

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 7558/DEL/2019
[Assessment Year: 2011-12]

Sanam Arora, 6/3, Kirti Nagar Industrial Area, New Delhi-110015 PAN- ASHPA1524C	<u>Vs</u>	Income-tax Officer, Ward 49(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by		Sh. Anil Kumar Malhotra, CA
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		12.05.2022
Date of pronouncement		27.05.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-17, New Delhi, dated 30.07.2019, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. Grounds of Appeal No. 1

Enhancement of assessed Estimated income from Rs.3-84,200/- to Rs. 19,21,200/- u/s 69A as Undisclosed Income

The Hon'ble CIT(A) has erred in law and on facts in invoking powers u/s 251 in enhancing the assessed income of the assessee from Rs.3,84,200/- to Rs. 19,21,200/- u/s 69A. The Income was assessed on estimate basis by the Ld. A.O. at Rs.3,84,200/-. Whereas, the assessee had filed Income Tax Return u/s 148 at Rs.1,57,000/-, declaring income as income from business

u/s 44AD at 8% of the turnover of Rs.29,00,000/- which includes Rs. 19,21,200/- treated as Income u/s 69A by Hon'ble CIT(A).

The enhancement by the Hon'ble CIT(A) is arbitrary and is prayed to be contained to the returned Income of Rs. 1,57,000/-.

2. Grounds of Appeal No.2

Addition of estimated household expenditure of Rs.2,00,000/- The confirmation by the Hon'ble CIT(A) of the addition of Rs.2,00,000/- made by the A.O. Rs.2,00,000/- in household withdrawal, is arbitrary and is not founded on facts and is prayed to be deleted.

3. The assessee company craves mercy to add / amend any grounds of appeal at the time of hearing. ”

2. Facts, in brief, are that case of the assessee was reopened u/s 147 of the Income-tax Act, 1961, hereinafter referred to as “the Act”. Accordingly, notice u/s 148 of the Act was issued. It is recorded by the Assessing Officer that the assessee filed his return of income at Rs. 1,57,000/- on 05.06.2018 in response to the notice u/s 148 of the Act. Thereafter, the Assessing Officer issued notices u/s 143(2) and 142(1) of the Act. However, no body attended the proceedings. Thereafter, the Assessing Officer made inquiries by issuing notice u/s 133(6) of the Act. The statement furnished by the assessee reflected that there were credit entries amounting to Rs. 19,21,200/-, interest amounting to Rs. 2,731/- and interest on FD of R. 6,400/-. The Assessing officer noticed that assessee failed to furnish the source of cash deposits. Therefore, 20% of this amount was added back to the income of the assessee. Further, the Assessing Officer made addition regarding low house-hold withdrawals amounting to Rs. 2,00,000/- and interest not offered for tax of Rs. 9,124/-. Hence, the Assessing Officer assessed income at Rs.7,50,370/- u/s 144 of the Act.

3. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who, after considering the submissions, enhanced the addition and made the addition in respect of cash deposits. Entire cash deposited in the bank account was treated as unexplained and the same was enhanced to Rs. 19,21,200/-. Further, the other addition on account of low household withdrawal made by the Assessing Officer was also sustained. Now the assessee is in appeal before this Tribunal.

4. Ground no. 1 of assessee's appeal is against enhancement of addition by the learned CIT(Appeals).

5. Learned counsel for the assessee vehemently argued that the authorities below are not justified for treating the credit entries as unexplained. He contended that the Assessing Officer as well as the learned CIT(Appeals) failed to appreciate the facts in right perspective. He contended that that the Assessing Officer treating the cash deposits in bank account as unexplained made addition of 20% out of such deposits. But the learned CIT(Appeals) enhanced it to the entire deposits. He submitted that both the authorities grossly failed to appreciate that there were withdrawals and deposits. Moreover, it was categorically stated that the assessee is small businessman and has been conducting the business in cash. He submitted that the authorities below failed to appreciate the facts and the contention of the assessee in right perspective. Further, he drew my attention to paper book (pages

17 to 25). The assessee has also drew my attention to the decision of the coordinate Bench of this Tribunal rendered in the case of Koshy John Vs. ITO in ITA no. 695/Del/2018 (order dated 16.04.2019).

6. On the contrary learned DR opposed the submissions and supported the orders of authorities below.

7. I have heard rival submissions, perused the material available on record and gone through the orders of authorities below. I find that the learned CIT(Appeals) has made enhancement to the income of the assessee by observing as under:

“5.3 I have considered the facts of the case, finding of the AO and submissions of the appellant. The appellant has not explained the source of credit entries amounting to Rs. 19,21,200/- therefore AO has treated 20% of the credit entries i.e. Rs. 3,84,240/- as income of the appellant. During the course of the appellant proceeding appellant has submitted that being a small vendor he had filed his return of income for AY 2011-12 declaring income from business or profession at Rs. 2,32,000/- (8% of total receipt of Rs. 29,00,000/-) u/s 44AD of the Act. The appellant has reported the turnover in cash and frequently made deposit / withdrawal in his saving bank account with IDBI. These transactions are for small sales and appellant already taxed in the income tax return. The contention of the appellant is not acceptable as he has filed the return in compliance of the notice issued by the AO u/s 148. The appellant has not made any compliance during the assessment proceedings and not explained the source of credit entries appearing in the bank account. The appellant has also not brought on record any evidence of existence of business and try to justify the credit entries appearing in the bank account as business transaction. Vide order sheet entry dated 26.07.2019 enhancement notice has been given to the appellant as per provisions of section 251 asking him to explain why whole of the deposit should not be treated as unexplained as per provisions of section 69A. The AR of the appellant has filed the response in compliance

of the show cause notice and again stated the same facts that appellant is dealing and trading in sale and purchase of hawai chappals. The amount deposited as cash in his bank account were against sale of hawai chappals. The appellant has enclosed the copy of bank statement along with narration. The appellant has further submitted that provisions of section 69A is not applicable in his case as he is not maintaining regular books of accounts and deposit in bank account is less turnover he has disclosed in his return as per provisions of section 44AD of the Act. It is further submitted by the appellant that addition in his case could be made on the basis of the peak credit and peak balance is worked out at Rs. 6,05,000/- as on 26.07.2010. The contention of the appellant is not acceptable as it is observed that cash is deposited in larger amount in the bank account of the appellant and after deposit cash withdrawal is made through ATM or funds transferred to his mother Smt. Rubina Arora and there is no rotation of funds or cash redeposited in the bank account. Thus, benefit of the peak credit could not be allowed to the appellant. The deposits were not out of sale proceeds and appellant has not brought any evidence on record to prove that any business carried out by him. Since, appellant failed to disclose the source of cash deposit in bank A/c whole of cash deposit is unexplained money of the appellant and liable to be taxed u/s 69A of the Act. Considering the above facts income of the appellant is enhanced to Rs. 19,21,200/- in place of 20% of the total deposits charged to tax by the AO at Rs. 3,84,240/-.

5.4 This ground of appeal of the appellant is hereby dismissed and income is enhanced.”

8. However, I find that the assessee has in the paper book submitted the statement of withdrawal of cash from April 2010 to March 2011, which is enclosed at PB 58 & 59. As per the statement, the assessee had withdrawn total amount of Rs. 21,50,971/- and the total cash deposits were Rs. 19,21,200/-. The learned CIT(Appeals) has not given any finding regarding availability of funds with the assessee for making the deposits. The assessee has relied on the decision of the coordinate Bench wherein on identical facts the Tribunal has held as under:

“10. I find that the opening balance in the bank Account No. 00432020002570 maintained with HDFC Bank Ltd. as on was Rs.10,39,467.15 and the closing balance as on was Rs. 10,52,657.57. Similarly, the opening balance in the bank Account No. 00431000209700 maintained with HDFC Bank Ltd. as on 01.04.2014 was Rs.1,32,296.25 and the closing balance as on 31.03.2015 was Rs. 1,36,499.89. Similarly, the opening balance in the bank Account No. 52142926828 maintained with State Bank of Hyderabad as on 01.04.2014 was Rs.2,97,719.80 and the closing balance as on 31.03.2015 was Rs.2,65,329.80. Similarly, the opening balance in the bank Account No. 57030640114 maintained with State Bank of Travancore as on 01.04.2014 was Rs.5,52,877.80 and the closing balance as on 31.03.2015 was Rs.10,27,498.80.

11. A perusal of the above bank statements shows that there was regular deposit and regular withdrawals of small amount in the bank. The assessee submitted that as his case was covered by the provisions of Section 44AD of the Act, he was not required to maintain books of account and therefore, it was not possible on his part to produce the books and vouchers of business transaction.

12. However, looking at the amount and regularity in the deposit and withdrawals are made in the bank account it seems that the deposits were from business. In the circumstances, in my considered opinion, it will be fair and reasonable to treat the entire amount of deposit in the bank account in the business turnover of the assessee and estimate thereon business income @ 8% in accordance with the provisions of Section 44AD of the Act. I, therefore, set aside the orders of the lower authorities and direct the Assessing Officer to estimate the business income of the assessee in line of the discussion made hereinabove and accordingly restrict the amount of the addition to that extent. Thus, the appeal of the assessee is partly allowed.”

9. Therefore, looking to the facts and the material placed before me I am of the considered view that the learned CIT(Appeals) was not justified in enhancing the income. Therefore, the order of the learned CIT(Appeals) is set aside. The coordinate Bench under identical facts has applied the provisions of Section 44AD

of the Act. Respectfully following the same the Assessing Officer is directed to treat the business receipts @ 8% of the total deposits and assess accordingly.

Ground of the appeal is allowed in the terms indicated above.

10. Ground no. 2 is against sustaining the addition made on account of low withdrawal for household expenses.

11. Learned Counsel for the assessee submitted that the addition has been made purely on estimation basis. He submitted that such ad hoc addition made on the basis of conjectures cannot be sustained.

12. Per contra, learned Sr. DR opposed these submissions and supported the orders of authorities below. He contended that the authorities below are justified in making addition as there was no explanation was offered regarding household drawings/ withdrawals.

13. I have heard the rival contentions. I do not see any merit into the contention of the assessee that addition has been purely made on estimation basis. The learned CIT(Appeals) has categorically given a finding on the life style of the assessee and expenditure incurred by him. The assessee has failed to give plausible explanation regarding low withdrawals for household expenses. Therefore, I do not see any

reason to disturb the finding of learned CIT(Appeals) and the same is hereby affirmed. The ground of appeal of assessee is dismissed.

14. Assessee's appeal is partly allowed.

Order pronounced in open court on 27.05.2022.

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