

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. S. Saini, Accountant Member

ITA No. 5091/Del/2018 : Asstt. Year : 2010-11

Mohd. Zafar, S/o Sokat Ali, Village-Bukhraka, Post-Nagina, Tehsil-Ferozpur Jhirka, Distt.-Nuh, Haryana- 122108 And C/o L M S C & Co., Chartered Accountants, Unit No. 317A, Vardhman Star Mall, Sector-19, Faridabad, Haryana-121002	Vs	Income Tax Officer, Ward-2(5), Gurgaon, Haryana-122016
(APPELLANT)		(RESPONDENT)
PAN No. AALPZ1637M		

**Assessee by : Sh. Shri Chand, CA
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 04.02.2019

Date of Pronouncement: 05.02.2019

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-1, Gurgaon dated 28.05.2018.

2. The sole issue involved in this appeal is that the CIT(A) erred in computing the income of the assessee applying rate of 8% to the gross receipts as per provisions of Section 44AD of the Act on the total deposit in the bank account of the assessee of Rs.11,88,450/-

3. Brief facts of the case are that the Assessing Officer observed that the assessee had made cash deposit of Rs.11,88,450/- in his bank account. The Assessing Officer allowed sufficient opportunity to the assessee but no return of

income was filed by the assessee and no reply was also filed by the assessee to the show-cause notice issued by the AO. He, therefore, made addition of Rs.11,88,450/- to the income of the assessee.

4. On appeal, the CIT(A) confirmed the action of the AO observing that sufficient opportunity was granted to the assessee by the AO but the assessee did not avail of them and also before him further opportunity was granted but no evidences were filed before him.

5. Before me, the AR of the assessee submitted that the assessee had purchased two JCB in earlier years and was giving them on hire. The amount deposited in the bank pertained to hire charges of JCB. He submitted that from the deposit in the bank account of hire charges of Rs.11,88,450/-, the assessee was entitled to deduction of interest expenses of Rs.2,37,924/- which is also reflected in the bank account of the assessee as the assessee had taken loan from the bank for purchase of JCB.

6. He further submitted that the assessee was entitled to depreciation @ 15% on the cost of JCB which works out to Rs.4,75,269/- on the written down value as on first day of the financial year under appeal. Further, the assessee had incurred insurance expenditure of Rs.94,482/- on JCB which is also reflected in the bank statement of the assessee which is also allowable deduction to the assessee. He further submitted that the assessee had incurred expenditure on salary of driver of the JCB of Rs.56,000/- during the year and deduction for the same should be allowed to the assessee. In this way, it was his submission that the income of the assessee will work out of Rs.3,52,775/- which should be subjected to tax during the year under appeal.

7. The Id. DR relied on the orders of the lower authorities and submitted that sufficient opportunities were allowed to the assessee both by the AO as well as the CIT(A) and the assessee did not avail of them and file necessary evidences for the expenditure incurred. Hence, the order of the CIT(A) should be confirmed.

8. In the above facts and circumstances of the case, I am of the considered opinion that in the interest of rendering substantial justice to the assessee one more opportunity should be granted to the assessee to present its case before the Assessing Officer with the necessary documents for expenditure claimed to have been incurred by the assessee and the Assessing Officer shall re-compute the income of the assessee after verifying the claim of the assessee for expenditure incurred by it for earning the income from hire of JCB. I, therefore, set aside the orders of the lower authorities and remand the matter back to the file of the AO to re-adjudicate the issues afresh after allowing reasonable and proper opportunity of hearing to the assessee in light of the discussion made hereinabove. The assessee is directed to file all evidences in support of the expenditure claimed to have been incurred by it for earning the income from hire of JCB as and when called upon to do so by the AO. With these directions, the appeal of the assessee is allowed for statistical purposes.

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

(Order Pronounced in the Open Court on 05/02/2019).

Sd/-
(N. S. Saini)
Accountant Member

Dated: 05/02/2019

Subodh