

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 7696/DEL/2019**  
**[Assessment Year: 2011-12]**

Sanjay, WZ-485/12B, Basai Darapur, New Delhi-110015  PAN- BYFPS 2833F	<u>Vs</u>	Income-tax Officer, Ward-45(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>Shri Dinesh Mohan Sinha, Adv.</b>	
<b>Respondent by</b>	<b>Sh. Anil Kumar Sharma, Sr. DR</b>	
<b>Date of hearing</b>	<b>17.02.2022</b>	
<b>Date of pronouncement</b>	<b>31.03.2022</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-15, New Delhi, dated 17.06.2019, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

*"1. That the Ld. C.I.T.(A) has erred in law as well as on facts in confirming the addition made in the order of assessment dated 8th Dec. 2012 passed u/s 144 of the Income Tax Act, determining the total income of the Assessee at Rs.6,20,390/- as against the Return filed by the Assessee on*

*an income Rs. 1,70,400/- without considering all the facts.*

*2. That the C.I.T. (A) has erred in law as well as on facts in confirming the income of Rs.6,20,390/- assessed by the Ld. Assessing Officer without considering the written submission and other supporting documents filed at the appellate stage.*

*3. That the Ld. C.I.T. (Appeals) has grossly erred in stating that the case of the Assessee was adjourned for 6th June 2019, whereas the case was adjourned for 5th June 2019, which was later declared as Holiday. The Assessee appeared on the next working day on 6th June 2019 and was asked to file written submission online with other supporting documents, which were filed on the same date but not considered while passing the order.*

*4. That the Ld. C.I.T. (Appeals) has erred in law in ignoring the fact that neither notice u/s 148 nor further notices u/s 142 (1) were ever served on the Assessee.*

*5. That the Appellant craves to add, alter, delete any grounds of appeal at any time before disposal of the appeal.”*

2. Further, the assessee has taken revised grounds of appeal, which read as under:

*“1. Because the order of the lower Authorities is bad in law & against the fact and circumstance of the case.*

*2. necessary sanction/approval has to be obtained according to the provision of sec 151 of the act from the appropriate authority , the sanction for issue of notice had to be obtained from the joint commissioner of Income Tax while the sanction obtained from commissioner of income tax.*

*3. That income calculated @ 30% which is quite higher as against the provision of sec 44Ad of the Income Tax act 1961.”*

3. Facts, in brief, are that the Assessing Officer noticed that no return of income was filed for the year under consideration. Certain transactions were

noticed from the bank account of the assessee. Therefore, case of the assessee was reopened and a notice u/s 148 of the Income-tax Act, 1961, hereinafter referred to as the "Act", was issued on 28.3.2018 after obtaining prior approval of the Principal Commissioner of Income-tax. However, no one appeared. Thereafter, the Assessing officer proceeded to frame the assessment u/s 144 read with Section 147 of the Act. Thereby, he made addition of Rs. 6,20,385/- being 30% of the total credits. Basis for making addition was that there were deposits and cash withdrawals. Therefore, the Assessing Officer treated the deposits in the bank account as the gross business receipts and applied gross profit rate at 30%.

4. Aggrieved against this, assessee preferred appeal before the learned CIT(Appeals). Before the learned CIT(Appeals) also there was no effective representation. Hence, the appeal of the assessee was dismissed. Now the assessee is has filed the present appeal before this Tribunal.

5. Apropos revised ground nos. 1 & 2, the learned counsel for the assessee has reiterated the submissions as made in the written submissions. It is contended that the reopening proceeding was without jurisdiction. It is contended that the assessment order speaks about the approval by the Principal CIT. However, as per the provisions of Section 151 of the Act, the approval was required by the Joint Commissioner. Hence, the initiation of proceeding is bad in law. In support of the contention reliance is placed on the judgment of the Hon'ble Bombay High Court

rendered in the case of Principal CIT Vs. Khusbu Industries in ITA no. 1035 of 2017.

6. Learned DR opposed the submissions and supported the orders of the authorities below.

7. I have heard the rival submissions. The preliminary objection of the assessee is regarding validity of sanction accorded by the higher authority. Section 116 of the Act provides hierarchy of Income Tax Authorities and Section 120 confers jurisdiction on such authorities. Hence, there has to be a specific order conferring jurisdiction for exercising powers under the Act. For issuance of notice u/s 148 of the Act, the sanctioning Authority is described u/s 151 of the Act. For the sake of clarity section 151 is reproduced herein below:-

***“Sanction for issue of notice.***

*151.(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice.*

*Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*

*(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on*

*the reasons recorded by such Assessing officer, that it is a fit case for the issue of such notice.*

*Explanation:- For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the chief Commissioner, as the case may be, being satisfied on the reasons recorded by the assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.”*

8. It is evident that it speaks about the situation where the assessment u/s 143(3) or Section 147 has been made in that event only no notice u/s 148 of the Act can be issued without the sanction of Joint Commissioner. The present case does not fall in any of the category i.e. where assessment u/s 143(3) or 147 of the Act was made. In the present case no assessment order was passed. It is the case of non filing of ITR. Hence, ground of appeal is devoid of any merit. Hence, dismissed.

8. Ground no. 3 of the revised grounds is on merits of the addition. Learned counsel for the assessee contended that the Assessing Authority applied gross profit for estimating the income of the assessee. The same is very high and excessive as compared to presumptive scheme of calculation of income u/s 44AD of the Act.

9. Learned DR opposed the submissions and supported the orders of the authorities below. Learned DR submitted that the assessee had been negligent in not attending the proceedings and making effective representation before the

authorities below. The grounds taken are afterthought. He further contended that the order of the Assessing Officer is justified as he has treated the deposits as business receipts and applied gross profit rate.

10. I have heard rival submissions and perused the material on record. It is noteworthy that the Assessing officer has noted in the assessment order that there were deposits and withdrawals by the assessee. The assessee has not filed any bank statement before this Tribunal. However, it is seen that the gross receipts as taken by the Assessing Officer is not disputed by the assessee. The only dispute is with regard to the application of rate of gross profit. The Assessing Officer has taken gross profit at 30%. It is not clear that as to how the gross profit @ 30% is adopted by the Assessing Officer. It is also noticed that the Assessing Officer has categorically recorded that there is no information available regarding business activity of the assessee. It is not clear as to how the gross profit is taken on what business activity. In the absence of such specific finding the rate as applied by the Assessing Authority is not justified. It is stated by the learned counsel for the assessee that if presumptive rate prescribed u/s 44AD is applied that would sub serve the ends of justice. I do not see any merit into this contention of the assessee that the presumptive rate as prescribed u/s 44AD would sub serve the ends of justice under the facts and circumstances of the present case, as the provision of

section 44AD of the Act speaks of the eligible business. The assessee has not demonstrated that the assessee was carrying out eligible business as prescribed u/s 44AD of the Act. Therefore, benefit of presumptive rate would not be available to the assessee. However, looking to the facts that the Assessing Officer has taken gross profit @ 30% and coupled with the fact that there were deposits in and withdrawals out of the bank account of the assessee, the action of the Assessing Officer is not justified. The Division Benches of this Tribunal in various decisions, where the Assessing Officer treated the amount as undisclosed business receipts, directed the net profit to be computed at 7.5% - ITA no. 2488/Del/2011 ACIT Vs. Smt. Kaushalya Gandhi. Respectfully following the same I hereby direct the Assessing Officer to apply the net profit at 7.5%. The ground raised by the assessee is partly allowed. Appeal is partly allowed.

Order pronounced in the open court on 31.03.2022.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI