

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER  
AND SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: 2765/Chny/2019

निर्धारण वर्ष / Assessment Year: 2013-14

Shri. Subramanian Alexander,  
No. 155/21, NSC Bose Street,  
Kumaran Nagar, Padi,  
Chennai – 600 050.

The Income Tax Officer,  
v. Non Corporate Ward -7(1),  
Chennai.

**[PAN: AAGPA 8016L]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Y. Sridhar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.03.2022

घोषणा की तारीख/Date of Pronouncement

: 04.05.2022

**आदेश / O R D E R**

**PER ANIKESH BANERJEE, JUDICIAL MEMBER:**

The appeal was filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-7/ Chennai [in brevity CIT(A)] order dated 31.07.2019 for Assessment Year 2013-14 bearing appeal no ITA No. 158/CIT(A)-7/2018-19.

2. The assessee filed grounds of appeal which are extracted as under:

- "1. The Ld. CIT(A) has erred in the facts and circumstances of the case.
2. The Assessing Officer has erred in determining the total income at Rs.1,31,33,300/-as unexplained cash credit u/s 68 of IT Act.
3. The Ld. CIT(A) was wrong in upholding the additions made by the AO.
4. That the additions were made without providing sufficient opportunity to the appellant to submit evidence in support of his case, thereby violating 'principles of natural justice' and thus rendering the impugned order untenable in law.
5. That the Ld.AO completed the assessment in an arbitrary manner wrongly invoking section 68 of IT Act and thereby adding the entire cash deposited in the bank account.
6. The said amount deposited in the bank represents the advances from various parties for construction of civil work.
7. At this juncture it is worthwhile to produce Section 68 of IT Act 1961, "Where a sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source Of the same or the explanation offered by him is not satisfactory in the opinion Of Assessing Officer, the sum so credited' .
8. Section 68 cannot be applied for the bank passbook.
9. That Ld "CIT(A) without any justification came to finding that the appellant is not interested in pursuing this appeal.
10. The details of the RI filed for 2012-13 and 2014-15 are given below:

AY	Contract Receipts	Net profit	Profit Ratio
2012-13	Rs. 74,80,500	Rs. 7,00,070	9.5%
2014-15	Rs. 42,59,100	Rs. 3,40,728	8%

11. It is submitted that assessee filed return of Income upto the A.Y 2018-19 within the time limit except for the A.Y 2013-14 as he was not keeping good health.
12. Due to his health problem the appellant could not submit the evidence before CIT (A) in support of his claim.
13. It is prayed that sufficient opportunity may be given to the appellant to submit evidence before CIT (A) in support of his claim.
14. The addition was just made simply on the basis of whims, surmises and conjectures. Assessment based on mere conjecture, surmises or suspicion is unsustainable in law, as held in Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Vs CIT (1954) 26 ITR 775 (SC).

*15. Therefore, the addition in this regard may kindly be deleted.*

*16. For the above reasons and other reasons that may be adduced at the time of hearing, the addition made by the Assessing Officer may kindly be deleted and justice be rendered.*

*17. The Appellant craves leave to amend, alter or delete any of the above grounds of appeal.”*

3. Brief facts of the case are that, the original assessment was made u/s 143(3)/147 of the Act. The Id. assessing officer reopened the case after sending notice u/s 148 of the Act due to deposit of cash of Rs.1,31,33,300/- in Savings bank account of HDFC Bank and Vijaya Bank for the F.Y. 2012-13. The Id. Assessing Officer issued the notice u/s 142(1) of the Act on 24/08/2018 but none appeared. An addition was made related to credit of cash in HDFC Bank to the tune of Rs.36,41,000/- and in Vijaya Bank to the tune of Rs.94,92,300/- total amount to Rs. 1,31,33,300/-.

4. The assessee filed an appeal before the Id. CIT(A) and the impugned order was passed ex-parte as none appeared before the Id. CIT(A). The notice was duly served upon the assessee but no response was received during the course of appellate proceedings. The assessee had not filed any adjournment petition either.

5. Further aggrieved, the assessee is in appeal before us.

6. After hearing the rival submissions, perusing the material available on record, orders of the authorities below as well as the case-laws cited, we would hold as under.

7. The assessee has filed a paper book which is kept on record, containing a sample agreement, bank statement of Vijaya Bank and HDFC Bank and other documents. The assessee has also filed a brief note and explained that he was unable to take part in the lower appellate proceedings owing to his ill health. The Id. Counsel for the assessee submitted that, the order passed by the Id. CIT(A) is without jurisdiction and that the Id. CIT(A) should have directed the Id. Assessing Officer for further enquiry.

8. As per the Id. Counsel for the assessee, the assessee deposited cash from his contract receipts from the construction. Accordingly, the construction agreement was enclosed in the paper book. The Id. Counsel for the assessee prayed for the matter to be set aside for further verification. The Id. D/R relied on the order of the revenue authorities and pleaded for dismissal of the appeal.

9. We find that though the assessee had not appeared before the lower authorities but before us he has explained the reasons for his non-appearance and sought to explain the source of cash deposits.

As further verification is required in the assessee's matter for coming to a substantive conclusion for determining the tax, We deem it fit to set aside the matter to the file of Id. CIT(A). The impugned order is set aside and the matter is restored back to Id. CIT(A) for denovo adjudication after considering the assessee's evidences. The assessee, in turn, is directed to substantiate its case. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in Open Court on 04<sup>th</sup> May, 2022 at Chennai.

**Sd/-**

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

**लेखा सदस्य /Accountant Member**

**Sd/-**

(अनिकेश बनर्जी)

**(ANIKESH BANERJEE)**

**न्यायिकसदस्य/Judicial Member**

चेन्नई/Chennai,

दिनांक/Dated, the 04<sup>th</sup> May, 2022

**JPV**

आदेश की प्रतिलिपि ँ ग्रेषित/Copy to:

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|------------------------|--------------------------|-------------------------------|
| 1. ँ पीलर्षी/Appellant | 2. प्रत्यर्षी/Respondent | 3. आयकर आयुक्त (ं पील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभर्षीय प्रतिनिधि/DR | 6. गार्ड फार्डल/GF            |