

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

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.2788/Mum/2023
(Assessment year : 2020-21)

Mohd Shahid Mohd Yusuf Qureshi, Room No.14, 14B, 4 th Floor, Prabhu Parekh Bldg, 111/113, Sherief Devji Street, Chakla, Mumbai-400 003 PAN : AAAPQ8890Q	vs	Dy.Commissioner of Income-tax, 902, 9 th Floor, Old CGO Bldg, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Present for the Assessee	Shri. Vimal Punmiya
Present for the Department	Shri. Srinivas

Date of hearing	10/01/2024
Date of pronouncement	29/01/2024

O R D E R

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee, against the order dated 15/06/2023 impugned herein passed by the Commissioner of Income-tax (Appeals)-47, Mumbai (in short, 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y.2020-21.

2. In the instant case, a search and seizure action under section 132 of the Act was conducted in the case of assessee on 20th October, 2019

in which the cash amounting to Rs.17,10,000/- was seized from the assessee and consequently a statement under section 131 (1A) was recorded on 20th October, 2019 wherein the assessee was asked to substantiate the source of said cash amount. The assessee more or less claimed that the assessee has collected the said cash amount against sales made on behalf of M/s AZ Enterprise and M/s Multi Enterprises from their customers. As the assessee is a commission agent in cutlery goods of Chinese products i.e. torch, sun glasses, key chain and imitation jewellery, etc. since last 15 years and having two principal wholesalers M/s AZ Enterprise (prop. Mr. Ahmed Kasam Shaikh) and M/s Multi Enterprises(prop. Mr. Ansanul Haque Ghoghari), who were operating their business from Room No.45, 2nd Floor, BMC Building No.1, Sabusiddiqui Road, Mumbai-400 001. It was also claimed by the assessee that assessee was filing its return of income regularly for the last many years. The Assessing Officer, though considered the submissions of the assessee, however, was not found acceptable on the ground that the assessee was unable to explain the source of such cash amount as he failed to disclose the details like addresses of the aforesaid two parties and also failed to bifurcate the seized amount and also failed to produce any documentary evidence to support his claim in order to show that seized amount belonged to two entities. The assessee also failed to prove even basic details of purported customers like name / PAN / addresses from whom he collected the cash amounting to R.17,10,000/-. The Assessing Officer ultimately added the said amount of Rs.17,10,000/- in the income of the assessee. The Assessing Officer also observed by perusing the bank statement of the assessee that the assessee has made cash deposits of Rs.6,57,672/- by credit other than by salary and interest. On being asked by the income-tax authorities, the assessee stated that nature of his income is commission on sale of cutlery items / materials.

Therefore, the amount deposited in cash and the amount received in his bank account by means other than cash must be his income from business. Considering the aforesaid facts, the Assessing Officer treated the amount of Rs.8,21,772/- credited in the assessee's bank account by cash and other than cash (except salary and interest) and treated the same as commission income of the assessee and by subtracting the amount of Rs.5,62,000/- as shown by the assessee as 'Income from other sources' in its return of income for the year under consideration, added the differential amount of Rs.2,59,772/- (Rs. 8,21,772/- (-) Rs.5,62,000/-) and added in the income of the assessee. Further, the Assessing Officer also on perusing the bank statement of the assessee observed that assessee has earned salary income to the tune of Rs.23,13,014/- during the year under consideration. However, the assessee has only shown the salary income to the tune of Rs.26,430/-. Therefore, the Assessing Officer added the differential amount of rs.22,86,578/- (Rs.23,13,014/- (-) Rs.26,436/-). The Assessing Officer on perusing the assessee's bank statements also observed that the assessee has earned interest income to the tune of Rs.65,780/- whereas in the return of income for the A.Y. under consideration has only declared interest income to the tune of Rs.9,562/- and, therefore, the Assessing Officer added the amount of Rs.56,218/- being differential amount (Rs.65,780/- (-) Rs.9,562/). The assessee being aggrieved against the assessment order, passed under section 144 of the Act by the Assessing Officer preferred first appeal before the Ld.Commissioner. The Ld.Commissioner, though provided the opportunity to the assessee to substantiate its claim with regard to the explaining and proving the source of cash with documentary evidences, however, the assessee failed to explain and prove the source of cash deposit. Further, the assessee also failed to furnish any explanation with regard to making the addition of Rs.2,59,772/-. Further, the assessee also

failed to reconcile the bank statement whereas the assessee has claimed that the amount of Rs.35,569/- pertains to his brother and balance interest belongs to the assessee which was inadvertently left of. Therefore, the Ld.Commissioner ultimately affirmed the additions made by the Assessing Officer by dismissing the appeal of the assessee. The assessee being aggrieved, is in appeal before the Tribunal.

At the outset we observe that in the instant case, the assessment proceedings have been carried out during the Covid-2019 period and from the assessment order it appears that the show cause notice dated 13th September, 2021 under section 144 of the Act, the assessee, on 23/09/2021 filed its reply and made certain submissions which were though considered by the Assessing Office, but not found acceptable and ultimately, the Assessing Officer passed the assessment order under section 144 of the Act. Before the Ld.Commissioner though the assessee during the course of appellate proceedings has filed his written submissions, however, the assessee claimed that he was not given proper opportunity to explain the case. Relevant submissions and documents filed before the Ld.Commissioner, the order passed by the Ld.Commissioner is more or less is an exparte order which resulted into denial of proper opportunity of being heard. Therefore, in the interest of justice, the assessee may be provided a reasonable opportunity of being heard.

We have given thoughtful consideration to the claim of the assessee and observe that both the authorities below more or less made the addition and sustained the same more or less on non providing the relevant documents / explanation. Therefore, the assessee did not deserve any leniency. However, considering the peculiar facts and circumstances, as the authorities below, in the absence of relevant documents / explanations

failed to decide the issues in its right perspective, therefore, for the just decision of the case and for the ends of justice, it would be appropriate to afford an opportunity to the assessee to substantiate its claim by filing relevant documents / explanations and also to seek opportunity through video conferencing in order to demonstrate its case properly. Hence, we set aside the impugned order and remand the instant case to the file of the Ld.Commissioner for decision afresh but subject to deposit of Rs.11,000/- in the Prime Minister's National Relief Fund (PMNRF) within 30 days of this order. We also direct the assessee to co-operate with the appellate proceedings and to file the relevant documents as would be essential and required for proper adjudication of the issues.

In the result, appeal filed by the assessee stands allowed for statistical purpose.

Order pronounced in the open course on 29/01/2024.

Sd/-

Sd/-

(MISS. PADMAVATHY S.)	(NARENDER KUMAR CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
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BY ORDER,

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Asstt. Registrar, **ITAT, Mumba**