

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A” BENCH : BANGALORE**

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.1818/Bang/2019
Assessment Year : 2016-17

Shri. Mohammed Sharaq, No.31/1, 3 rd Cross, 8 th Main, CCHS Layout, 1 st Block, Jayanagar, Bengaluru-560 011. PAN : AUOPM 6300 P	Vs.	Income-tax Officer, Ward-7[2][1], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	05.04.2021
Date of Pronouncement	:	07.04.2021

ORDER

Per Shri. Chandra Poojari, AM:

This appeal by the assessee directed against the order of CIT(A) dated 22.05.2019. The assessee raised the following grounds:

1. *The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in upholding the addition of Rs.5,51,512/- as income u/s.44AD of the Act by estimating 15% of the excess cash deposits to the extent of Rs.36,76,750/- which has been treated as undisclosed business turnover under appeal under the facts and in the circumstances of the appellant's case.*
- 2.1 *The learned CIT[A] ought to have appreciated that the cash deposits to the extent of Rs. 36,76,750/- were made out of earlier cash withdrawals from the bank account and*

hence, the same cannot be regarded as undisclosed business turnover and therefore, the addition of Rs. 5,51,512/- ought not to have been confirmed.

- 3. The learned CIT[A] is not justified in upholding the addition of Rs.9,01,350/- as income u/s.44AD of the Act by estimating 15% of the alleged excess cheque deposits to the extent of Rs.60,09,000/- as compared to the turnover declared by the appellant, which has been treated as undisclosed turnover of the appellant under the facts and in the circumstances of the appellant's case.*
- 4. The learned CIT[A] failed to appreciate that even though there was a total receipt through the bank account via cheques of Rs. 87,34,000/-, there were withdrawals through the bank aggregating to Rs. 1,26,91,770/- and many of the amounts received in cheques were refunded to the customers on account of the cancellation of the transactions and the same cannot be regarded as income.*
- 5.1 The learned CIT[A] failed to appreciate that the appellant was a old car dealer and broker and used to purchase and sell the old cars to the prospective customers, in course of which he used to collect the cost of such cars by way of cash / cheque and the same were deposited and thereafter withdrawn and paid by cash or by cheque to the customers when the deals did not go through.*
- 5.2 The learned CIT[A] failed to appreciate that the appellant had taken only the net of the turnover after deducting the refunds made to the customers when the deals did not go through and consequently, he ought to have accepted the turnover reported by the appellant under the facts and in the circumstances of the appellant's case.*
- 6. Without prejudice to the above the additions made by the A.O. and sustained by the learned CIT[A] is highly excessive and deserves to be reduced substantially.*
- 7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

- 2. The assessee filed the following additional ground:*

“The Learned Income Tax Officer, Ward 7(2)(1) Bangalore ought not to have passed the impugned order u/s 143(3) of the Income Tax Act, 1961 in the manner in which it was done. The Learned Income Tax Officer, Ward 7(2)(1) Bangalore ought to have accepted the declared income by the appellant. The Learned Income Tax Officer has wrongly considered unexplained cash deposits. The Learned Income Tax Officer ought to have appreciated some of the payments have been passed through the bank in respect of cash received from prospective buyers and others wherever deal has not gone through. The learned Income Tax Officer considered total receipt through bank cheques etc of Rs.873 4000 but failed to consider the total withdrawals of Rs.12691770 through banks. The basis of estimating the turnover for the purpose of estimating income u/s 44AD is unreasonable; unrealistic opposed to natural justice. The Learned Income Tax Officer has failed to appreciate and analyse the bank account of cash and cheque deposits submitted during the course of assessment proceeding. For the above facts of the case and grounds of appeal and the ground that may be urged at the time of hearing the appeal the addition made kindly be deleted in full.”

3. The assessee filed petition to additional ground stating that inadvertently this ground was not raised in earlier occasion and which do not require any investigation of any facts otherwise on the records of the Department and also pure question of law and prayed to admit the additional ground placing reliance on the judgment of Supreme Court in the case of NTPC Ltd., Vs. CIT 229 ITR 383 and also judgment of Karnataka High Court in the case of Gundathur Thimmappa And Sons Vs. CIT 70 ITR 70. The DR did not put any serious objections for admission of additional grounds. After hearing both the parties, we are of the opinion that the grounds raised by assessee do not require any investigation of facts and by placing reliance on judgment of Supreme Court in the case of NTPC Ltd., we are inclined to admit the additional grounds for adjudication.

4. The facts of the case are that the assessee is engaged in business of buying and selling of old cars and declared income of Rs.408870/- under

section 44AD of the Income Tax Act, 1961 (hereinafter called 'the Act') on turnover of Rs.27.25 lakhs and the assessee not maintained any books of account. The assessee's case was selected for limited scrutiny to see whether cash deposit has been made from disclosed sources. The AO while carrying out the scrutiny found that the assessee has received a sum of Rs.87.34 lakhs by way of cheques and Rs.111.06 lakhs by way of cash in his ICICI Bank account during the year. The assessee explained that his total turnover was only Rs.27.25 lakhs which is arrived at after taking into account total receipts in the form of cash and cheques and amount refunded in the event of unsuccessful deal. But the assessee could only submit the list of persons from whom cash has been received amounting to Rs.74,29,800/-. Therefore, the AO treated the balance amount of Rs.36,76,750/- (Rs.111.06 lakhs – Rs.74,29,800/-) as undisclosed business turnover of the assessee and applied profit rate of 15% to determine income of Rs.5,51,512/-. Similarly, the AO calculated income of Rs.9,01,350/- at the rate of 15% on the turnover received by cheque (Rs.87.34 lakhs – Rs.27.25 lakhs) where the declared turnover was Rs.27.25 lakhs by the assessee.

5. The CIT(A) observed that assessee has shown a total turnover of Rs 27,25,0001- for the year and declared income of Rs 4,08,8701- u/s 44AD of the Act. Thus, the profit rate declared is 15% of the turnover. No books of account were maintained. As regards deposit of Rs 87.34 lakhs by way of cheque and Rs 111.06 lakhs by cash into his Bank account, it is explained that the same are taken into account and the net receipt of Rs 27.25 lakhs has been arrived at. However, the assessee could furnish the list of persons for cash receipt to the extent of Rs 74,29,800/- only: The source of cash deposit amounting to Rs- 36,76,750/- remained unexplained. As against the total receipt of Rs 87.34 lakhs by cheque, a turnover of Rs 27.25 lakhs only has

been declared in the return of income. The explanation that the balance receipt amount has been refunded back to the persons from whom the same was received, is not supported by details and evidence. It is also observed that against a total receipt of Rs.198.4 lakhs (Rs.111.06 lakhs + Rs.87.34 lakhs) the assessee has declared only turnover of Rs.27.25 lakhs which is a mere 13.73%. It cannot be believed that 87% of the receipt was refunded back due to unsuccessful deals, specifically when there are no details or evidence to support this claim. The claim of the appellant that the withdrawal by cheque was not considered by the AO is also not substantiated with any evidence that the same was submitted before the AO but not considered. Further, it is observed that unless all the deposits are reconciled with the withdrawal by linking the specific transactions showing the source of credit and the destination of withdrawal are the same; the mere claim to adjust all the withdrawals as refund against the deposits in the account cannot be accepted as such. It is already accepted that the assessee could not even furnish the complete list of persons for the receipt of cash in its Bank account. In view of above, the contentions of the appellant cannot be accepted. The AO has already accepted the cash deposit for which the assessee could furnish a list of persons and the AO has also adjusted the turnover declared by the assessee in his return against the total receipt in cheque as per Bank account. Therefore, it is observed that the approach of the AO has been reasonable and the additions made by the AO are found to be justified. Hence, the addition of Rs 14,52,862/- by the AO is upheld by the CIT(A).

6. Against this, assessee is in appeal before us. The learned AR submitted that CIT(A) is not justified in confirming the addition of Rs.5,51,512/- as income under section 44AD of the Act estimating the income at 15% of cash deposit to the tune of Rs.36,76,750/- as undisclosed business turnover of

assessee. According to learned AR, this cash deposit was from earlier cash withdrawals from bank account. Learned DR submitted that the assessee has not established that earlier cash withdrawals was available to assessee being so, no credit to be given to the earlier cash withdrawals.

7. We have heard both the parties and perused the material on record. In the present case, assessee deposited Rs.111.06 lakhs into bank account. Assessee gave a list of persons from whom cash has been received to the tune of Rs.74,29,800/-. The assessee has claimed before the lower authority that earlier cash deposit was available to assessee to redeposit into account. Therefore, it is the duty of the assessee to establish that earlier cash was not spent by the assessee and is kept with him to redeposit it into bank account. In the absence of such evidence to show that the assessee kept the earlier cash withdrawals with him as idle, it is not possible to give any benefit of earlier withdrawals as available to assessee to redeposit into bank account. Accordingly, this ground of appeal is dismissed.

8. With regard to next ground of appeal of addition of Rs.90,350/- and estimating the income at 15% of cheque deposit to bank account, the learned AR submitted that the assessee received Rs.87.34 lakhs by cheque and there was withdrawals of Rs.126.9 lakh for refund of amount to various customers on cancellation of transaction. Being so, these cheque deposit into bank account cannot be treated as income of the assessee. The nature of assessee's business is such that in the course of business, the assessee receives cheques from various prospective customers and the same were deposited to bank account and when the deal was not materialized, it was refunded. Being so, the total amount of cheques deposited into bank accounts cannot be treated as income of the assessee. Further, by way of additional ground, it was submitted

that the case of the assessee was selected for limited scrutiny to verify the cash deposit into bank account and AO cannot travel beyond the limited issue for which it was selected. The DR submitted that assessee has not explained the source of cheque deposit into bank account. Being so, it was treated as income of the assessee at 15% of such amount. Regarding limited scrutiny, he relied on the Circular No.20/2015.

9. We have heard both the parties and perused the material on record. In this case, the assessee has deposited a total of Rs.87.34 lakhs by way of cheque into bank account and declared income of total turnover of Rs.27.25 lakhs only. The AO deducted the declared turnover from this receipt (87.34 – 27.25) and worked out the undisclosed turnover at Rs.60.09 lakhs. Out of this, he estimated the income at 15% worked out at Rs.9,01,350/-. Now the contention of the AR is that the assessee received cheque from the prospective customers and the same was deposited into bank account and it cannot be treated as income of the assessee. In our opinion, whenever assessee deposits money into bank, it is the duty of the assessee to furnish the name, address and PAN to show that it is towards the advance received from the customers. In this case, the assessee failed to establish the identity of the parties from whom it has been received. Being so, the AO having no alternative, has estimated the income at 15% as offered by the assessee in its return of income. We do not find any infirmity in this action of the lower authority. The assessee made one more plea by way of additional ground that the AO cannot extend the limited scrutiny towards the estimation of income on cheque deposited in bank account. He relied on the order of Co-ordinate Bench in the case of H. N. Ravindra Vs. ITO in ITA No.1065/Bang/2019 dated 10.01.2020 and submitted that in the limited scrutiny, AO cannot make any further addition beyond the matter for which he has selected for limited scrutiny. In our

opinion, this decision was delivered by the Co-ordinate Bench without considering the CBDT Circular No.20/2015. It is clearly mentioned in the CBDT Circular No.20/2015 in para 3d as follows:

“d. During the course of assessment proceedings in ‘Limited Scrutiny’ cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for ‘Complete Scrutiny’ with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating ‘Complete Scrutiny’ in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, ‘Metro charges’ would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).”

10. In the present case, the tax liability on the impugned issue is less than Rs. 10 lakhs. Being so, the AO is within jurisdiction to take up the issue relating to cheque deposit into bank account. Accordingly, in the result this ground as well as additional ground is dismissed.

11. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

**Sd/-
(CHANDRA POOJARI)
Accountant Member**

Bangalore,
Dated: 07.04.2021.
/NS/*

Copy to:

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|-------------------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.