

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

**ITA No.3485/Del/2015
Assessment Year 2011-12**

Mohd Anas Qureshi 19, Navyug Market, Second Floor, Ghaziabad PAN-AAEPQ0492K	Vs.	ITO, Ward-1(4) Ghaziabad
(Appellant)		(Respondent)

Appellant by :	Sh. Raj Kumar Agarwal, FCA
Respondent by :	Sh. T. Vasanthan, Sr. DR

सुनवाई का तारख/Date of Hearing : 03/10/2017
घोषणा का तारख/Date of Pronouncement: 05/10/2017

ORDER

PER B.P. JAIN, A.M.

This appeal of the assessee arises from the order of learned CIT(A), Gaziabad, vide order dated 19.02.2015 for the Assessment Year 2011-13. The assessee has filed the revised and concise grounds of appeal which are as under:-

- 1. The order passed by the AO and the CIT(Appeal) are in bad in law and against the cannon the taxation.*
- 2. The AO and the CIT(A) have ignored of law and interpreted wrongly.*
- 3. The AO and the CIT(A) have vitiated by the fact, finding and reached on assessment only on the presumption and assumptions and not based on any relevant evidences or circumstances.*
- 4. It is true as observed by the AO that accountant is fabricating & trying to hike the sales shown in ITR. The explanation on 26.11.2012 was offered that accounts are not kept.*

2. The brief facts of the case in all the grounds are that as per AIR information, the assessee had deposited in Union of India and State Bank of India Rs.24,71,500/- as cash which has been explained to be sale of banana against which the assessee claimed the purchases of the Banana for which cheques have been issued. The assessee had filed the return under Section 44 AF of the Act. The assessee could not explain the closing stock of Rs.54,15,060/- of Banana which being of a perishable nature and also could not explain the sales and purchases. The AO accordingly treated the unexplained cash deposited of Rs.31,24,550/- under Section 68 of the Act and added to the income of the assessee which action of the AO was confirmed by the learned CIT(A).

3. I have heard the rival contentions and perused the facts of the case. The facts of the case as narrated by the AO and the learned CIT(A) find no ambiguity and the learned AR also conceded that the assessee does not maintain any books of account. The cash sale amounting to Rs.42,55,300/- and Rs.24,71,500/- totaling to Rs. 67,26,800/- has been admitted against which cheques have been issued to various persons but to whom those cheques have been issued, no explanation is placed on record. It is also unbelievable that Union Bank of India having deposit of cash of Rs. 42,55,300/- and cheques having been issued for the same amount cannot be treated as the purchases for the same amount which also has been conceded by the learned counsel for the assessee.

4. In any case, the assessee had made a sale of Rs. 67,26,800/- on which a net profit rate has to be applied and return under Section 44 AF cannot be filed because it exceeds the limits of Section 44 AF of the Act. Under Section 44AF, the assessee has to declare minimum net profit rate to 8% and to cover up the leakage of the Revenue and meet the both the interest of justice, a net profit rate of 10% is ordered to be applied on a total sale of Rs.67,26,800/-. Accordingly, the assessee gets the part relief.

5. In the result, the appeal of the assessee in ITA No. 3485 /Del/2015 is partly allowed.

Order pronounced in the open court on this day 05/10/2017.

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER

Dated: 05/10/2017

SH

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation	
2.	Date on which the draft is placed before the Dictating Member	
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	