

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.5402/Del./2018
Assessment Year 2010-2011

Shri Ved Prakash Gupta, 51, Gali No.2, Nehru Nagar, Meerut – 250 002 Uttar Pradesh. PAN AGSPG3858J	vs.	The Income Tax Officer, Ward – 2 (4), Meerut.
(Appellant)		(Respondent)

For Assessee :	Shri Rohit Tiwari, Advocate.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	03.08.2021
Date of Pronouncement :	30.09.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 05.06.2018 of the Ld. CIT(A), Meerut, relating to the A.Y. 2010-2011.

2. This is the second round of litigation before the Tribunal. This appeal was earlier dismissed by the Tribunal for want of prosecution. Subsequently, the Tribunal vide M.A.No.365/Del./2019 order dated 26.07.2019 recalled its earlier order. Hence, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and has not filed his return of income. The case of the assessee was reopened on the ground that assessee has made cash deposit of Rs.16,10,500/- in the Bank A/c maintained with ICICI Bank Limited. Accordingly, the A.O. after recording reasons under section 147 of the I.T. Act, 1961, issued notice under section 148 on 15.03.2017. The assessee in response to the same filed his return of income declaring total income of Rs.1,50,000/-. During the course of assessment proceedings, the A.O. asked the assessee to explain the source of deposits in the Bank A/c. It was explained by the assessee that he is running his business in the name of M/s. Bobby Sales Corporation and filed the Registration Certificate issued by the Sales Tax Department. It was explained that the entire deposit is his business receipt. However, the A.O. was not satisfied with the arguments advanced by the assessee. He noted that the peak credit in the Bank A/c is Rs.7,27,846/-. After excluding the income declared by the assessee in response to notice under section 148 at Rs.1,56,000/- as

explained, the A.O. made an addition of Rs.5,71,846/- to the total income of the assessee being the difference. Thus, the A.O. determined the total income of the assessee at Rs.7,27,846/-.

3.1. Before the Ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. It was explained that the case of the assessee is covered under section 44AF of the I.T. Act, 1961 and, therefore, income can be estimated @ 5% of the gross receipts. It was explained that the A.O. without considering the facts of the case properly, has made an addition of Rs.5,71,846/- which is not justified. So far as the validity of the re-assessment proceedings is concerned, it was argued that A.O. has not recorded reasons and has not provided the approval of PCIT, Meerut which is against the procedure of Law.

3.2. However, the Ld. CIT(A) also was not satisfied with the arguments advanced by the assessee and uphold the action of the A.O.

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

- “1. *That the Ld. CIT(A) has not appreciated the legal infirmity of the action of the Ld. A.O. in initiating proceedings u/s 147 and issuing notice u/s 148 without considering the facts and legal position of the case as a whole.*
2. *That without prejudice to ground no-1 the observations made by the Ld. A.O. are inconsistent with the factual and legal position of the case.*
3. *That the order passed by the Ld. A.O. deserves to be annulled as the assessment order has been passed in hurry without appreciating the legal and factual position of the case and without application of mind resulting in contradiction in observations of the Ld. A./O. That as per first page of the assessment order it has been passed u/s 148/143(3) when observations made by the Ld.*

A.O. on page -2 of assessment order that the order is being passed ex-parte u/s 144 of the I.T. Act.

- 4. That the Ld. CIT(A) could not appreciate appellant's return of income showing a net income of Rs.1,56,000/- disclosing all material facts necessary for his assessment.*
- 5. That the Ld. CIT(A) erred in endorsing the observations of the Ld. A.O. as mentioned in his assessment order and making assessment u/s 148/143(3) without ascertaining the facts of the case as a whole.*
- 6. That the observations of the Ld. A.O. and its endorsement by the Ld. CIT(A) for making the addition of Rs.5,71,846/- as alleged peak balance in bank account alleging it as undisclosed capital are inconsistent both factually and legally. That the Ld. CIT(A) could not appreciate the fact that the appellant has been filing his return of income since 1985-86 and peak amount in bank account represents appellant's accumulated capital out of*

income declared by him since the assessment Year 1985-86.

7. *That in view of the facts and legal position of the case the assessment made by the Ld. A.O. deserves to be annulled or in alternative the entire addition to be deleted.*
8. *That the assessee very modestly reserves his right to take, amend or withdraw any ground of appeal.”*

5. Learned Counsel for the Assessee strongly challenged the order of the Ld. CIT(A) in sustaining the addition made by the A.O. He submitted that assessee is 73 years old and from 1986 onwards he is doing the business of supplying tailoring material. He submitted that in the immediately preceding assessment year the case of the assessee was also reopened under section 147 of the I.T. Act, 1961 wherein deposit of Rs.19 lakhs was made in the Bank A/c. The A.O. has accepted the fact that assessee is using his S.B. A/c and the deposits in the Bank A/c are out of business receipts. He submitted that no 263 proceedings

have been initiated. He submitted that assessee is having only one Bank A/c and does not have any other Bank A/c. He submitted that when the assessee is doing business and his entire receipts are deposited in the only Bank A/c maintained by him, therefore, treating the deposits in the Bank A/c as unexplained source is not justified. Further the assessee in his return of income has opted for presumptive tax as per the provisions of section 44AF of the I.T. Act, 1961 and is not required to maintain any books of account. He accordingly submitted that the addition made by the A.O. and upheld by the Ld. CIT(A) should be deleted.

6. On the other hand, the Ld. D.R. heavily relied on the order of the Ld. CIT(A).

7. I have considered the rival arguments made by both the sides and perused the record. I find the A.O. in the instant case has reopened the assessment by issuing notice under section 148 of the I.T. Act, 1961 on the ground that assessee has made cash deposit of Rs.16,10,500/- in the Bank A/c maintained with ICICI Bank Limited. After considering the returned income of Rs.1,56,000/- as

explained out of peak deposit of Rs.7,21,846/-, the A.O. made an addition of Rs.5,71,846/- which has been upheld by the Ld. CIT(A). It is the submission of the Learned Counsel for the Assessee that assessee is engaged in the business of trading in tailoring materials under the name and style of M/s. Bobby Sales Corporation and all his business receipts are deposited in the Bank A/c maintained with ICICI Bank Limited and he does not have any other Bank A/c. It is also his submission that assessee has opted for the presumptive taxation as per the provisions of Section 44AF of the I.T. Act, 1961 and has not maintained any books of account and, therefore, the addition made by the A.O. and sustained by the Ld. CIT(A) is not justified. It is also his submission that in the subsequent assessment year the case of the assessee was reopened under section 147 of the I.T. Act, 1961 on the ground that assessee has made cash deposit of Rs.19 lakhs in the S.B. A/c and the A.O. has accepted the plea of the assessee that the S.B. A/c is used for the business transactions and no 263 proceedings have been initiated against such assessment order.

7.1. I find some force in the above submissions of the Learned Counsel for the Assessee. A perusal of the letter addressed to the A.O. shows that assessee has categorically mentioned that he is engaged in the retail trading of tailoring materials since long and his total income had never become taxable, for which, he never filed his return of income. The assessee had also explained before the A.O. that he is having only one S.B. A/c maintained with ICICI Bank Limited vide A/c. No.097501501410 and has no Current A/c for maintaining business transactions and all his sales and purchases have been routed through his S.B. A/c only. There is no material on record before the A.O. that apart from the aforementioned Bank A/c, the assessee is having any other Bank A/c. I, therefore, find merit in the arguments advanced by the Learned Counsel for the Assessee that when all business transactions i.e., purchases and sales etc., are routed through the only Bank A/c maintained with ICICI Bank Limited and since in the subsequent assessment year the A.O. himself has accepted that the S.B. A/c of the assessee is used for his business

transactions and since the assessee has opted for presumptive taxation under section 44AF of the I.T. Act, 1961, therefore, I am of the considered Opinion that the lower authorities are not justified in sustaining the addition of Rs.5,71,846/- as unexplained cash deposit in the Bank A/c. I, therefore, set aside the order of the Ld. CIT(A) and direct the A.O. to delete the addition.

7.2. So far as the merit of the re-assessment proceedings are concerned, the Learned Counsel for the Assessee did not make any arguments on this issue, for which, the grounds challenging the validity of re-assessment proceedings are dismissed.

8. In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 30.09.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 30th September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.