

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

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.5095/Del/2018
Assessment Year: 2012-13

Zameer Ahmed S-3/B-18, Dilshad Colony, New Delhi -110095 PAN No. ADMPA8566A (APPELLANT)	Vs	Income Tax Officer Ward – 56 (2) New Delhi (RESPONDENT)
--	----	---

Appellant by	Sh. Prateek Khandelwal, CA
Respondent by	Shri S. L. Anuragi, Sr. DR

Date of hearing:	05/08/2019
Date of Pronouncement:	08/08/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 12.09.2016 of the CIT(A)-19, New Delhi relating to A. Y. 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of sale and purchase of property and declared income u/s. 44 AD of the Act. He filed his return of income on 30.03.2013 declaring total income of Rs.2,16,120/-. The Assessing Officer completed the assessment determining the total income of Rs.12,70,480/- wherein he made addition of Rs.10,54,360/- by estimating the income of

the assessee @ 8% on the turnover of Rs.1,71,87,620/- and after deducting the income already declared.

3. In appeal the Ld. CIT(A) noted that there were total deposit of Rs.1,71,87,619/- containing 115 credit entries out of which the assessee was able to furnish evidences and explanations in respect of 84 entries totaling to Rs.1,36,13,046/-. However, despite various opportunities, the assessee was not able to explain the nature of deposits amounting to Rs.35,74,573/-. He accordingly held that the deposits to the tune of Rs.35,74,573/- remained unexplained and added the same to the total income of the assessee u/s. 69 of the Act. He accordingly enhanced the income of the assessee to this extent.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

1. That in the impugned order, assessment made is a ambiguous and has been passed with pre determined / biased state of mind.

2. That the impugned order is against the principals of natural justice as the order has been passed in biased manner without considering the submissions and status of the appellant. The impugned order is liable to be quashed being biased and non considered order.

3. The facts and explanations regarding assumed unexplained deposits of INR 35,74,573/- has been over looked by the Ld. CIT(A) and the orders were passed on predetermined notion.

5. The Ld. Counsel for the assessee at the outset submitted that due to paucity of time and non receipt of full information from the bank the assessee was unable to substantiate each and every entry in the bank account. He submitted that the assessee now is in a position to substantiate each and every entry credited in the bank account to the satisfaction of the CIT(A) provided an opportunity is granted to the assessee. He accordingly submitted that in the interest of justice the assessee should given an opportunity to substantiate his case before the Ld. CIT(A). The Ld. Counsel for the assessee also filed certain additional evidences which were not in his possession at the relevant time and were obtained from the bank subsequently. He submitted that since these additional evidences go to the root of the matter, therefore, these additional evidences should be admitted and the appeal may be decided accordingly.

6. The ld. DR on the other hand submitted that adequate opportunity was granted to the assessee by Ld. CIT(A) and the assessee failed to substantiate his case, therefore, the order of the CIT(A) should be upheld.

7. I have considered the rival arguments made by both the sides and perused the orders of the AO and CIT(A). I have also considered the additional evidences filed before me containing narration of various entries which were obtained from the bank subsequent to passing of the order by the Ld. CIT(A). Since the Ld. CIT(A) enhanced the income of the assessee on the ground that the assessee could not explain various entries to the tune of Rs.35,74,573/- and since the assessee has now filed certain

additional evidences in the shape of bank certificate explaining the nature of receipt on letter head of the bank, therefore, considering the totality of the facts of the case and in the interest of justice I deem it proper to restore this issue to the file of the CIT(A) with a direction to give an opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The Ld. CIT(A) shall go through the certificate given by the bank giving nature of credit in the bank statement. The grounds raised by the assessee are accordingly allowed for statistical purpose.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 08.08.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 08.08.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	05.08.2019
Date on which the typed draft is placed before the dictating Member	05.08.2019
Date on which the approved draft comes to the Sr.PS/PS	05.08.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	05.08.2019
Date on which the fair order comes back to the Sr. PS/ PS	05.08.2019
Date on which the final order is uploaded on the website of ITAT	08.08.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	