

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC-1 : NEW DELHI  
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.1324/Del/2018  
Assessment Year: 2008-09

Bhawani Shanker Gupta, Vs ITO,  
18, Asola Village, Fatehpur Beri, Ward-24(3),  
Near MCD Hospital, New Delhi.  
New Delhi.

PAN: AANPG5347D

(Appellant)

(Respondent)

Assessee by	:	Shri Lalit Mohan, CA
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	20.05.2021
Date of Pronouncement	:	10.06.2021

**ORDER**

This appeal filed by the assessee is directed against the order dated 13.11.2013 of the CIT(A)-11, New Delhi, relating to assessment year 2008-09.

2. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of retail trading of building material. He filed his return of income on 31<sup>st</sup> July, 2008 declaring the total income at Rs.1,07,216/-. The case of the assessee was selected for scrutiny through CASS. In this case AIR information was also received for deposit of cash above Rs.10 lakhs.

3. During the course of assessment proceedings, the AO noted that the assessee has shown gross receipt of Rs.1,80,560/- and after claiming of expenses to the tune

of Rs.78,480/- had shown a net profit of Rs.1,02,080/-. The assessee has also shown Rs.11,415/- as income from other sources. In the details submitted by the assessee, vide letter dated 25.11.2010, the assessee revised the gross receipt amount to Rs.7,08,320/- and declared profit of Rs.35,416/- u/s 44AF of the Act and also shown short-term capital gain of Rs.66,664/- apart from Income from other sources of Rs.11,415/-. The AO, thereafter, asked the assessee to explain the source of cash deposit amounting to Rs.10,19,000/-. It was explained that the deposits are out of his savings and business receipts, etc. In support of the same, the assessee also filed a cash flow statement. However, the AO did not accept the explanation given by the assessee in absence of any evidence/source of these deposits. He, therefore, adopted the peak balance of Rs.4,79,369/- as income from unexplained sources and added the same to the total income of the assessee.

3.1 Similarly, from the statement of affairs filed with the letter dated 25.11.2010, he noted that the assessee has invested Rs.6,36,004/- in shares from which long-term capital gain amounting to Rs.66,664/- was declared. Since these facts were not reflected in the original return of income, the AO made addition of Rs.7,02,668/- (Rs.6,36,004/- + Rs.66,664/-).

3.2 The AO further noted from the details filed by the assessee as per letter dated 25.11.2010 that the assessee has shown gross receipt from the business amounting to Rs.7,08,320/-. He, therefore, adopted the gross receipt declared by the assessee as per the said letter and after allowing the expenses of Rs.78,480/-

claimed in the original return of income, determined the income from business at Rs.6,29,840/-. Thus, the AO determined the total income of the assessee at Rs.18,00,460/- as against the returned income of Rs.1,07,216/-

4. Before the CIT(A), the assessee made elaborate submissions and filed various details based on which the Id.CIT(A) gave part relief to the assessee. So far as the addition of Rs.6,29,840/- made by the AO is concerned, the Id. CIT(A) deleted the same by observing as under:-

¶6.1. The facts of the case and the written submissions of the appellant have been carefully considered. Ground No.1 of the appeal is against the addition of Rs.7,08,320/- made by the AO in appellant's income from trading of building material. The AO treated the trading receipt at Rs.7,08,320/- but gave deduction of expenses at Rs.78,480/- originally claimed by the appellant out of total receipts of Rs.1,80,560/-. The appellant objected it on the ground that by this way profit has been computed at nearly 90% which is impossible. To appreciate the facts of the case, let us see the computation of income originally filed by the appellant which is as under:

<u>Income from Business/profession:</u>		
Receipts from supply of building material	1,80,560	
Less: expenses incurred	<u>78,480</u>	1,02,080
<u>Income from other sources:</u>		
REC Bond Interest	11,000	
Bond Interest	415	11,415
Total Income		1,13,495
Less: Deduction u/s 80C (LIC Premium)		6,279
Net Income		1,07,216

However, when the appellant's case was taken up in scrutiny, on account of cash deposits of Rs.10,19,000/- in the bank account, the appellant filed revised computation of income as under:

<u>Computation of Total Income</u>	
<u>Income from Business/Profession</u>	
Net profit declared in accordance with the provisions of section 44AF (5% of Rs.7,08.320/-)	35,416/-
<u>Income from Capital Gain</u>	
Short Term capital gain (as per enclosed sheet)	66,664/-
<u>Income from Other Sources</u>	

REC Bonds Interest	11000	
Bank Interest	415	11415
Total Income		1,13,495
Less : Deduction u/s 80C (LIC Premium)		<u>6,279</u>
Net Income		<u>Rs.1,07,216</u>

6.2. The comparison of two computations of income clearly establishes that the reason behind showing business receipts at an odd figure of Rs.7,08,320/- was specifically to tally the figure of Net Income of Rs.1,07,216/-. As the appellant had omitted the short term capital gain of Rs.66,664/- in his return; he reduced the business income from Rs.1,02,080/- to Rs.35,416/- in revised computation so that the net income remains unchanged at Rs.1,07,216/-. The appellant has not offered any independent evidence that supports his claim at a later stage that his turnover was Rs.7,08,320/- instead of Rs.1,80,560/- originally declared by him. Using the provisions of section 44AF of the Act to his advantage and its application as a tool to partly cover the unexplained cash deposits in the bank account is not permissible by statute. Therefore, there is no justification to enhance the appellant's receipts and give benefit of section 44AF of the Act to the appellant in his return. The AO was not justified in enhancing such income at Rs.6,29,840/-. The same is directed to be deleted.

5. So far as the addition of Rs.7,02,668/- is concerned, here also, the Id.CIT(A) bifurcated the same into two parts i.e., the investment portion and the profit thereon declared by the assessee of Rs.66,664/- and directed the AO to adopt the income from share at Rs.1,55,354/- as against Rs.66,664/-. So far as the investment of Rs.6,36,004/- for purchase of shares and the addition of peak credit in the bank account of Rs.4,79,316/- is concerned, the Id.CIT(A) recasted the cash flow and enhanced the same from Rs.4,79,367/- to Rs.7,98,770/-. He, however, directed the AO to delete the addition made by him of Rs.6,36,004/- on account of investment in shares. Thus, in effect, the Id.CIT(A) enhanced the addition on account of peak credit in the bank account from Rs.4,79,369/- to Rs.7,98,770/-.

Similarly, the profit from shares shown at Rs.66,664/- was enhanced to Rs.1,55,354/-.

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

Ø1 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the addition of Rs. 4,79,367/- made by the learned Assessing Officer representing alleged unexplained cash deposits in the bank account of the appellant.

1.1 That while upholding the addition the learned Commissioner of Income Tax (Appeals) has overlooked written submissions and relevant evidence placed on record and, drawn factually incorrect and legally unsustainable inferences based on irrelevant and extraneous considerations and thus, addition sustained is wholly unwarranted and not in accordance with law.

1.2 That various adverse findings recorded by the learned Commissioner of Income Tax (Appeals) are contrary to record and law and thus unsustainable

2. That furthermore the enhancement of income by the learned Commissioner of Income Tax (Appeals) by Rs. 3,19,403/- (incorrectly stated at Rs. 3,17,403/-) representing alleged unexplained cash deposits in the bank account of the appellant is illegal, invalid and beyond the scope and powers vested in the learned Commissioner of Income Tax (appeals) u/s 251 of the Act:

2.1 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in making the said addition on factually incorrect, irrelevant and, extraneous considerations

2.2 That no show cause notice was issued by the learned Commissioner of Income Tax (Appeals) before enhancing the income and as such the enhancement is without jurisdiction.

2.3 That enhancement by the learned Commissioner of Income Tax (Appeals) in the impugned order has been otherwise made without granting fair and proper opportunity of being heard and as such, in violation of principles of natural justice and therefore, vitiated.

It is therefore, prayed that addition made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and appeal of the appellant be allowed. It be further held that enhancement made by the learned Commissioner of Income Tax (Appeals) is in excess of jurisdiction.ö

7. The ld. counsel for the assessee strongly objected to the enhancement made by the CIT(A). The ld. Counsel for the assessee submitted that the solitary issue involved in the appeal relates to the addition of Rs.7,98,770/- i.e., addition of Rs.4,79,367/- and an addition of Rs.3,19,403/- (incorrectly stated as Rs.3,17,403/-). The ld. Counsel filed the following chart showing the status of the income determined by the AO and as per the order of the CIT(A) which is as under:-

Particulars of Income	Original computation of Income	Revised computation of Income	As per AO	As per CIT(A)
<b>A) Business Income</b>				
Receipt from supply of building material	1,80,560	35,416	7,08,320	1,80,560
Net Profit declared in accordance with the provision of section 44AF (5% of Rs. 7,08,320/-)				
Less: Expense incurred	78,480	-	78,480	78,480
<b>Total</b>	<b>1,02,080</b>	<b>35,416</b>	<b>6,29,840</b>	<b>1,02,080</b>
<b>Addition peak balance on account unexplained source</b>	--	--	<b>4,79,369</b>	<b>7,98,770</b>
<b>B) Income from capital gain</b>				
Short Term capital gain	-	66,664/-	7,02,668	66,664
<b>C) Income From other sources</b>				
REC Bond Interest (Rs. 11,000/-)				
Bond Interest (Rs. 415/-)	11,415	11,415	11,415	11,415
<b>Total Income (A+B+C)</b>	<b>1,13,495</b>	<b>1,13,495</b>	<b>18,00,462</b>	<b>8,76,849</b>
Less: Deduction u/s 80C (LIC Premium )	6,279	6,279	---	6,279
<b>Net Income</b>	<b>1,07,216</b>	<b>1,07,216</b>	<b>18,00,462</b>	<b>8,70,570</b>

8. Referring to the above, he submitted that the AO had made the addition of Rs.4,79,369/- being peak credit on account of alleged unexplained cash deposit which was enhanced by the CIT(A) to Rs.7,98,770/- and, thus, the effective

enhancement is Rs.3,70,403/-. The Id. Counsel drew the attention of the Bench to the following table showing the basis of addition made by the CIT(A):-

Sr.No.	Particulars	Amount	
1	Total cash deposit (A)		12,67,500
2	Cash withdrawals (B)	6,53,330	
	Less: Ineligible cash withdrawals for cash deposits	1,53,000	
			5,12,330
3	Less: Amount estimated to have been utilized for household expenses (15,000x8) for the period April, 2017 to November, 2017 (C)	1,20,000	1,20,000
	Balance D = (B-C)		3,92,330
	E=(A-D)	--	8,75,170
4	Benefit out of current year's income from building material (F)	76,560	76,560
5	Addition enhanced from Rs. 4,79,367/- to Rs. 7,98,610/-* i.e. Rs. 3,17,403 as against original addition in of Rs. 4,79,367/- in the order of assessment (G=E-F)	--	7,98,610
	* Figure adopted incorrectly at Rs. 7,98,770/-		

9. The Id. Counsel submitted that during the assessment proceedings it was stated that the assessee is engaged in the business of trading of building material. The business has been accepted by the AO as well as CIT(A). However, the AO assessed the said income at Rs.62,984/- whereas the Id.CIT(A) has accepted the income from the said business at Rs.1,02,080/-. He submitted that as per the provisions of section 44AF, the income of the assessee has to be assessed on presumptive basis at a sum equal to 5% of the total turnover. Since the assessee has claimed turnover at Rs.7,08,320/- and declared profit @ 5% of the turnover at Rs.35,416/- as income, therefore, without disturbing the turnover the AO should

not have rejected the benefit u/s 44AF. Further, the CIT(A) neither accepted the turnover nor granted the benefit of section 44AF on the ground that the assessee could not offer any independent evidences to support his claim at a later stage i.e., turnover was Rs.7,08,320/-, despite the fact that there were cash deposits in the bank account of the assessee which aggregated to Rs.12,67,500/-. The Id. Counsel while explaining the deposit in the bank account submitted that the same is out of the receipt from supply of building material, earlier cash withdrawal from the bank, gifts received from parents at Rs.2,50,000/- and opening cash balance of Rs.2,50,256/-. Relying on various decisions, the Id. Counsel for the assessee submitted that the assessee is a very small assessee and has explained the source of deposits and, therefore, the explanation of the assessee should not have been rejected outright without conducting any further inquiry. He submitted that the gift of Rs.2,50,000/- was received from both parents at Rs.1,25,000/- each. The parents have given their confirmations. His father is a senior citizen aged 73 years and derives income from agriculture and ancestral land holdings. The land is situated at Fatehpuri Beri. The assessee had also enclosed Khatoni since 1984-85 which shows the landholding. So far as the opening cash of Rs.2,50,256/- is concerned, he submitted that the assessee had substantial cash withdrawal from F.Y. 2006-07 and the cash balance is a result of both withdrawals and on account of the fact that he is carrying on the business of construction material where the receipts are in cash only. The assessee has also produced the cash book before the AO as well as the CIT(A). Therefore, without proper appreciation of the facts the

ld.CIT(A) was not justified in enhancing the income of the assessee. He accordingly submitted that the addition enhanced by the CIT(A) should be deleted and the addition made by the AO also should be deleted.

10. The ld. DR, on the other hand, strongly supported the order of the CIT(A). He submitted that the ld.CIT(A), after going through the various submissions made by the assessee, has passed a very reasoned order. The ld. Counsel is not able to controvert the findings given by the CIT(A). Therefore, under the facts and circumstances of the case, the grounds raised by the assessee should be dismissed.

11. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the assessee, in the instant case, initially has shown the gross receipt at Rs.1,80,560/- and after claiming expenses of Rs.78,480/- had declared net profit at Rs.1,02,080/- out of retail trading of building material. However, subsequently, during the course of assessment proceedings, the assessee had shown gross receipts amounting to Rs.7,08,320/- and declared the profit at Rs.35,416/- by opting the benefit under provisions of section 44AF. Similarly, the assessee had shown short-term capital gain of Rs.66,664/- apart from Income from other sources of Rs.11,415/-. I find, the AO determined the income of the assessee at Rs.18,00,460/- wherein he determined the income from supply of building material at Rs.6,29,840/- after allowing the deduction of Rs.78,480/- originally claimed

from the revised gross receipt of Rs.7,08,320/-. Similarly, the AO made addition of Rs.4,79,369/- being the unexplained cash deposit by adopting the peak balance of Rs.4,79,369/-. The AO also made addition of Rs.7,02,668/- being the investment in shares at Rs.6,36,004/- and the short-term capital gain of Rs.66,664/- which was declared by the assessee. I find, in appeal, the Id.CIT(A) enhanced the income of the assessee by Rs.3,70,403/- wherein he enhanced the deposit in the bank account from Rs.4,79,369/- to Rs.7,98,770/-. He, however, deleted the other addition of Rs.6,36,004/- being the investment in shares and the addition made by the AO of Rs.6,29,840/- being the income from supply of building material for which there is no appeal by the Revenue. According to the Id.CIT(A), the assessee was unable to provide the source of various deposits in the bank account and the assessee failed to file the cash flow statement as no cash book was stated to have been maintained. The Id.CIT(A), therefore, determined the unexplained cash deposit at Rs.7,98,610/- as against Rs.4,79,369/- determined by the AO on the ground that the assessee was unable to explain the source of cash deposit. It is the submission of the Id. Counsel that the cash so deposited was out of the opening cash balance of Rs.2,50,256/-, gifts received from parents of Rs.2,50,000/- and out of the receipt from supply of building materials, etc.

12. The Id. Counsel for the assessee filed the following reconciliation statement and submitted that if the above is considered, the total cash deficit comes to Rs.1,66,850/-:-

Particulars of Income	As per AO	As per CIT(A)	Submissions of the appellant
A) Business Income			
Receipt from supply of building material	7,08,320	1,80,560	35,416 (5% of Rs. 7,08,320/-)
Net Profit declared in accordance with the provision of section 44AF (5% of Rs. 7,08,320/-)			
Less: Expense incurred	78,480	78,480	
Total	6,29,840	1,02,080	35,416
Addition peak balance on account unexplained source	4,79,369	7,98,770	
B) Income from capital gain			
Short Term capital gain	7,02,668	66,664	66,664
C) Income From other sources			
REC Bond Interest (Rs. 11,000/-)			
Bond Interest (Rs. 415/-)	11,415	11,415	11,415
Total Income (A+B+C)	18,00,462	8,76,849	1,13,495
Less: Deduction u/s 80C (LIC Premium)	--	6,279	6,279
Net Income	18,00,462	8,70,570	1,07,216

5. Apart from the above, the appellant seeks to rely on the following explanation to support the cash deposits in the bank account of the appellant:

Sr.No.	Particulars	Amount	
1	Total cash deposit (A)		12,67,500
2	Cash withdrawals (B)	6,53,330	
	Less: Ineligible cash withdrawals for cash deposits	1,53,000	
			5,12,330
3	Less: Amount estimated to have been utilized for household expenses (15,000x8) for the period April, 2017 to November, 2017 (C)	1,20,000	1,20,000
	Balance D = (B-C)	----	3,92,330
	E=(A-D)	ô	8,75,170
4	Benefit out of current year's receipt (F)	ô	7,08,320
5	Balance G=E-F	ô	1,66,850

13. So far as the difference of Rs.1,66,850/- as derived above, it is his submission that the same is further explained by the opening cash balance of Rs.2,56,256/- and gifts received from parents of Rs.2,50,000/-.

13.1 I find some force in the above submissions made by the Id. Counsel. As mentioned earlier, the total cash deposit in the bank account is Rs.12,67,500/-. The assessee explained to have made the deposit out of the current year receipt of Rs.7,08,320/-, earlier cash withdrawal which is available for re-deposit in the bank account of Rs.3,92,330/-, opening cash balance of Rs.2,50,256/- and gifts received from parents at Rs.2,50,000/-, all totaling to Rs.14,00,906/-. So far as the amount of Rs.7,08,320/- is concerned, the same is not in dispute because the AO himself has accepted the receipt from supply of building materials at Rs.7,08,320/-. So far as the other items are concerned, however, they are not fully substantiated in absence of maintenance of any regular books of account as assessee has opted for the presumptive taxation scheme u/s 44AF. The opening cash balance of Rs.2,50,256/- in my opinion cannot be accepted in toto. At the same time, it cannot be said that there is no opening cash balance. Therefore, adoption of opening cash balance at Rs.2 lakh on estimate basis may be adopted for explaining the source of deposit in the bank account. So far as the gift of Rs.2,50,000/- is concerned, the assessee has received these gifts from his parents. Although the parents have filed the confirmations of gifts and they are very senior citizens and the father is deriving income from agriculture, at the same time, the gift was

received in cash and, therefore, in absence of any other documentary evidence, the source of the parents to extend gift of Rs.2,50,000/- to the assessee remains doubtful. However, some funds must be available with the parents who are very senior citizens to extend gift to their son. Therefore, gift of Rs.1 lakh each by both the parents to the assessee under the facts and circumstances may be considered as reasonable to be explained as available to the assessee for deposit. Therefore, the claim of the assessee that he has received gifts from parents to the tune of Rs.2,50,000/- is not accepted in full and gifts only to the tune of Rs.2 lakh is accepted as explained for depositing in the bank account. So far as the cash available for deposit in the bank out of earlier withdrawals is concerned, here also the same is on estimation basis. The assessee has given the break-up of such cash available for re-deposit in the bank account to the tune of Rs.3,92,330/-. However, after going through the same, I am of the considered opinion that an amount of Rs.3,50,000/- may be accepted for earlier cash withdrawals eligible for re-deposit in the bank account as against Rs.3,92,330/- since the assessee has estimated his personal withdrawals only for eight months. Thus, in effect, an amount of Rs.1,42,330/- remains unexplained to be deposited in the bank account. Therefore, considering the totality of the facts of the case, I am of the considered opinion that an amount of Rs.1,50,000/- on estimate basis is the unexplained cash deposited in the bank account which requires addition. Accordingly, the order of the CIT(A) is modified and the AO is directed to restrict the addition to Rs.1,50,000/- to the returned income. The grounds raised by the assessee are partly allowed.

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

The decision was pronounced in the open court on 10.06.2021.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 10<sup>th</sup> June, 2021

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi