

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "K(SMC)" Bench, Mumbai.

Before Shri Rahul Chaudhary(JM) &  
Shri Omkareshwar Chidara (AM)

ITA No. 902/MUM/2025 (Assessment Year : 2013-14)

Sunilkumar Subhash Balwada Flat No. 3/P Janakpuri Zenith Staff Co Boisat Boisar, Palghar Maharashtra-401 504.	Vs.	ITO Ward 1 Palghar
PAN : AMUPB9065G		
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Bhagirath Ramawat
Date of Hearing	:	06/10/2025
Date of pronouncement	:	31/10/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

The Ld. AO has made addition of Rs. 25,71,658/- while passing assessment in the above appeal case as the appellant failed to produce any documentary evidence substantiating the sources of amount used for payment of credit card bill. Since the onus of proof was not discharged, additions were made by the Ld. AO. From the assessment order, it is seen that the appellant submitted a statement of income in which he has shown a gross turnover of Rs. 36 lakh and declared total 'income from business' as a percentage of the turnover under section 44AD of the Income Tax Act. As the appellant did not produce any details with regard to nature of business and the sources of payment of credit card bill, the Ld. AO made addition has above. Ld. CIT(A) confirmed the addition stating that the bank statement furnished by the appellant serves no purpose in establishing the nature and sources of the payments made to the credit card bill. Ld. CIT(A) has noted that the appellant received various payments from one Mr. Vishal Kannan Mudaliya before making payments to credit card bill. Ld. CIT(A) held that

the appellant has not explained nature and purpose of these transactions and hence addition was confirmed made by the Ld. AO. Aggrieved by this addition, appellant filed appeal before the ITAT with following grounds of appeal :-

Ground No. 1: Unexplained Source of Income Rs. 25,71,659/-:

The learned assessing officer has grossly erred is not appreciating the facts that the amount of Rs. 25,71,659/- is paid through credit card shall be treated as turnover u/s 44AD of the Income tax act and as the assessee fall under section 44AD, the additional documentary evidence shall not be called for as per the provisions of section 44AA of the Income Tax Act.

Additional Ground No. 1: Assessment order passed and Addition made of Rs. 25,71,658/- was bad-in-law:

On the fact and circumstances of the case, the Learned Assessing Officer has erred in making the addition of Rs. 25,71,658/- as it was mentioned in the Assessment order that the "addition has been made as per Para 4.5 above", however, the said paragraph was not there/available in the Assessment Order or Show-Cause Notice. Further, it is also evident that the section under which the addition has been made was also not mentioned in the said Assessment order and therefore, as it clearly evident from the assessment order that it lacks clear references to the specific sections under which the addition is made, it raises doubts about the intention and rationale behind the additions. Such an order can no longer be considered a "speaking order and provides room to surmises. Such an order cannot be held to be valid in the eyes of law.

Additional Ground No. 2: Assessment order passed was also time barred order:

On the fact and circumstances of the case, the Assessment order passed by the Learned Assessing Officer was beyond the period of limitation as provided u/s. 153 of the Income Tax Act, 1961 and hence the same is time barred and liable to be declared as null and void and considered as bad-in-law.

2. Before the ITAT, none was present on behalf of the appellant but a paper book was filed as per which appellant is a small businessman and purchase items and sold the same with the value addition of 5 to 15% in the open market. The AO issued a notice after almost six years and the appellant is a small businessman who has not maintained books of account and hence opted for provisions of section 44AD of the Income Tax Act. It was mentioned that the payment of Rs. 25.71 lakh from credit card for purchasing the goods and it should be considered as turnover under section 44AD of the Act. It was also mentioned in the written submission

that the Income Tax Act mandates maintenance of books of account only when the turnover of the business exceeds certain limits whereas in the present case, turnover is very small and tried to explain with one or two examples of credit relating to some small business transaction. Hence, the turnover cannot be treated as income and what that appellant gets is a small percentage of turnover.

3. The Ld. DR has stated that the appellant did not prove any existence of business and hence he has to prove source of all payments through credit card failing which the same was correctly added by the AO and the same has to be upheld.

4. Heard Ld. DR. After going through the submissions of both sides and hearing before ITAT, the Bench decided that the appellant was not able to explain sources with evidence at the time of assessment proceedings and appeal proceedings. But, since the appellant appears to be a small businessman, the Bench decided to give one more opportunity to the appellant to adduce the evidence relating to sources of credit card payment. In view of the same, the issue is remitted back to the file of Ld. CIT(A). The Ld. CIT(A) is directed to take all evidences relating to receipts and payments and pass an order afresh.

5. The appeal of appellant is allowed for statistical purposes.

Order pronounced in the open Court on 31/10/2025.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT

4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

*PS*

BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai