

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

(Through Video Conferencing)

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.5382/DEL/2017
[Assessment Year: 2010-11]**

M/s Associated Business Group, C/o-Harjot Singh Anand, T-3/402, Sun World Vanalika, Sector-107, Noida, Uttar Pradesh-201301	ITO, Ward-31(1), Old Ward-23(4), New Delhi
PAN-AAEFA6794M	
Assessee	Revenue

Assessee by	Sh.R. S. Ahuja, CA
Revenue by	Sh. V.K. Kataria, Sr. DR

Date of Hearing	08.09.2021
Date of Pronouncement	11.10.2021

ORDER

PER KUL BHARAT, JM

This appeal filed by the assessee is directed against the order dated 06.03.2017 of the learned CIT(A)-11, New Delhi, relating to Assessment Year 2010-11. The assessee has raised following grounds of appeal:-

(A) That on the facts & circumstances of the case the learned ITO U/s 147/143(3) and Learned CIT (A)- 11 U/s 250 erred in:

i) Holding that the case of the Assessee had been validly reopened U/s 148 of the Income Tax Act, 1961.

ii) *Not appreciating the overwhelming evidence and confirming the difference between 26AS and amount declared as undisclosed income of the Assessee.*

iii) *Ignoring the affidavit of the Assessee and confirming an Addition of Rs. 5393868/-.*

iv) *Not accepting that Harjot Singh Anand had in his individual capacity disclosed a sum of Rs. 827483/- and Rs. 304152/- under Income Disclosure Scheme on this turnover for the AYs. 2010-11 and 2011-12 respectively and shown the Bank Account Details of M/s. ABG Hospitality Services- A/c No. 020100755001 in citizen Cooperative Bank Noida.*

v) *Not appreciating that the parties U/s 133(6) have given the name of the Account as M/s. ABG Hospitality Services and also issued cheques in the name of M/s. ABG Hospitality Services but wrongly mentioned the PAN No. of Appellant Firm.*

vi) *Not allowing the admission of the Additional Grounds of Appeals: -*

1. *That without prejudice to other Grounds of Appeal, the assessee may please be allowed the proportionate expenses as claimed in profit and loss account from the alleged additional income of Rs. 5393868/-. The net profit may please be computed after deducting the proportionate expenses as per profit and loss account at notional rate or deemed rate of 8%.*

2. *That the TDS credit may please be allowed corresponding to the alleged sale/income of Rs. 5393868/- to the Assessee since assessee has not claimed TDS of Rs. 115695/- in the computation of income deducted by the alleged parties.*

(B) *Without prejudice to the grounds of Appeal stated above, on merits the AO has erred in adding the entire amount of difference as undisclosed income of the Assessee. The Receipts may be construed as Business Receipts and only the income portion out of the Business Receipts can be taken as income. It is*

an established fact that the Assessee is in the business of canteen, catering and 55-66% constitute direct Food Cost besides labour, Fuel and other Costs.”

2. Facts giving rise to the present appeal are that in this case income tax return (“ITR”) declaring income of Rs.23,800/- was filed on 30.03.2011 and the same was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter ‘the Act’). Thereafter, it was observed that as per Form 26AS the gross receipt against the PAN of the assessee were shown at Rs.88,66,179/-, whereas the assessee in his return declared the same at Rs.34,72,311/-. Since, there was a difference of Rs.53,93,868/-, the Assessing Officer reopened the case of the assessee u/s 147 of the Act by issuing notice u/s 148 of the Act dated 06.03.2013. In response thereto, the Ld. Authorized Representative of the assessee attended the proceedings and filed details as called for. However, the Assessing Officer was not convinced with the explanation given by the assessee in respect of difference of gross receipt as per 26AS and declared by the assessee. It was also recorded by the Assessing Officer that the deductors of tax have confirmed the payment made to the assessee and corresponding deduction of tax. Thereafter, the Assessing Officer rejected the contention that the partner of the assessee

Shri H.S. Anand was conducting the business in his individual capacity, separately in proprietary concern. The impugned sum related to proprietary concern of the partner of Shri H. S. Anand. The Assessing Officer therefore, treated the difference of receipt as income of the assessee. Thus, Assessing Officer made addition of Rs.53,93,868/-.

3. Aggrieved against this, the assessee preferred appeal before Ld. CIT(A), who after considering the submissions, sustained the finding of the Assessing Officer, and dismissed the appeal of the assessee.

4. Aggrieved against the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee vehemently argued that the authorities below have failed to appreciate the facts in right perspective. He contended that the assessee had duly explained the cause of difference between the receipts declared in computation of income and reflected in Form 26AS. He contended that the authorities below have failed to appreciate that one of the partners assessee firm namely, Sh. Harjot Singh Anand had owned up the receipts stating therein that he was also conducting the business in his personal capacity

under the proprietary concern. An affidavit in support was also filed. He submitted that the authorities below failed to take note of the fact that Sh. Harjot Singh Anand had in individual capacity disclosed a sum of Rs.8,27,483/- and 3,04,152/- under the Income Disclosure Scheme for the Assessment Years 2010-11 and 2011-12 respectively. The details of bank account no. 020100755001 of M/s ABG Hospitality Services was also furnished. He submitted that under the facts and circumstances of this case, the Assessing Officer erroneously made the addition purely on the basis of whims and fancies. Further, he contended that even if it is assumed that the entire receipt pertained to the assessee firm, in that event also, entire receipt could not have been taxed only profit element embedded in such receipt could be subjected to tax. He submitted that the law is well settled in this regard that the gross receipts cannot be treated as net receipt. He contended that profit at notional rate i.e. @ 8% on the gross receipt ought to have been computed, without prejudice to the contention of the assessee that the amount did not pertain to the assessee firm, and same was disclosed and the due taxes even paid by the partner of the assessee firm under the disclosure scheme.

5. On the other hand, the Ld. DR opposed the submissions of the assessee and supported the orders of the authorities below and contended that the payment was made to the assessee firm on which the recipient of service deducted the tax as per law. Now, the assessee is taking a different stand, which cannot be permitted under the law. He submitted that the tax was deducted by the payer correctly and no prudent person would deduct the tax in the name of the wrong entity. Hence, he strongly supported the orders of the authorities below.

6. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. In one of the grounds, the assessee has objected to re-opening of the assessment. We do not see any merit into this ground as the Assessing Officer has clearly brought out that there was difference in the gross receipts declared by the assessee in its P&L A/c and as reflected in Form No.26AS. Therefore, the Assessing Officer was justified in re-opening of the assessment. Regarding merit of the addition, the contention of the assessee is that the receipt pertained to one of the partners namely, Shri Harjot Singh Anand, who confirmed this fact on duly sworn affidavit.

Without prejudice to other contention, it is also stated that the entire receipts as reflected in Form 26AS only profit element embedded in such receipt could be taxed. We have given out thoughtful consideration to this contention of the Authorized representative of the assessee, there is no dispute with regard to the fact that the Assessing Officer taxed the entire difference of receipts. Further, undisputedly, there is no finding by the Assessing Officer or any material placed on record, suggesting that the assessee had made investment out of undisclosed source for earning of gross receipts. The Assessing Officer simply added the difference of receipts as recorded in Form 26AS and as disclosed by the assessee firm in its P&L A/c. This action of the Assessing Officer is contrary to the settled principle of law. Therefore, such action could not be sustained. Under these uncontroverted facts of the case, we are of the considered view that the Assessing Officer ought to have taxed the only profit element embedded into such receipts. As by any stretch of imagination, the gross receipt would not partake the character of income. The assessee has placed reliance on the decision of the Co-ordinate Bench of Tribunal rendered in the case of *Raghubir Singh vs ITO in ITA No.2563/Del/2016* where under the identical facts,

the Assessing Officer was directed to apply net profit of 8% on the difference of receipts. Respectfully following the reasoning of the Co-ordinate Bench of this Tribunal rendered in the case of *Raghubir Singh vs ITO* (supra), we hereby direct the Assessing Officer to apply net profit @ 8% on the difference of receipts that comes to Rs.4,31,510/-. Hence, addition is sustained to the extent of Rs.4,31,510/- and rest of the addition is, hereby deleted. Thus, grounds raised by the assessee are partly allowed.

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

Above decision was pronounced in the open court on conclusion of Virtual Hearing on 11.10.2021.

Sd/-
[G.S. PANNU]
PRESIDENT

Dated: 11/10/2021.
Shekhar / Anil Kumar, Sr. P.S

Copy forwarded to:

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

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Asst. Registrar,
ITAT, New Delhi