

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1345/DEL/2020

[Assessment Year: 2012-13]

Sajid Ali, Kh. No. 236, Mukhandpur Extension, Gali no. , Hingiri Enclave, Burari, Delhi-110084.	<u>Vs</u>	Income-tax Officer, Ward-36(6), New Delhi.
PAN- ASLPA0128J		
APPELLANT		RESPONDENT
Appellant by		Sh. L.K. Arora, Adv.
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		03.01.2022
Date of pronouncement		25.02.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-13, New Delhi, dated 05.02.2020, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. The assessee is a scrap dealer in Delhi and he had filed his ITR on 31.03.2013 on the basis of presumptive scheme u/s 44AD for taxable income of Rs. 1,75,640/- (i.e. 12.58% on Turnover of Rs 21,90,410/- less deduction claimed under chapter-VI-A.) for A.Y. 2012-13. The Assessing officer fixed

the case u/s 144/147 of the Act on the basis that the assessee has deposited cash of Rs 34,29,900/- in bank accounts during the financial year 2011-12 and assessed the total credit of Rs 34,29,900/- by ignoring the turnover of Rs. 21,90,410/- already declared in ITR as income escaped from tax u/s 68 of the Act.

2. In Appeal before Hon'ble CIT(A), it was informed that the credit entries of Rs 12,39,490/- from a bank account could not be considered inadvertently in Turnover declared in ITR. The Hon'ble CIT(A) accepted turnover as shown in ITR already filed by the assessee but she considered unreported turnover of Rs 12,39,490/- as income u/s 69A of the Act, in spite of available information of bank statements that the outstanding balance of all bank accounts was never exceeded Rs 2,12,000/- at any day through the year. All payments were made to same vendors for buying scraps during the year. By ignoring debit side of bank statement towards purchases/ expenses, total of credits of Rs 12,39,640/- in the statement are taken as undisclosed investment u/s 69A of the Act.

3. Thus the impugned order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

4. That the appellant craves leave to add/alter any grounds of appeal before or at the time of hearing of the appeal.”

2. The facts giving rise to the present appeal are that the assessee filed its return of income on 31.03.2013 declaring income of Rs. 1,75,640/-. Thereafter, the case was reopened u/s 147 of the Income-tax Act, 1961, hereinafter referred to as the “Act” and the assessment u/s 147 read with Section 144 of the Act was made vide order dated 23.11.2019. Thereby the Assessing Officer made addition of the cash deposited by the assessee in his bank account of Rs. 34,29,900/-. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who

after considering the submissions partly allowed the appeal. Thereby the learned CIT(A) restricted the addition to the extent of Rs. 12,39,490/-. Now the assessee is in further appeal before the Tribunal.

3. The only effective ground is against sustaining the addition to the extent of Rs. 12,39,490/- as income u/s 69A of the Act.

4. Learned counsel for the assessee submitted that the learned CIT(Appeals) was not justified in sustaining the addition of Rs. 12,39,490/- as income u/s 69A of the Act. He submitted that the learned CIT(Appeals) failed to appreciate the fact that as per the bank statement, the outstanding balance of all bank accounts never exceeded Rs. 2,12,000/- at any day throughout the year. He contended that all payments were made to the same vendors for buying scraps during the year. He submitted that by ignoring debit side of bank statement towards purchase/expenses, total of credits of Rs. 12,39,640/- in the statement are taken as undisclosed investment u/s 69A of the Act, which is not justifiable and contrary to the facts on record.

5. Per contra, learned DR supported the orders of the authorities below and submitted that it was incumbent upon the assessee to prove that the receipts were

out of the sale and purchase of scraps. In the absence of such material, the authorities below were justified in treating the same as the income from unexplained sources.

6. I have heard rival submissions, perused the material on record and gone through the orders of the authorities below. The contention of the assessee that the learned CIT(Appeals) failed to consider the fact that the outstanding balance of all bank accounts never exceeded Rs. 2,12,000/- at any date throughout the year. Furthermore, the learned CIT(Appeals) ignored debit side of bank statement towards purchases/expenses. I find that the learned CIT(Appeals) decided the issue by observing as under:

“4.2 Ground of appeal no. 1, 4 and 5 are general in nature and do not call for separate adjudication. Ground of appeal no. 2 states that the AO failed to consider the turnover of the assessee and added the entire cash deposit as income instead of considering the profit component. During appellate proceedings, it was submitted that the appellant filed his ITR on 31.03.2013 for the relevant year u/s 44AD under the presumptive provisions of section 44AD declaring profit of 12.58% on a turnover of 21,90,410/- i.e. Rs.2,75,640/-. After claiming deduction under chapter VI- A, the total taxable income was declared at Rs. 1,75,640/-. It is noted that the AO has taken due cognizance of this ITR in the computation of the income. Hence, it can be inferred that the corresponding turnover declared of Rs.21,90,410/- was also not challenged/questioned by the AO.

4.3 However, as brought out in the appellant's submission, the difference in cash deposit (Rs.34,29,900) and declared sale receipts (Rs.21,90,410/-) was Rs.12,39,490/-. This as per the appellant should have been taxed

@12.58% profit and the amount thereon Rs.1,55,977/- should have been treated as escaped income. The fact that the excess cash deposit was not declared by the appellant does automatically give him the protection of the presumptive scheme taxation u/s 44AD for the undeclared amount. It has also been claimed that since he had opted for the presumptive scheme under section 44, he was not bound to maintain the books of account. Hence, considering that no books of account were maintained, it cannot be verified or established, whether the excess amount of Rs.12,39,490/- was factually part of business receipts or not. Alternatively, even if for arguments sake it was accepted that these were the sale proceeds of trading, it can be also presumed that the expenses were already claimed against the declared receipts. In any case, the appellant has failed to establish the source of cash deposit of Rs. 12,39,490/- which therefore remain unexplained. Thus, while giving credit to the declared turnover of Rs.21,90,410/- as claimed u/s 44AD, the difference amount of cash deposit of Rs. 12,39,490/- is to be treated as unexplained money u/s 69A and added accordingly. Hence, the addition to the extent of Rs. 12,39,490/- is hereby confirmed.”

7. It is seen from the records that the contention of the assessee was not adverted by the learned CIT(Appeals), even the Assessing officer did not comment upon the contention of the assessee. In my considered view the learned CIT(Appeals) was not justified in treating the amount as unexplained income and the assessee is filing his income tax return on the basis of presumptive scheme u/s 44AD of the Act. Therefore, the addition sustained by the learned CIT(Appeals) of Rs. 12,39,640/- cannot be affirmed. However, on the receipt of Rs. 12,39,640/- the assessee is liable to pay tax on the profit element embodied into the receipt, which was in excess of the receipt declared at the rate of 12.58%, as computed by the

learned CIT(Appeals). Hence, out of Rs. 12,39,640/-, addition of Rs. 1,55,977/- is sustained. The ground raised in this appeal is partly allowed.

8. Appeal of the assessee is partly allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 25/02/2022.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI