

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 2840/MUM/2024
Assessment Year: 2018-19**

ACIT,
R. No. 511, 5th Floor,
Piramal Chambers,
Mumbai-400012.

Appellant

Vs. Keshriya Co-op. Credit Society Ltd.,
22/24 1st Floor, Tell Gali, Vithal Wadi,
Mumbai-400 002.

**PAN NO. AABAK 7531 Q
Respondent**

Assessee by : Mr. Jayant R. Bhatt, CA
Revenue by : Mr. Biswanath Das, CIT-DR

Date of Hearing : 10/12/2024
Date of pronouncement : 20/12/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 19.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:

- i. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.*



- 44,74,00,000/-on account unexplained cash expenditure u/s 69C of the Act, without considering the facts that the assessee had failed to file the complete reply regarding sources and utilization of huge cash withdrawal during assessment proceeding, whereas the appellants had been provided sufficient opportunities of hearing during the assessment proceedings & principles of natural justice had been duly followed by AO?"
- ii. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 44,74,00,000/-on account of unexplained cash expenditure u/s 69C of the Act, whereas the assessee had not cleared that whether, huge withdrawal spends or invested in cash for the purpose of the society?"
- iii. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 44,74,00,000/-on account of unexplained cash expenditure u/s 69C of the Act, without considering the fact that during the assessment proceeding as well as remand proceeding the assessee did not justify the purpose of such a huge amount was withdrawn and to whom the same was paid or given, whereas objective of the Co-operative Society's form is for lending to the members at lower rate of interest?"
- iv. (iv) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting total cash withdrawals of Rs. 21,66,64,625/- instead of Rs. 44,74,14,625/- as per reconciliation of entries appeared in Form 26AS & SFT data furnished by assessee during remand proceedings and due to non comment by AO merely assuming that, AO has nothing adverse to say about such reconciliation?"
- v. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in directing to withdraw the penalty proceeding initiated u/s 271AAC of the Act, whereas the AO has established in his order that the assessee failed to explain the purpose of cash withdrawal and has made addition u/s 69C of the IT Act, 1961?"

2. Briefly stated, facts of the case are that the assessee, a cooperative credit society, filed its return of income for the captioned assessment year on 31.10.2018. The return of income filed by the assessee was selected for limited scrutiny assessment for examining/verifying high value cash withdrawals. During the course of the assessment proceedings, the Assessing Officer asked the assessee to explain source and utilization of cash withdrawal of Rs.44.74 crores. The Assessing Officer also asked the assessee to



file complete details of members, copy of memorandum of the society, rules and regulations of the society, registration document of the society, name, address, PAN, Aadhar number and mobile number of the members and furnish the deposits and withdrawal made by each member in cash and electronic mode. But despite issuing various notices, the assessee filed part reply only. The Assessing Officer was of the view that amount of Rs.44.74 crores spent in cash was not for the purpose of the society. In view of the non-compliance on the part of the assessee, the Assessing Officer treated cash withdrawal of Rs.44.74 crores as income of the assessee u/s 69C of the Act as unexplained expenditure, liable for higher rate of taxation u/s 115BBE(1)(b) of the Act.

3. On further appeal, the assessee explained before the Id CIT(A) , the reasons for the part/no compliance before the Assessing Officer as due to on-going Covid Pandemic and consequent lockdown. The Ld. CIT(A) in view of reasons stated admitted the additional evidence filed by the assessee and called for a remand report from the Assessing Officer. After going through the remand report of the Assessing Officer and the rejoinder of the assessee, the Ld. CIT(A) deleted the addition observing as under:

“8.2.4 I have carefully perused the facts on record, the report of the AO as well as submissions of the appellant. It is clear and not disputed by the AO also that the appellant had provided details of its members and their KYCs/Aadhar details. The deposits in banks of the appellant were via bank/cheque transfers as has been stated by the AO himself and source of such deposits are not under dispute.”



The first dispute is regarding the quantum of cash withdrawals. Despite the appellaht having furnished the bank statements, cash & bank summary during the assessment and also the reconciliation in remand proceedings (the AO had been sent, by this office, submissions dated 12/05/2022 of the appellant along with the enclosures therein), the AO has not made any comments about such reconciliation & hence, it can be safely assumed that the AO nothing adverse to say about such reconciliation

Considering the fact that the total cash withdrawals in bank statements are only of Rs. 21.66.64,625/- instead of Rs. 44,74,14,625/- as mentioned in assessment order & the AO has not brought anything contrary on record, the figure of cash withdrawals is hereby accepted at Rs. 21,66,64,625/-.

8.2.5 Coming to the reasons and explanations regarding such cash withdrawals. the appellant stated that the same were for the purpose of making payment to or on behalf of its members only. The AO. in response, made very generalized and sweeping statements stating that the appellant had violated the principles of being a cooperative institution. The AO has not taken cognizance of a few facts viz. the appellant is registered as a cooperative credit society under the Maharashtra Cooperative Societies Act (MCSA) 1960, it has to get its accounts audited by the auditor empanelled by the Registrar of Cooperative Societies, Maharashtra and its accounts are subject to filing with and inspection by such Registrar in terms of section 81 to 90 of the MCSA 1960. No case of fraud or irregularity in accounts has been brought out by the AO either from the books of accounts of the appellant or from any inquiry with or by the Registrar of Cooperative Societies, Maharashtra.

Once the appellant furnished its bank statements, bank summary, cash summary & the list of its members with their KYC, it was open to the AO to test his suspicions by making inquiries directly with members and with the Registrar, Cooperative Societies, Maharashtra but the AO merely made vague statements in his remand report even after availing about 25 months in sending the remand report. The short time gap between cash withdrawals alone cannot lead to additions u/s 69C of the Act.

Considering the facts of the case and nothing contrary on record, the additions of Rs. 44,74,00,000/- made by the AO u/s 69C us 115BBE of the Act are hereby deleted Ground no. 5, 6, 7 & 8 of appeal are allowed.”

4. We have heard rival submission the parties and perused the relevant material on record. Before us, the Ld. Departmental Representative (DR) submitted that source of investment has not been examined by the Ld. CIT(A). Further, he submitted that merely



for the reason that the Assessing Officer has not examined the reconciliation of the quantum of fresh withdrawal as well as purpose of the withdrawal, the Ld. CIT(A) cannot delete the addition. He submitted that the Ld. CIT(A) was having co-terminus power of the Assessing Officer, therefore, he himself should have carried out the relevant inquiry and decided the issue on merit. Accordingly, he submitted that the order of the Ld. CIT(A) might be set aside and matter may be restored back to the Assessing Officer.

4.1 On the contrary, the Ld. counsel for the assessee relied on the order of the Ld. CIT(A) and submitted that no addition could have been made for cash withdrawal as the source of the same was already explained by way of credit side appearing in the books of accounts of the assessee.

4.2 We have heard rival submission of the parties. The main issue in dispute in the instant appeal is whether the addition of Rs.44.74 crores deleted by the Ld. CIT(A) is justified or not. We don't agree with the finding of the ld CIT(A) for two reasons. **Firstly**, the Ld. CIT(A) has held that deposits in the bank account were mainly via bank/cheque transfer and therefore source of such deposits is not under dispute. During the course of hearing before us both the parties were asked to file copy of the remand report so as to verify whether source of deposit was examined by the Assessing Officer or not. Both the parties did not file any such evidence as to whether the source of cash deposits corresponding to withdrawal of



Rs.44.74 crores was examined by the Assessing Officer. **Secondly**, on the issue of the reconciliation of the quantum of the cash withdrawal, whether it is Rs.21,66,64,625/- as per the claim of the assessee made on the basis of the Form No. 26AS or Rs.44,74,14,625/- as mentioned by the Assessing Officer in the assessment order, the Ld. CIT(A) has accepted the contention of the assessee only for the reason that nothing contrary was brought on record by the Assessing Officer. We are of the opinion that no independent inquiry has been conducted by the Ld. CIT(A) for reconciliation of the quantum of addition. Further, **thirdly**, the Ld. CIT(A) has regarding utilization of the cash withdrawal for the purpose of objects of the society has accepted the contention of the assessee mainly for the reason that details in respect of memorandum of society, bank statement, bank summary, cash summary and list of members along with KYC was submitted during the remand proceedings and the Assessing Officer did not made any inquiry and thus he accepted the contention of the assessee. We find that the Hon'ble Delhi High Court in the case of **Jansampark Advertising and Marketing P. Ltd. in ITA 525/2014 held** that if the AO fails in making any inquiry then it is duty of the Ld. CIT(A) or the ITAT to carry out inquiry and ascertain true facts of the matter and not to allow appeal of the assessee merely for the reason that AO has not carried out the inquiry. The relevant finding of the Hon'ble Delhi High Court is reproduced as under:



“38. *The provision of appeal, before the CIT (Appeals) and then before the ITAT, is made more as a check on the abuse of power and authority by the AO. Whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the two appellate authorities above are also forums for fact-finding, in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shift to the door of the said appellate authority. For such purposes, we only need to point out one step in the procedure in appeal as prescribed in Section 250 of the Income Tax Act wherein, besides it being obligatory for the right of hearing to be afforded not only to the assessee but also the AO, the first appellate authority is given the liberty to make, or cause to be made, "further inquiry", in terms of sub-section (4) which reads as under:—*

"The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)."

39. *The further inquiry envisaged under Section 250(4) quoted above is generally by calling what is known as "remand report". The purpose of this enabling clause is essentially to ensure that the matter of assessment reaches finality with all the requisite facts found. The assessment proceedings re-opened on the basis of preliminary satisfaction that some part of the income has escaped assessment, particularly when some unexplained credit entries have come to the notice (as in Section 68), cannot conclude, save and except by reaching satisfaction on the touchstone of the three tests mentioned earlier; viz. the identity of the third party making the payment, its creditworthiness and genuineness of the transaction. Whilst it is true that the assessee cannot be called upon to adduce conclusive proof on all these three questions, it is nonetheless legitimate expectation of the process that he would bring in some proof so as to discharge the initial burden placed on him. Since Section 68 itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not satisfactory, it naturally follows that the material submitted by the assessee with his explanation must itself be wholesome or not untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party.*

40. *The CIT (Appeals), as also the ITAT, in the case at hand, in our view, unjustifiably criticized the AO for not having confronted the assessee with the facts regarding return of some of the summons under Section 131 or not having given opportunity for the identity of all the share applicants to be properly established. The order sheet entries taken note of in the order of CIT (Appeals) seem to indicate otherwise. The order of CIT (Appeals), which was confirmed by ITAT in the second appeal, does not demonstrate as to on the basis of which material it had been concluded that the genuineness of the*



transactions had been duly established. There is virtually no discussion in the said orders on such score, except for vague description of the material submitted by the assessee at the appellate stage. Whilst it does appear that the time given to the assessee for proving the identity of the third party was too short, and further that it is probably not always possible for the assessee placed in such situation to be able to enforce the physical attendance of such third party (who, in the case of share applicants vis-à-vis a company, would be individuals at large and may not be even in direct or personal contact), the curtains on such exercise at verification may not be drawn and adverse inferences reached only on the basis of returning undelivered of the summonses under Section 131. Conversely, with doubts as to the genuineness of some of the parties persisting on account of non- delivery of the processes, the initial burden on the assessee to adduce proof of identity cannot be treated as discharged.

41. We are inclined to agree with the CIT (Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.

42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld."

4.3 Respectfully, following the finding of the Hon'ble Delhi High Court (supra), we feel it appropriate to set aside the finding of the Ld. CIT(A) and restore the matter back to the Assessing Officer for (i) examining the source of the cash deposits in the bank account of the assessee society, (ii) reconciliation of the quantum of cash



deposits from the bank statement (iii) examine/verify the end use of the cash withdrawal whether same was for the purpose of the objects of the society or not. After verification of the contention of the assessee along with the evidences, the Assessing Officer shall adjudicate the issue in dispute in accordance with law. The grounds of appeal of the Revenue are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 20/12/2024.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 20/12/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai