

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1276/Mum/2023
(A.Y. 2006-07)**

Sanjay Vrajlal Kothari B-603, Shroff Apts, Sodawala Lane, Borivali (West), Mumbai – 400092	Vs.	ITO Ward 25(2)(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AGPPK5426K		
Appellant	..	Respondent

Appellant by :	Anil Thakrar
Respondent by :	Suresh D. Gaikwad

Date of Hearing	13.07.2023
Date of Pronouncement	26.07.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 15.03.2023 for A.Y. 2006-07. The assessee has raised the following grounds before us:

- “1. The Ld CIT (A) is erred in confirming an amount of Rs. 81,75,302/- U/S 68 of the Act.
2. The Ld CIT (A) is erred in confirming the said amount without appreciating the fact that original addition made consisted of cash & cheques deposits pertaining to the period as well as the period earlier to the Assessment Year which relates.
3. The Ld CIT (A) is also erred in confirming the said amount without considering the additional evidence filed at the time of remand report proceedings
4. The appellant request to delete the addition confirmed by the CIT (A).

5. *The appellant craves to add, alter or omit any or all of the above grounds of appeal before or at the time of hearing of the appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.99,123/- was filed on 31.03.2007. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 24.10.2007. During the course of assessment proceedings the assessee has not made any compliance to the various notice issued by the assessing officer. Therefore, the AO has completed the assessment ex-parte u/s 144 of the Act. The assessing officer noticed that as per AIR information there was cash deposit of Rs.15,49,250/- found in the bank account of the assessee maintained with HDFC Bank Borivali Branch. The assessing officer has obtained the bank statement from the HDFC Bank by issuing of notice u/s 133(6) of the Act. On perusal of the bank statement in respect of account no. 01451160001168 the assessing officer noticed that there was deposit to the amount of Rs.97,69,197/- including cash and cheques. Because of not making compliance during the course of assessment proceedings the AO has treated the whole amount of deposit made in the said bank account of the assessee as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) after considering the submission of the assessee called remand report from the assessing officer. The ld. CIT(A) has deleted the addition to the extent of Rs.15,93,895/- on the basis of confirmation of the various parties from whom the balance was recoverable on purchase of shares which were settled at later years.

4. During the course of appellate proceedings before us the ld. Counsel submitted that in the aforesaid bank account the total deposit made was mostly by cheques and same were pertained to assessment

year 2004-05 to 2007-08. However, the assessing officer has incorrectly added the whole amount pertaining to all these assessment year in the assessment year 2006-07. As per the working given by the ld. Counsel only the amount of Rs.49,56,976/- was pertained to the period 01.04.2005 to 31.03.2006 relevant to assessment year 2006-07 and the remaining deposits was pertained to other assessment year i.e. 2004-05, 2005-06 and 2007-08 which was included in the total income of the assessee pertaining to assessment year 2006-07. The ld. Counsel further submitted that out of the amount of cash and cheque deposit pertained to this year the ld. CIT(A) has already deleted the amount of Rs.15,93,895/- and out of the remaining amount of Rs.33,63,081/- some of the amount pertained to the friendly loan obtained and repaid to the parties as per the copies of loan confirmation letters and copies of bank statements placed in the paper book. The ld. Counsel further submitted that some deposit in the bank account are pertained to miscellaneous items i.e. bank charges, dividend etc. The Counsel submitted that aforesaid explainable items of deposits were incorrectly added to the total income of the assessee. The ld. Counsel also submitted that except loan on credit card to the extent of Rs.20,000/- and amount of Rs.2,90,000/- pertaining to market Creation Limited other deposit in the bank account are explainable and not required to be added.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The AO has added the whole amount of deposits made in the bank account of the assessee due to non-compliance at the time of assessment. Before the ld. CIT(A) the assessee explained with relevant supporting evidences that compliance could not be made before the AO because of ill health

of the mother of the assessee from 10.08.2008 to 26.12.2008. Therefore, Id. CIT(A) has accepted the additional evidences filed by the assessee and called remand report from the assessing officer. However, we find that the assessing officer has incorrectly added the whole amount of deposit found in the impugned bank account which was not pertained to the assessment year under consideration. Further as per the submission of the assessee there are some amount deposited in the bank account on account of dividend, bank interest and friendly loan taken by the assessee in respect of which the assessee has referred various document placed in the paper book. During the course of appellate proceedings before us the Id. Counsel submitted that there is no supporting evidences of loan on credit card of Rs.20,000/- and amount of deposit claimed on account of market Creation Limited to the amount of Rs.2.90 lac. All these issues were not considered at the time of remand proceedings, therefore, in the interest of justice we restore all the aforesaid issues except the amount of Rs.15,93,895/- for deciding a fresh to the file of the AO after affording adequate opportunity to the assessee. Accordingly, the grounds of appeal of the assessee are partly allowed for statistical purposes.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26.07.2023

Sd/-

(Aby T Varkey)
Judicial Member

Place: Mumbai

Date 26.07.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

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