

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

**Before Sh. N. S. Saini, Accountant Member**

**ITA No. 6915/Del/2018 : Asstt. Year : 2015-16**

Koshy John, Flat No. 24, D-19, Devli Road, Khanpur, New Delhi	Vs	Income Tax Officer, Ward-31(4), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AEGPJ9585B</b>		

**Assessee by : Sh. Ashwani Kumar, CA  
Revenue by : Sh. S. L. Anuragi, Sr. DR**

<b>Date of Hearing: 09.04.2019</b>	<b>Date of Pronouncement: 16.04.2019</b>
------------------------------------	--

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-11, New Delhi dated 16.07.2018.

2. The assessee has raised following grounds of appeal:

*"That the order dated 16-07-2018 passed u/s 250 of the Act by the Learned Commissioner of Income-Tax (Appeals) -11 New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Income Tax Officer, Ward - 31(4), New Delhi in adding back a sum of Rs. 20,17,587/- on account of deposits made in the bank by treating them as Income from Other Sources on the erroneous ground that the Appellant had failed to furnish any evidence to show that these excess deposits in the bank account are related to his business activities and or have direct nexus with the business of the Appellant."*

3. The sole issue involved in this appeal is that the Commissioner of Income Tax (Appeals) erred in confirming addition of Rs.20,17,587/- on account of deposits made in bank by treating the same income from other sources.

4. The brief facts of the case are that the appellant is engaged in the business of civil construction. The appellant has shown business income as per the provisions of section 44AD of the Act and has shown gross receipts of Rs. 36,08,303/- and net profit of Rs. 3,60,000/-. The AO observed from the bank statements that the total deposits in the bank accounts of the appellant amounting to Rs. 56,25,890/-. The AO asked the appellant to explain the difference of Rs. 20,17,587/-. It was contended by the AR that the difference is on account of the deposits made after making withdrawal from his firm and deposit of earnest money, advances received etc. The AO was not satisfied with the reply and has observed that a perusal of the capital account in the partnership firms shows that appellant has not made any withdrawal from the partnership firms and has not received any advances as claimed by him. The AO has further observed that the appellant has not furnished any evidence to support his claim. In view of this, the AO has treated the excess deposit of Rs. 20,17,587/- as income of the appellant under the head income from other sources.

5. On appeal, the Commissioner of Income Tax (Appeals) observed that Authorized Representative of the assessee has reiterated the arguments taken before the AO and has stated that the excess deposits of Rs. 20,17,587/- in the bank accounts are on account of the deposits made after making withdrawal from his firm and deposit of earnest money, advances received etc. It has also been contended that the AO cannot make addition of more than 8% of the total receipts. However, it is observed that appellant has failed to furnish any evidence to show that these excess deposits in the bank account are related to his business activities and/or have direct nexus with the business of the appellant. In the absence of any such evidence, the source of deposits amounting to Rs.20,17,587/- remains unexplained. Accordingly, I am

of the view that the Assessing Officer was right in treating this sum as income of the appellant.

6. Before me, the Authorized Representative of the assessee relied on the decision of Ahmadabad Bench of the Tribunal in the case of Abhi Developers Vs ITO (2007) 12 SOT 444 (Ahd.) where it was held as under:

*"The only base for the revenue to assess the 'on money' in its entirety was the statement of partner recorded during the course of survey. No evidentiary value could be attached to such statement unless it was supported by some material. Hence, there was no material with the department to make addition of 'on money' in its entirety and what was assessable under section 44AD was 8 per cent of the gross receipt or more profits shown by the assessee in its return of income. In the instant-case, the assessee had shown income of more than 8 per cent of the total sale consideration, and therefore, no addition could be made by the Assessing Officer while working under section 44AD."*

7. The Departmental Representative relied on the orders of the lower authorities.

8. I have heard the rival submissions and perused the orders of the lower authorities and material available on record. Assessee filed his return of income disclosing total income at Rs.4,58,254/-. Assessee has shown his business income from Civil Contract u/s 44AD of the Act. The total business turnover was disclosed at Rs.36,08,303/-. The Assessing Officer found that the total deposit in the bank account of the assessee was Rs.56,25,890/-. Thus, deposit of Rs.20,17,587/- was found in excess from the disclosed turnover. The Assessing Officer added the entire amount of excess deposit of Rs.20,17,587/- as income of the assessee and added to the income of the assessee.

9. On appeal, the Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer.

10. I find that the opening balance in the bank Account No.00432020002570 maintained with HDFC Bank Ltd. as on 01.04.2014 was Rs.10,39,467.15 and the closing balance as on 31.03.2015 was Rs.10,52,657.57. Similarly, the opening balance in the bank Account No. 00431000209700 maintained with HDFC Bank Ltd. as on 01.04.2014 was Rs.1,32,296.25 and the closing balance as on 31.03.2015 was Rs.1,36,499.89. Similarly, the opening balance in the bank Account No. 52142926828 maintained with State Bank of Hyderabad as on 01.04.2014 was Rs.2,97,719.80 and the closing balance as on 31.03.2015 was Rs.2,65,329.80. Similarly, the opening balance in the bank Account No. 57030640114 maintained with State Bank of Travancore as on 01.04.2014 was Rs.5,52,877.80 and the closing balance as on 31.03.2015 was Rs.10,27,498.80.

11. A perusal of the above bank statements shows that there was regular deposit and regular withdrawals of small amount in the bank. The assessee submitted that as his case was covered by the provisions of Section 44AD of the Act, he was not required to maintain books of account and therefore, it was not possible on his part to produce the books and vouchers of business transaction.

12. However, looking at the amount and regularity in the deposit and withdrawals are made in the bank account it seems that the deposits were from business. In the circumstances, in my considered opinion, it will be fair and reasonable to treat the entire amount of deposit in the bank account in the business turnover of the assessee and estimate thereon business income @ 8% in accordance with the provisions of Section 44AD of the Act. I, therefore, set aside the orders of the lower authorities and direct the Assessing Officer to estimate the business income of the assessee in line of the discussion made hereinabove and accordingly restrict the amount of the addition to that extent. Thus, the appeal of the assessee is partly allowed.

13. In the result, the appeal of the assessee is partly allowed.  
(Order Pronounced in the Open Court on 16/04/2019).

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

**Dated: 16/04/2019**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**