

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-I" NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.8197/DEL/2019
Assessment Year: 2011-2012

Rosy Kakkar, G-66, Pushkar Enclave, Paschim Vihar, New Delhi.	vs.	ITO, Ward-41(3), New Delhi
TAN/PAN: ALYPK8488M		
(Appellant)		(Respondent)

Appellant by:	S/Shri R.S. Singhvi, C.A. and Satyajeet Goel, CA		
Respondent by:	Ms. Rakhi Vimal, Sr.D.R.		
Date of hearing:	21	09	2020
Date of pronouncement:	22	10	2020

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against the impugned order dated 15.07.2019, passed by Ld. Commissioner of Income Tax (Appeals)-XIV, New Delhi for the quantum of assessment passed u/s.147/143(3) for the Assessment Year 2011-12. In the grounds of appeal, the Assessee has challenged the validity of initiation of proceedings u/s.147/148 and addition of Rs. 13,61,300/- against return of income of Rs.1,79,200/-.

2. The facts in brief are that, the assessee is an individual and through i-tax net provides the list non-filers of Income Tax Return, wherein the assessee's name had appeared in

that list and it was found that cash transaction exceeding Rs.10 lac has been made during the financial year 2009-10. Since assessee had not filed her return of income for Assessment Year 2010-11, a notice u/s.148 was issued on 27.03.2018. In response to notice, the assessee has declared income of Rs.1,79,200/-.

3. Before the Assessing Officer, the assessee had filed part submission and also filed objection for initiation of proceedings u/s.148 and stated that she has declared income u/s.44AD and she does not have any documentary evidence in support of business activities carried out by during the year. It was stated by the assessee that entire deposits of Rs.13,61,300/- in the bank account cannot be treated as total income, because there have regular withdrawals from her bank account for the business purpose. Alternatively, it was submitted that since there was were regular deposits and withdrawals, then in that case only earlier deposits be treated as undisclosed income and subsequent deposits may be treated as the source for these deposits. Regarding nature of business assessee explained that, she was engaged in providing coaching facilities to the students, business of purchase and sale of artificial jewellery, bed sheets and pillow covers, etc. However, the Assessing Officer held that the assessee could not substantiate her business activities nor could explain the cash deposits in the bank account. Accordingly, he treated the entire cash deposits aggregating to Rs.13,61,300/- as income from undisclosed sources. The

income was assessed at Rs.15,40,500/- including the return of income of Rs1,79,200/- which was shown as business income.

4. Ld. CIT (A) too has confirmed the said addition on the ground that source of cash deposits cannot be explained in the absence of contemporaneous evidence. The Ld. CIT (A) from the perusal of the bank account had noted that the cash has been deposited at various places in the bank account of the assessee, like from Jhansi, Solapur, Ajmer, etc. He observed that if the assessee had been earning income from coaching business, then the deposits of cash would not have been made from multiple cities and even if she was running of business of purchase and sale of bed sheets, artificial jewellery etc. in Delhi still the source of cash deposits outside the Delhi was not explained.

5. Before us, the ld. counsel for the assessee, Mr. R.S. Singhvi submitted that here in this case the assessee had filed her return of income in response to notice u/s.148 as business income u/s.44AD. From a bare perusal of the bank account, it can be seen that assessee has been receiving cash from various cities including Delhi and there are regular withdrawals also which shows that assessee has been making purchase from various vendors and selling to various places in different cities. Further, she has also been paying GST, which is evident from the bank details itself which indicates that she was buying and selling goods. Moreover, when the

business income has been accepted by the Assessing Officer, i.e., he has accepted the return of income then the entire deposits cannot be added.

6. Ld. DR, on the other hand, submitted that the onus is upon the assessee to prove the source of deposit and explained the nature of business with cogent evidences. Not a single material or documents was furnished to substantiate that assessee carried out any kind of business claimed by her. In absence of corroborative evidence or explanation fully supported by documents her claim for carrying out business activities cannot be accepted. Accordingly, the entire tax deposits are undisclosed income only. Regarding alternative claim of addition of peak credit, she submitted that the same can be made only when it was found that assessee is carrying out some kind of business activity which here in this case have not been found. The factual foundation for plea of peak credit has to be established by the assessee.

7. We have heard the rival submissions and also perused the relevant finding given in the impugned order and the material referred to before us at the time of hearing. It is an undisputed fact that the assessee had not filed the return of income for Assessment Year 2010-11 and the only return which was filed, was in response to notice u/s.148 on 27.08.2018. In the said return of income, the assessee had declared income of Rs.1,79,200/- which was shown as business income u/s.44AD based on the total cash deposits

appearing in her bank account. Since issue of validity of notice u/s.148 and u/s.147 has not been argued by the ld. counsel, therefore, the same are treated to be not pressed.

8. The assessee's plea all throughout has been that she has been carrying out petty business activities like purchase and sale of artificial jewellery, bed-sheets and other items from various places and also giving coaching to the students. The aggregate cash deposits in her account for the entire year was Rs. 13,61,300/- though no cogent material or evidence has been filed in support of business activities. However, from a bare perusal of the bank statement which was basis for the addition, it is seen that assessee has received cash from various vendors/ purchasers outside the Delhi and the narration given in the account mentions 'by cash- Jhansi-Shipri Bazar', 'by cash cashupl-Solapur', 'by cash cashupl-Jodhpur', 'by cash Ajmer', and likewise wherein cash amount has been deposited in her bank account on various dates. However, one very glaring feature from the perusal of the bank account is that the assessee has been paying VAT and such entries are appearing all throughout the year on various dates. Payment of VAT does indicate purchase and sale of some goods, items or services. All these factors thus, go to show that some kind of business activity was carried out by the assessee. If the assessee had shown income u/s.44AD which is presumptive basis for taxation and looking to the nature of bank account entries and regular cash deposits and withdrawals this shows that assessee was doing some kind of

business activities and preponderance of probabilities for such activities is definitely goes in favour of the assessee. Moreover, the Assessing Officer has tacitly accepted the business income by accepting the return of income from the same deposits of sums aggregating to Rs.13,61,300/-. Accordingly, we direct the Assessing Officer to accept the return of income of Rs.1,79,200/- as business income.

9. In the result, the appeal of the assessee is partly allowed.

Sd/-
[ANIL CHATURVEDI]
[ACCOUNTANT MEMBER]

DATED: 22/10/2020

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER