

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

I.T.A. No. 4666/DEL/2014				
A.Y. : 2010-11				
DCIT, ROHTAK	ROHTAK	CIRCLE,	VS.	SH. SUNIL AHUJA, 1175/19, HARI NAGAR, ROHTAK (PAN: ADUPA1729P)
<b>(ASSESSEE)</b>				<b>(RESPONDENT)</b>

Revenue by : Sh. N.K. Bansal, Sr. DR.  
Assessee by : Sh. Naveen Gupta, Adv.

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed this Appeal against the impugned Order dated 27.6.2014 of the Ld. CIT(A), Rohtak relevant to assessment year 2010-11.

2. The grounds raised in the appeal read as under:-

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 1,41,25,286/- representing deposits in J & K Bank account not disclosed in the books of account and has erred in accepting the explanation of the assessee, particularly, when she herself has accepted in her order that this bank account was undisclosed.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and facts in directing the AO to apply Net Profit of 5% on Sales and 2% on investment merely on submission of assessee that the same may be done even though she has not accepted the explanation that these transactions were HUF transactions.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in accepting the contention of the assessee who has already been found to be maintaining an undisclosed bank account, rather than deciding the appeal on merits and without finding any lacuna in the AO's findings.

4. That the appellant craves for permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.

3. The brief facts of the case are that the assessee is an individual and has been earning income from purchase, sale and supply of medicines on whole sale bases for which he earns business income or commission. The assessee filed the return of income on 31.10.2010 showing income of Rs. 6,24,320/- which worked out to approximately 5.3% of the sales. Audit Report in the prescribed form was also enclosed with the return. The case of the assessee was selected for scrutiny and every type of information asked for was readily supplied. The AO asked for copy of the impugned a/c

maintained in J&K Bank Rohtak which was also furnished. The account had been started only this year w.e.f. 27.5.2009 with initial deposit of Rs. 5,000/-. Receipt and payments reflected therein pertain to purchase and sale of medicines on whole sale basis. The credit entries reflecting sale during the year; totaled to Rs. 1,41,05,286/-. The assessee has started this new business as that belonging to the HUF for settling his son separately and independently. However, no income accrued and hence, no separate return was filed. Unfortunately, this fact was not mentioned in the return filed before the AO by oversight nor a separate return for HUF could be filed. The AO noticed several small creditors below Rs. 20,000/- each. The assessee produced affidavit in respect of many of them. In cases where proper evidence could not be filed, the assessee surrendered the amount through a letter. The AO treated the entire sale proceeds of Rs. 1,41,05,286/- as income of the assessee on account of unaccounted sales not disclosed in the books of account. No separate addition in respect of cash credits received from several persons (each credit being below Rs. 20,000) was made as the entire amount of deposits in the said account had been treated as assessee's income and assessed the income of the assessee at Rs. 1,17,60,530/- vide order dated 22.3.2013 u/s. 143(3) of the Act. Aggrieved by the assessment order, the assessee

appealed before the Ld. CIT(A), who vide his impugned order dated 27.6.2014 has partly allowed the appeal of the assessee and Against the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal. He submitted that on perusal of the audit report and balance sheet, AO has observed that assessee has raised petty unsecured loans of amount below Rs. 20,000/- in respect of 32 persons during the year under consideration. He further submitted that the assessee has not furnished reliable documentary evidence to prove the creditworthiness of persons advancing loans. He further submitted that on perusal of bank statement it revealed that assessee has withdrawn cash on various dates from this bank account which has not been reflected in the books of accounts of the assessee. He further submitted that it is clear that the assessee has withdrawn cash which was introduced by him in the shape of these petty unsecured loans from various persons. It was further stated that since the entire deposits in the said bank account has been added to the returned income, no separate addition is being made on this count.

5. Ld. counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that she has passed a well reasoned order which does not need any interference on our part.

6. We have heard both the parties and perused the records especially the impugned order. We find that AO has observed that the assessee is maintaining a bank account with J&K Bank, Bhiwani Stand, Rohtak which is not disclosed in the books of account of the assessee. The total deposits made in this bank account during the year under consideration are to the tune of Rs. 1,41,05,286 and assessee has no sustainable explanation to offer regarding amount deposit in the aforementioned bank account and therefore, the AO made the addition of Rs. 1,41,05,296/- to the net profit of the assessee as an accounted sales not disclosed in the books of accounts of the assessee. We further find that the main issue in this case is relating to addition of a deposit of Rs. 1,41,05,286/- in M/s J&K Bank by the assessee treating the entire amount as in accounted sales. This addition had been made because no details were submitted at the time of assessment proceedings. On the matter being remanded back, the AO has examined the details of deposits and withdrawals alongwith copies of supply order, purchase and sales bills. However, the AO has not pointed out any fault with the explanation regarding the said entries in the bank account. Therefore, Ld. CIT(A) has rightly held that no adverse view can be taken in respect of accounts and the net profit needs to be calculated on a reasonable basis, which in this case, as admitted by the Assessee can be 5% (for NP) and an additional 2% for investment.

Hence, the AO was rightly directed to calculate the amount of disallowance on the formula method above as a result thereof the assessee gets relief on the remaining amount, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issues in dispute and reject the grounds raised by the Revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 18/06/2019.

Sd/-

**[B.R.R. KUMAR]**  
**ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date 18/06/2019

**SRBHATNAGAR**

**Copy forwarded to: -**

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

