however, could not furnish the balance receipt of Rs.16,81,802/- which remained un-explained and therefore the AO by considering the fact that the Assessee had deposited cash and cheques as appearing in the bank accounts, found the Assessee to be the owner of the money appearing in his bank accounts and therefore the provisions of section 69A of the Act is applicable. As the Assessee found to be the owner of the money, such money was not recorded in the books of account and its nature and source is not identifiable, consequently the AO treated the amount of Rs.16,81,802/- as unexplained and added u/s 69A of the Act.

3. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner and claimed that he had declared his total business receipts of Rs.1,08,38,664/- in the return filed on presumptive basis u/s 44AD of the Act, while the AO considered the same at Rs.1,25,20,466/- based on the bank entries and taxed the difference of Rs.16,81,802/- as unexplained money u/s 69A of the Act. The cash deposited in the bank was savings out of the profits earned from the earlier years and household savings of the family, which was deposited in the bank during the demonetization period. The Assessee also filed its reply adted 02.01.2024 through e-proceedings, which is reproduced below: -

"Your honour the appellant is a small time businessman who has been filing his income tax return u/s 44AD wherein the maintaining of book of accounts is not mandatory so from where can he produce documentary evidences to substantiate his claim when the income tax law permits him for not maintaining books of accounts,

Section 44AD was introduced in the Income-tax Act, 1961 with the purpose to ease the burden of small taxpayers and make them more tax compliant with minimal compliances.

If the income is declared under section 44AD of the Income-tax Act on presumptive basis, then the assess is not required to maintain books of account accordingly the assessee has no liability to maintain the books of account as per the provision of the Act.

The AO demands to produce the books of account thereof stands invalid therefore the additions made by him should be quashed. The Hon'ble Allahabad High Court in the case of CIT-I, Kanpur V/s Nitin Sani (2012) had decided the assessee has no liability to maintain the books of account under section 44AD and accordingly the additions made by the AO was quashed on this ground."

4. The Ld. Commissioner though considered the submissions of the Assessee, however, found the same as non-satisfactory and ultimately affirmed the addition of Rs.16,81,802/- by observing and holding as under:

"The appellant was failed to file satisfactory submission w.r.t. above said balance receipt of Rs.16,81,802/- Further, the A.O during assessment proceedings has already allowed gross receipts of the appellant under section 44AD of the I.T. Act, 1961 although the appellant failed to file original return of income which thereby means that the AO has given credit to the submission made by the appellant that the cash deposits form a part of his turnover in spite of the failure of the appellant to file return originally So it is incumbent on the appellant on the appellant to explain the cash deposits in entirety but the appellant neither explained the difference amount of Rs. 16,81,802/- during the assessment proceedings nor during appellate proceedings. Therefore, it can be safely assumed that the appellant has nothing to explain the sources of said difference of Rs. 16,81,802/- Considering all the facts and the circumstances of the case no interference with the assessment order of the AO is called for. Therefore, I find no infirmity in the assessment order passed by the assessing officer u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 dated 23.12.2019."

5. The Assessee, being aggrieved with the impugned order, is in appeal before this Court and reiterated his claim made before the authorities below. On the contrary the Ld. DR refuted the claim of the Assessee by supporting the impugned order.

6. Heard the parties and perused the material available on record. Though it is a fact that the total deposits made in the bank account maintained with SVC Co-operative Bank Ltd. were Rs.1,25,20,466/- but the Assessee has shown the amount of Rs.1,08,38,664/- as gross receipt and therefore the Assessee has claimed before the authorities below that the amount of Rs.16,81,802/- deposited by the Assessee in his bank account was from the savings out of the profits earned from the earlier years and the household savings of the family, which was deposited in the bank during the demonetization period. The AO and the Ld. Commissioner considering the fact that no details were furnished by the Assessee, respectively made and affirmed the addition of Rs.16,81,802/- u/s 69A of the Act. This Court has given thoughtful consideration to the rival claims of the parties and determination made by the authorities below. Admittedly the Assessee has not carried out any other business except the imitation jewellery. Even otherwise no material is available on record by which it can be construed that the Assessee has earned any other income other than from the admitted business. Thus, considering the peculiar facts and circumstances in totality, in the considered opinion of this Court , it would be appropriate, as both the parties have also agreed in the open court, to treat the amount of Rs.16,81,802/- also as business receipts and therefore the same can be subjected to the profit @ 8 % of the said amount Rs.16,81,802/-, which can be added as income of the Assessee, hence the AO is directed to consider/apply the profit @ 8% of Rs.16,81,802/- add the same in the income of the Assessee. **Thus, the AO is ordered accordingly.**

7. In the result, the appeal filed by the Assessee stands **partly allowed.**

Order pronounced in the open court on 09.12.2024.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.