

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI  
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.3314/Del/2019  
Assessment Year: 2015-16

Sanjay Jain,  
28/1, 2<sup>nd</sup> Floor, East Azad Nagar,  
Delhi.

Vs

ITO,  
Ward-58(3),  
New Delhi.

PAN: AOCPJ5646M

(Appellant)

(Respondent)

Assessee by	:	Shri Neeraj Mangal, & Shri Gourav Bansal, CAs
Revenue by	:	Shri D.S. Yadav, DR
Date of Hearing	:	04.03.2020
Date of Pronouncement	:	06.03.2020

**ORDER**

This appeal filed by the assessee is directed against the order dated 28<sup>th</sup> February, 2019 of the CIT(A)-19, New Delhi, relating to the A.Y. 2015-16.

2. The grounds raised by the assessee are as under:-

õ1. That the assessment order passed by the Ld. AO and the appellate order passed by Ld. CIT(A) are illegal and not tenable under the law because of being passed without considering the written submissions filed and the evidences placed on record.

2. That the Ld. CIT(A) grossly erred in facts of the case in presuming that the appellant requested to assess all credits as sales and gross profit be assessed as income of the appellant despite the fact that after explaining the source of cash deposits it was claimed that the addition of gross amount is in violation of theory of taxation of real income.

3. That the addition of Rs. 22,16,710 made under Section 69A of the Act to the income of the assessee is not tenable under the law because additions are made in gross ignorance and in violation of Real Income Theory of taxation which states that no income could be earned without incurring expenses for the same.

4. That the Ld. AO grossly erred in law and to the facts of the case in holding the trading activities of the assessee to be bogus solely on inability to furnish supporting bills and vouchers substantiating the same despite the fact that the appellant has declared his income under Section 44 AD of the Act and furnished DVAT returns and bank statements substantiating the same.

5. That the Ld. AO grossly erred in facts of the case in presuming that the assessee has not furnished source of cash deposits in his bank account despite the fact that the same was evident from the cash book furnished during the course of assessment proceedings.

6. That the addition of Rs. 22,16,710 made under Section 69A of the Act to the income of the assessee is not tenable under the facts of the case because additions are made in gross ignorance of the fact that the cash deposited in the bank account was either withdrawn and re-deposited or utilized for making purchases.

7. The appellate craves leave to add/ alter/ modify or delete any ground of appeal during the course of appellate proceedings.ö

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 23<sup>rd</sup> February, 2017 declaring the total income at Rs.2,69,900/- . During the course of assessment proceedings, the AO noted that the assessee has deposited cash amounting to Rs.32,59,950/- in the savings bank account maintained with the Punjab National Bank, Anand Vihar Branch, Delhi. On being asked by the AO to explain the source of such cash deposit of Rs.32,59,950/-, the assessee furnished the cash book of M/s Om Sai Ram Garments in which the assessee is a proprietor without any supporting bills/vouchers. Since the assessee did not furnish the supporting bills and vouchers, the AO held that the genuineness

of purchase and sales cannot be substantiated and this is bogus sale and purchase. He noted that the assessee has declared gross turnover or gross receipt amounting to Rs.13,50,125/- and has offered Rs.2,82,000/- for taxation. Since the assessee's total deposit of Rs.35,66,835/- was for the period from 01.04.2014 to 31.03.2015 and the assessee has declared gross receipt of Rs.13,50,125/-, therefore, the AO, invoking the provisions of section 69A, made an addition of Rs.22,16,710/- (i.e., Rs.35,66,835/- (-) 13,50,125/-). The AO accordingly determined the total income at Rs.24,86,610/-.

4. In appeal, the Id.CIT(A) sustained the addition made by the AO by observing as under:-

ö6. I have examined the facts at hand. In this case, before me, no supporting vouchers or documents were produced by the appellant. The deposits / credits in the bank account were more than the admitted sales. The A.O. has noted that the evidence of purchase was not presented, the A.O also found the sale to be bogus. Before me in appeal, the appellant came forward with a plea that the entire credits of Rs. 35,36,835/- (cash deposits and Rs. 32,59,950/- and other credits Rs.3,06,885/-), be treated as sales of the appellant. The appellant prayed that his gross profit rate of 20.89% be treated as income. In this case, I find that the appellant has not been able to prove the fact of purchases or sales. Even before me, no evidence regarding sale or purchase was presented. As such, the entire credits in the bank account have remained unexplained. Thereafter, I am left with no alternative but to confirm the A.O's findings.ö

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. Counsel for the assessee submitted that all credits in the bank account are sale proceeds. However, the assessee, at the time of hearing could not

produce the bills and vouchers for which the AO has made the addition. He submitted that the assessee has shown gross profit rate of 20.89% and, therefore, the same rate of profit should be applied to the total deposits in the bank account which are the sale proceeds. In his alternate contention, the Id. Counsel for the assessee filed a chart containing the details of deposits and withdrawals and submitted that the peak credit comes to only Rs.7,70,390/-. Therefore, he has no objection if the same amount is brought to tax as against Rs.22,16,710 made by the AO and sustained by the CIT(A).

7. The Id. DR, on the other hand, strongly objected to the arguments advanced by the assessee and supported the order of the AO and the CIT(A). He submitted that neither during the course of assessment proceedings nor during the appellate proceedings the assessee has substantiated the source of such cash deposits in the bank account. Therefore, the unaccounted deposits made in the bank account which has rightly been added by the AO and sustained by the CIT(A) should be upheld.

8. I have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that as against the total deposits in the bank account of Rs. 35,36,835/-, the assessee has shown a turnover of only Rs. 13,50,125/- for which the AO made the addition of Rs.22,16,710/- which was upheld by the CIT(A). It is the submission of the Id. Counsel for the assessee that the assessee has shown a GP rate of 20.89% and, therefore, the same rate should be

applied to the entire deposits since such deposits are nothing, but, suppressed turnover. It is the alternate contention of the Id. Counsel for the assessee that only the peak credit should be added and not the entire deposits in the bank account since the corresponding withdrawals from the said bank account have not been considered. A perusal of the deposit and withdrawals in the said bank account filed by the assessee shows that there are systematic deposits as well as withdrawals. The assessee is engaged in the business of readymade garments, therefore, taxing only the deposits without giving corresponding credits to the withdrawals, in my opinion, will be not justified in the instant case especially when the assessee is a small trader. Since the peak credit comes to Rs.7,70,390/-, I, therefore, modify the order of the CIT(A) and restrict the addition to Rs.7,70,390/-. The grounds raised by the assessee are accordingly partly allowed.

9. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 06.03.2020.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 06<sup>th</sup> March, 2020.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi