

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

Before Ms. Suchitra Kamble, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3745/Del/2018 : Asstt. Year : 2014-15

Santi Ranjan Biswas, C/o Dev Raj Sharma, Adv. TA-327, 2 nd Floor, Tughlakabad Extn., Main Okhla Road, New Delhi-110019	Vs	Income Tax Officer, Ward-31(3), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AREPB3558M		

Assessee by : None

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 12.10.2021

Date of Pronouncement: 14.10.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-11, New Delhi dated 16.03.2018.

2. Following grounds have been raised by the assessee:

"1. That on the facts and in the circumstances of the case and in law, the order passed by the Id. CIT(A) is completely arbitrary, unjustified and illegal.

2. That on the facts in the circumstances of the case and in law, Id. CIT(A) erred in dittoing the order of the A.O. and confirming the addition of Rs.98,25,752/- as unexplained difference which is completely arbitrary, unjustified and illegal.

3. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) and Id. Income Tax Officer erred in not appreciating the business module of the assessee. The Id. CIT(A) failed to appreciate that total business receipts cannot be regarded as income of the assessee.

4. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not affording reasonable opportunity to the appellant to present his case.

5. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not allowing the credit of the TDS of Rs.2,21,145/-.

6. That appellate order passed by the Id. CIT(A) and the assessment order passed by the Id. Income Tax Officer are bad in law and against the facts of the case."

3. Heard the arguments of both the parties and perused the material available on record.

4. The fact emerges as under:

The assessee is engaged in the business of manpower/security guards supply and earns profit out of the receipts after paying wages to the security guards provided by him to the customers. During the year, the assessee received Rs.1,16,75,752/- on account of services rendered to his customers. The assessee has shown the net receipts of Rs.18,50,000/- as gross profit and declared a total loss of Rs.12,385/- in the return of income. The Assessing Officer disallowed an amount of Rs.98,25,752/- being the difference of the total receipts (Rs.1,16,75,752/-) as per the AS-26 and the net receipt shown (Rs.18,50,000/-) on the grounds that the tax credit claimed in the ITR is less than the receipt shown as per the AS-26. We find that revenue had to

add this amount of Rs.98,25,752/- owing to absence of representation before the revenue authorities. The Id. DR also submitted that the receipts being more than Rs.1 Crore needs to be audited as per the provisions of Section 44AB of the Income Tax Act, 1961. We hold that the provision of violation of Section 44AB needs to be dealt separately as per the provisions of the Income Tax Act. The Id. AR submitted that notwithstanding anything, the assessee may be taxed at the presumptive rate of 8% on the gross receipts. We have gone through the provisions of the Act. In case of a person engaged in a business and opting for the presumptive taxation scheme of section 44AD, the provisions of section 44AA relating to maintenance of books of account will not apply. In other words, if a person adopts the provisions of section 44AD and declares income @ 8% of the turnover, then the assessee is not required to maintain the books of account as provided for under section 44AA in respect of business covered under the presumptive taxation scheme of section 44AD. Payment of advance tax in respect of income from business is also covered under section 44AD. It mandates that any person opting for the presumptive taxation scheme under section 44AD is liable to pay whole amount of advance tax on or before 15th March of the previous year. If he fails to pay the advance tax by 15th March of previous year, he shall be liable to pay interest as per section 234C. Provisions to be applied if a person does not opt for the presumptive taxation scheme of section 44AD and declares income at a lower rate, i.e., at less than 8%. A person can declare income at lower rate than 8% however, if he /she does so, and his/her income exceeds the maximum amount which is not chargeable to tax, then he/she is required to maintain the

books of account as per the provisions of section 44AA and has to get his accounts audited as per section 44AB.

5. Since, in the instant case, the assessee straightly doesn't fall into "The Scheme of Things" as he defaulted on payment of advance tax and disclosure of the profits @ 8% on the gross receipts and filing of the same in the return of income. At the same time, the facts of the case that the assessee is a small taxpayer engaged in the supply of security guards and earns his income out of the margin after paying of wages and salary to the security guards he hires for his customers. Hence, keeping in view the entire facts and circumstances of the case and in the peculiarities of the instant case, we feel ends of justice would be met by directing the assessee to pay tax @ 10%.

6. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 14/10/2021.

Sd/-

(Suchitra Kamble)
Judicial Member

Dated: 14/10/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR