



IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.694/Mum./2009
(Assessment Year : 2005-06)

Shri Mitesh K. Shah
A/72, Ashiana Tower
Sodawal Lane, Borivali (W)
Mumbai 400 092
PAN – ADDPJ8448B

..... Appellant

v/s

Income Tax Officer
Ward-25(2)(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Shrikant Namdeo

Date of Hearing – 15.11.2016

Date of Order – 30.11.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal by the assessee is directed against the order dated 14th November 2008, passed by the learned Commissioner (Appeals)-XXV, Mumbai, for the assessment year 2005-06.

2. In ground no.1, assessee has challenged addition of ₹ 2,39,32,870.

3. Brief facts are, the assessee an individual filed his return of income on 22nd September 2006, declaring total income of ₹ 1,39,820.

The return of income filed by the assessee was selected for scrutiny. As observed by the Assessing Officer, in spite of notices being issued under section 143(2) and 142(1), along with the questionnaire, neither the assessee nor any other person authorised by him appeared and complied to the queries raised. On the basis of AIR information, it was found by the Assessing Officer that in accounts held jointly as well as in his single name in Mandavi Co-operative Bank Ltd., the assessee had made total cash deposits of ₹ 239,32,973. To make the assessee explain the source of such cash deposits, the Assessing Officer not only issued notices but also summons under section 131 of the Act, however, none of these notices or summons evoked any response from the assessee. Therefore, the Assessing Officer proceeded to complete the assessment ex-parte to the best of his judgment in terms of section 144. On the basis of information available on record, the Assessing Officer found that in the relevant previous year, assessee had made cash deposits of ₹ 2,39,32,873 in different bank accounts as the assessee failed to explain the source of such cash deposits the Assessing Officer treating the cash deposits in the bank account as unexplained cash credit under section 68 added back to the income of the assessee. Being aggrieved of such addition, assessee preferred appeal before the learned Commissioner (Appeals).

4. The learned Commissioner (Appeals), after considering the submissions of the assessee, in the context of facts and material on record, found that, though, the assessee accepted that the bank accounts belong to him, however, his claim that cash deposits made in the bank account were given to him by his clients to whom he issued cheque / pay orders were not backed by corroborative evidence. She observed, even after repeated query made by her to disclose the name, address and confirmation from the persons from whom assessee claimed to have received the cash deposits, the assessee did not furnish any information on some plea or the other. The learned Commissioner (Appeals), therefore, finding that the assessee has not explained the source of cash deposits through any cogent evidence confirmed the addition made by the Assessing Officer, though, not under section 68 but under sections 69, 69A and 69B of the Act.

5. When the appeal was called for hearing, no one appeared for the assessee. On a perusal of the order sheet entries, it is noted that, though, the hearing of appeal is going on since January 2011, the assessee is repeatedly seeking adjournment on some plea or other. It is also pertinent to mention, this appeal of the assessee was earlier decided ex-parte on the failure of the assessee to appear on the date of hearing, However, subsequently, on the request of the assessee, the order disposing of the assessee's appeal was recalled. Still, as is

evident, there is no change in the attitude of the assessee in pursuing his appeal diligently. Thus, it is clear that the assessee is not interested in pursuing his appeal. As it is an old appeal of the year 2009, we proceed to dispose off the appeal ex-parte, qua the assessee, after hearing the learned Departmental Representative.

6. We have heard the learned Departmental Representative and perused the material on record. As could be seen from the assessment order, the Assessing Officer on the basis of information available on record, has found certain cash deposits in bank accounts held by the assessee. As the assessee did not appear to explain the source of cash deposits before the Assessing Officer, he treated cash deposit as income of the assessee. Before the learned Commissioner (Appeals), as it appears from the appeal order, though, the assessee accepted the fact that the bank accounts where cash deposits were made belong to him, however, he could not properly explain the source of cash deposit. Therefore, learned Commissioner (Appeals) confirmed the addition. Before us also, the assessee has neither appeared nor produced any material to explain the source of cash deposits in the concerned bank accounts. Therefore, in the absence of any evidence produced by the assessee, the cash deposits made in the bank account have to be held as assessee's income, therefore, we do not find any

infirmity in the order of the learned Commissioner (Appeals) in confirming the addition. Ground no.1, is dismissed.

7. In grounds no.2 and 3, assessee has challenged the validity of the assessment order passed under section 144 without fulfilling the condition of the said provisions as well as the principle of natural justice. As could be seen from the grounds raised, the assessee's grievance is the learned Commissioner (Appeals) while deciding the appeal has not adjudicated these issues raised by the assessee. On a perusal of the impugned order of the learned Commissioner (Appeals), it appears to us, though, the assessee had raised grounds on the aforesaid issues, however, at the time of hearing, the merits of the additions were only argued and these issues were not specifically argued by the assessee. The assessee has failed to bring any material on record to demonstrate that before the first appellate authority, the ground raised on the validity of assessment order passed under section 144 as well as failure on the part of the Assessing Officer to observe principles of natural justice were specifically argued but not adjudicated. Therefore, in the absence of any specific argument on these issues by the assessee, there was no occasion for the learned Commissioner (Appeals) to adjudicate these issues. Therefore, we do not find any merit in grounds no.2 and 3, hence, dismiss the same.

8. Ground no.4, is on levy of interest under section 234B, 234C and 234D.

9. Levy of interest under the aforesaid provisions being mandatory and consequential, we do not find any reason to interfere with the same. Accordingly, this ground is dismissed.

10. In the result, appeal is dismissed.

Order pronounced in the open Court on 30.11.2016

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.11.2016

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai