

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI  
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER  
ITA No. 1527/Del/2016  
Asstt. Year : 2009-10**

Raj Kumar A-246, Chattarpur Enclave, Phase-I Delhi	Vs	ITO Ward-70(4) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ASNPK8678D</b>		

**Assessee by : Sh. V.K.Tulsiyan, CA  
Revenue by : Sh. T Vasanthan, Sr. DR**

<b>Date of Hearing : 26.09.2017</b>	<b>Date of Pronouncement : 28 . 09.2017</b>
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**ORDER**

**Per R.K.Panda, AM:**

This appeal filed by the assessee is directed against the order dated 22<sup>nd</sup> January, 2016 of the CIT(A)-21, New Delhi relating to assessment year 2009-10.

2. This appeal was earlier dismissed by the Tribunal for non-appearance. Subsequently, the Tribunal vide order dated 18<sup>th</sup> August, 2017 recalled its earlier order. Hence, this is a recalled matter.

3. Grounds raised by the assessee are as under :-

*“1. Whether Ld. CIT(A) was justified, by upholding the addition of Rs. 16,54,000/- on account of cash deposit in Bank, even after admitting the issue that the deposit was out of the sale proceed of Fabric Trading Business.*

*2. Whether the Ld. CIT(A) was justified by not accepting the appellant plea of having business activity despite of fact Assessee submitted revised computation of income by declaring business profit @ 8%, without proper considering the submission in right prospective and evidences.”*

4. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 18<sup>th</sup> May, 2009 declaring taxable income of Rs. 89,504/-. The case was selected for scrutiny by issue of statutory notices to which the assessee appeared before the AO and submitted the details as called for.

5. During the course of assessment proceedings, the AO observed that assessee in his Savings Bank Account maintained with Axis Bank has deposited cash amounting to Rs. 16,54,000/-. He observed that the assessee derived salary income from M/s. Communique Marketing Solution Pvt. Ltd. He, therefore asked the assessee to explain the source of such cash deposits. In absence of any satisfactory explanation given by the assessee, the AO made addition of Rs. 16,54,000/- to the total income of the assessee u/s 68 of the IT Act.

6. Before the CIT(A) the assessee submitted that he is running the business of Fabric merchant apart from salary income from M/s. Communique Marketing Solutions Pvt. Ltd. the cash receipts deposited in the said bank account represents the proceeds of the fabric trading business. It was submitted that the gross receipts for the year under consideration was Rs. 23,19,870/- and the assessee has not maintained any books of accounts during the F.Y 2008-09 as the same is not required u/s 44AF of the IT Act. It was accordingly argued that

the income of the assessee should be computed @ 8% of the turn over from such fabric trading business.

7. However, the CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the addition made by the AO by observing as under :

*“I have carefully considered appellant's submission in this regard and find that in the return of income filed by the appellant, he has not shown any such business income whatsoever. Further, the appellant has also failed to produce any evidence whatsoever to establish that he has undertaken the impugned business activity such as address of place from where impugned trading was conducted, purchase book, sale book, trade license, transportation details, communication with the clients, details of buyers and sellers etc. Moreover, the appellant has also failed to furnish complete cash flow statement so as to explain the nature and source of cash deposits in his bank account. As such, for want of evidence I am not inclined to accept the appellant's plea of having carried out above business activity. On the contrary, the provisions of sec.68 of the I.T. Act places on the appellant the primary onus to establish the nature and source of impugned cash deposits which the appellant has failed to discharged for reasons best known to him only. Moreover, no new facts or evidence have been furnished by the appellant in support of his contention, as above. Therefore, I am not inclined to interfere with the assessment order passed by the AO which is hereby confirmed.”*

8. Aggrieved with such order of CIT(A) the assessee is in appeal before the Tribunal.

9. The Id. Counsel for the assessee referring to page 10 of the paper book drew the attention of the Bench to the additional evidences filed before the CIT(A) as per letter dated 10<sup>th</sup> June, 2015. Referring to page 11 of the paper book, the Id. Counsel for the assessee drew the attention of the bench to the letter issued by the CIT(A) to the

assessing officer calling for a remand report from him. Referring to page 12 of the paper book he submitted that the AO has issued a letter to the assessee on 6<sup>th</sup> August, 2015 asking him to appear before him and explain the additional evidences filed before the CIT(A). He submitted that when the CIT(A) passed the order dismissing the appeal of the assessee, he has not considered the remand report called for by him from the AO. He submitted that in the interest of justice the income from fabric trading activity should be estimated @ 8% of the turn over of Rs. 23,19,870/-. For the above proposition, he relied on the decision of the Chennai Bench of the Tribunal in the case of M/s. Perlos Telecommunication vs. ACIT vide ITA No. 1037/Mds/2013 order dated 18.11.2013 for assessment year 2008-09.

10. Ld. DR on the other hand, heavily relied on the order of the CIT(A). He submitted that since the assessee did not declare the income from fabric trading in the original return, now he can not explain the bank deposits as sale proceeds of such fabric trading. He submitted that the CIT(A) has given justifiable reasons for upholding the addition. Therefore, the same should be upheld. He also relied on the decision of the Hon'bel Bombay High Court in the case of Arun Kr. J. Muchhala vs. CIT vide ITA no. 363/2015 order dated 24 August, 2017 and the decision of Hon'ble Punjab and Haryana High Court in the case of Suchir Kumar Sharma (HUF) vs. CIT reported in 224 Taxman 178.

11. The Id. Counsel for the assessee in his rejoinder submitted that since the assessee was an employee with Communique Marketing Solution Pvt. Ltd. he did not inform them regarding its trading activity out of fear. He submitted that the various decisions relied on by the Id.

DR are not applicable to the facts of the present case, since they all relate to share capital issue. However, in the instant case the deposits are out of trading activity.

12. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the AO made addition of Rs. 16,54,000/- on account of unexplained cash deposits in the bank account maintained with Axis Bank. I find before the CIT(A), the assessee made a submission that he is engaged in fabric trading business and the gross turn over was Rs. 23,19,870/-. Further it was argued that he is not required to maintain books of accounts for such retail trading business as per provisions of section 44AF and he requested for estimating the profit at the rate of 8% on turn over of Rs. 23,19,870/-. I find based on the additional evidences filed before him, the Id. CIT(A) called for a remand report from the AO as per his letter dated 10<sup>th</sup> June, 2015, to the AO a copy of which is placed at page 11 of the paper book and which reads as under :

***“Office of the Commissioner of Income Tax (Appeals)-21,  
Room No.312, 3<sup>rd</sup> Floor ‘B’ Block,  
Civic Centre, New Delhi  
Telephone No. (O):-23213601, 23212593***

***F.No.CIT(A)21/Remand Report/2015-16/***

*Dated: 10/06/2015*

*Income Tax Officer  
Ward 70(4)  
D-Block, Civic Centre  
New Delhi.  
Sub : Appeal No. 3361/11-12 in the case of Sh. Raj Kumar, A.Y. 2009-10-*

*Sir,  
Kindly find enclosed the broad submissions and an application for admission of additional evidences under Rule 46A of I.T. Rule 1962 filed by the AR of the appellant for*

*your comments thereon. Your comments should not be restricted to the admissibility or otherwise of the additional evidences filed at the appellate stage but should also be on their merits.*

*As the appellate proceedings are pending please send your comments positively by 16/07/2015.*

*Sd/-*  
**( Upamanyu Basu )**  
**Commissioner of Income Tax**  
**(Appeals) - 21, New Delhi”**

13. I find the AO vide letter dated 6<sup>th</sup> August, 2015 had called for the details from the assessee after receiving the letter from the CIT(A), copy of which is placed at page 12 of the paper book and which reads as under :-

**“Office of the Income Tax Officei Ward 70(4), Room No. 309, D Block,  
'Pratayakashkar Bhawan, S.P.Mukherjee Civic Centre J.L Nehru Marg,  
New Delhi-1L0002 Ph. 23234704**

*ITO/Ward-70(4)/2015-16/107*

*To,*

*Sh.Raj Kumar  
A-246, Chartarpur Enclave,  
Phase- New Delhi-110074,*

*Sir,*

*Sub.: Appeal No. 3361/1 1-12 for A.Y. 2009-10-regarding*

*During the course of appellate proceedings before CIT(A)-21, New Delhi, you have filed additional evidences under rule 46 A. of the Income Tax Rules, 1962 with regard to order passed by the A.O. u/s 143(3) on 22.12.2011. In this regard you are requested to attend this office on or before 12.08.2015 to explain the additional evidences filed by you before the Ld.CIT(A). The copies filed by you as additional evidence are not legible. Hence, you are requested to bring copies of additional evidence which should be legible.*

*Yours faithfully*

*Sd/-*  
**(Antriksh Kumar)**  
**Incom Tax Officer .**  
**Ward-70(4), New Delhi”**

14. However, I find from the order of the CIT(A) that there is no whisper about such remand report from the AO. Under these circumstances, I find merit in the submission of the Id. Counsel for the assessee that his profit from fabric trading business should be estimated at 8% on the turn over of Rs. 23,19,870/-. I therefore, direct the AO to adopt the profit @ 8% on turn over of Rs. 23,19,870/- in place of Rs. 16,54,000/- made by AO u/s 68 of the IT Act. Grounds raised by the assessee are accordingly partly allowed.

15. In the result, the appeal filed by the assessee is partly allowed.

(Order Pronounced in the Open Court on 28 .09.2017)

**Sd/-**  
**(R.K.Panda)**  
**ACCOUNTANT MEMBER**

**Dated: 28/09/2017**

\*Binita\*

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

**ASSISTANT REGISTRAR**

		Date	<u>Initial</u>	
1.	Draft dictated on	26/09/2017		
2.	Draft placed before author	26/09/2017		
3.	Draft proposed & placed before the second member	/09/2017		
4.	Draft discussed/approved by Second Member.	/09/2017		
5.	Approved Draft comes to the Sr.PS/PS	/09/2017		
6.	Kept for pronouncement on	/09/2017		
7.	File sent to the Bench Clerk	/09/2017		
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			