

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

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA no.7757/Mum./2019
(Assessment Year : 2012-13)

Zakir Ali Yarbali Khan
A-19/101, Al Namirah, Millat Nagar
Andheri (West), Mumbai 400 053
PAN – AACPQ1551G

..... Appellant

v/s

Income Tax Officer
Ward-25(1)(5), Mumbai

.....Respondent

Assessee by : Shri Rakesh Melwani
Revenue by : Shri Purnesh Gururani

Date of Hearing – 10/10/2022	Date of Order – 03/01/2023
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ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 13/06/2019 passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals)-53, Mumbai [*'learned CIT(A)'*], for the assessment year 2012-13.

2. The present appeal is delayed by 29 days. The assessee has filed an application seeking condonation of delay which is also supported by an affidavit sworn by the assessee. It is the plea of the assessee that he was unwell from 25/11/2019 till 15/12/2019 and, therefore, the present appeal

could not be filed within the limitation period. The assessee has also filed a medical certificate in support of its aforesaid claim. Accordingly, the assessee has prayed for condonation of delay in filing the present appeal. Having perused the application seeking condonation of delay and the affidavit filed by the assessee, we are of the considered opinion that there was a sufficient cause which prevented the assessee from filing the present appeal within the limitation period. Accordingly, the delay in filing the present appeal is condoned and we proceed to decide the appeal on merits.

3. In this appeal, the assessee has raised the following grounds:

"1. Considering the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals)-53, Mumbai, erred on facts and in law in confirming addition to income of cash deposit of Rs. 730000 into the bank account and this addition ought to be deleted.

2. Considering the facts and circumstances of the case and in law, such other and further relief as the circumstances merit be granted to the appellant.

3. The appellant craves leave to add and / or alter and / or amend any ground(s) of appeal."

4. The sole grievance of the assessee is against the addition of Rs. 7,30,000, on account of cash deposits in the bank account.

5. The brief facts of the case as emanating from the record are: The assessee is an individual and is in the business of building/civil construction under the name and style of M/s Ark Enterprises. For the year under consideration, the assessee did not file any return of income. Subsequently, information was received from the office of DDIT (Inv.), Mumbai that the assessee, inter-alia, has deposited cash of Rs. 7,30,000, in its bank account, the source of which has not been disclosed by the assessee to the Income Tax

Department. Since the aforesaid income was not offered for taxation, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 11/02/2016. Pursuant to the request by the assessee, the reasons recorded for reopening the assessment were provided to the assessee. However, the assessee did not file any objection to the reopening of the case. Thereafter, the case was taken up for scrutiny and statutory notices were issued calling for various details, but no compliance was made against the show cause notices. Notice under section 274 r/w section 271 of the Act was also issued to the assessee, however, no compliance was made by the assessee. During the assessment proceedings, the assessee filed some details. Thereafter various notices were issued but no compliance was made by the assessee. Accordingly, the Assessing Officer proceeded to compute the assessment under section 144 of the Act in absence of compliance by the assessee to various notices seeking details. The Assessing Officer vide order passed under section 144 r/w section 147 of the Act, inter-alia, added the entire amount of Rs.7,30,000, to the total income of the assessee, in absence of any details regarding the source of the cash deposits in the assessee's bank account.

6. In its appeal before the learned CIT(A), the assessee submitted that the cash withdrawal from the bank is more than the cash deposit of Rs. 7,30,000. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue by observing as under:

"6.3. I have considered the submissions carefully. The appellant has not explained fully and comprehensively the source of cash deposit in the bank account. The various entries of withdrawals and deposits in the bank statement

has not been explained by the appellant. Thus, there is no linkage established between the withdrawals and the deposits. The appellant has not explained the purpose of withdrawal in cash. He has also not explained the nature of transactions of deposits and withdrawal by way of cheque appearing in the bank statement. Thus, the appellant has attempted to take the benefit without fully disclosing the transactions appearing in the bank statement. It is also noted that this particular bank statement of account at Dena Bank was hidden by the appellant when his statement was recorded by the Investigation Unit. Thus, without establishing the linkage, the explanation cannot be accepted. The source of cash deposit in the bank account is not substantiated. Accordingly, ground of appeal no.3 is dismissed.”

Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative (*‘learned AR’*) submitted that cash deposited in the bank account is out of cash withdrawn by the assessee. By referring to the bank statement of the assessee’s account maintained in Dena Bank, learned AR submitted that the cash withdrawn by the assessee during the year under consideration is much more than the cash deposited in the bank account, which also supports the claim of the assessee that cash deposited is out of cash withdrawal.

8. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities and submitted that there is no linkage between cash withdrawals and cash deposits.

9. We have considered the rival submissions and perused the material available on record. In the present case, it is undisputed that the assessee did not file any return of income. The transaction of cash deposits, inter-alia, came to the knowledge of the Assessing Officer pursuant to the information received from DDIT (Inv.) Mumbai. It is also evident from the record that during the assessment proceedings, pursuant to issuance of notice under section 148 of

the Act, the assessee did not comply with the various notices issued by the Assessing Officer and failed to furnish details as sought, which resulted in the culmination of assessment proceedings under section 144 of the Act. In its appeal before the learned CIT(A), the assessee merely claimed that the cash deposited in its bank account are out of cash withdrawals from the bank. Even in the present appeal, the learned AR reiterated the aforesaid submissions. From the perusal of the bank statement, forming part of the paper book from page nos. 15–28, we find that there are multiple transactions of cash withdrawals and cash deposits by the assessee. Further, from the details of cash deposits and cash withdrawals, forming part of the paper book from page nos. 29–30, we find that the total cash withdrawals are Rs. 50,38,800 while the total cash deposits are Rs. 13,13,000, during the year under consideration. Apart from referring to this bank statement to substantiate its claim that the cash deposited in the bank account is out of the cash withdrawal, no other document was placed on record to prove the utilisation of cash withdrawn by the assessee. Further, the assessee has also not established the linkage between cash withdrawals and cash deposits in its bank account. There is also no proof regarding other transactions in the bank account. Merely because cash withdrawal by the assessee is more than the cash deposited in the bank account cannot lead to the conclusion that the cash deposit is out of the cash withdrawal only unless complete details of the utilisation of money are furnished. Thus, the absence of necessary explanation and details do not inspire any confidence about the assessee's claim. Therefore, in view of the above, we find no infirmity in the findings of the learned CIT(A). Accordingly, the sole ground raised by the assessee is dismissed.

10. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open Court on 03/01/2023

Sd/-
GAGAN GOYAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/01/2023

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

Assistant Registrar
ITAT, Mumbai