

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." NEW DELHI]**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, S.M.C.

आ.अ.सं./I.T.A Nos. 2870 TO 2872/Del/2019

निर्धारणवर्ष /Assessment Year : 2013-14

Mr. Shakir Ali, C/o. Ahsaan Khan, Advocate, Mohsin-E-Azam Colony, Diamond Cinema Road, Distt. Rampur [U.P.]	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 1 (3), Rampur.
PAN No. AMRPA3453E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by :	None;
राजस्वकीओरसे / Department by :	Shri Sumesh Swani, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	30/06/2022
उद्घोषणाकीतारीख/ Pronouncement on :	14/07/2022

आदेश /O R D E R

PER C. N. PRASAD, J.M. :

1. These three appeals are filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Moradabad [hereinafter referred to CIT (Appeals)] dated 05.12.2018 for assessment year 2013-14 in sustaining the order of the Assessing Officer passed under Section 143(3) of the Income Tax Act, 1961 (the Act) estimating the net profit rate at 8% on the suppressed turnover of Rs.94,94,613/- thereby making an addition of Rs.7,59,569/- and also in sustaining the penalties levied under sections 271(1) (c) and 271B of the Act.

2. The notice issued by the Registry through Speed Post with Acknowledgement Due fixing the date of hearing on 30.06.2022 was served on the assessee and the acknowledgement Card is placed on record. In spite of issue and service of notice, none appeared on behalf of the assessee nor any adjournment was sought. Therefore, these appeals are disposed of on hearing the ld. DR and materials available on record.

3. The ld. DR submits that the Assessing Officer while completing the assessment under Section 143(3) of the Act examined the bank accounts of the assessee and noticed from the account statements supplied by HDFC Bank that assessee is operating two Savings bank accounts in his name and also several bank accounts in the name of family members. The Assessing Officer noticed that in all these Savings bank accounts assessee made cash deposit aggregating to Rs.1,83,63,255/- and the assessee was required to explain the nature and source of these cash deposits. The assessee submitted before the Assessing Officer that substantial portion of cash deposit belongs to his wife, who is running business and the small amounts deposited in the children account was made by his wife which were generated out of business income and these deposits were made with love and affection towards children.

4. The assessee further contended that the cash deposits made in his Savings bank account are out of business proceeds and the aggregate credit entries works out to Rs.1,15,19,619/- and the same be considered as explained out of sale proceeds of sanitary goods being traded by the assessee. The assessee stated that net profit rate of 3% on Rs.1,15,19,613/- may be considered as his income from business. However, since the assessee had already declared net profit @ 3% on turnover of Rs.20,25,000/- the assessee had agreed for 3% of net profit on the balance turnover of Rs.94,94,613/- which worked out profit of Rs.1,81,790/-. The ld. Assessing

Officer noticed that assessee has declared Rs.20,25,000/- as its turnover and shown income of Rs.1,63,800/- on presumptive basis under Section 44AD of the Act he concluded that assessee has suppressed turnover to the extent of Rs.94,94,613/-. The ld. DR submits that the Assessing Officer estimated the net profit at 8% of the suppressed turnover of Rs.94,94,613/- and accordingly brought to tax an amount of Rs.7,59,569/-. The ld. DR submits that this addition was rightly sustained by the ld. CIT (Appeals).

5. Heard ld. DR perused the orders of the authorities below. On perusal of the assessment order it is noticed that the Assessing Officer estimated the net profit on the suppressed turnover of Rs.94,94,613/- which were on account of cash deposits made by the assessee in its bank accounts and were explained by the assessee as business receipts from trading in sanitary goods. The contention of the assessee that the cash deposits made into his bank accounts were out of business proceeds were accepted by the Assessing Officer. However, since the assessee had declared turnover only to the extent of Rs.20,25,000/- in its return of income the Assessing Officer treated the balance turnover of Rs.94,94,613/- (Rs.1,15,19,613 - Rs.20,25,000) as suppressed turnover he estimated net profit rate at 8% on such suppressed turnover and brought to tax. The ld. CIT (Appeals) sustained the addition towards net profit at 8% considering the submissions of the assessee observing as under:-

“5.1 In his submission, assessee mentioned that he opened a bank a/c in the name of the firm, name & Style M/s Shakir Ali and actual transaction of business has been made in the firm M/s Shakir Ali, having PAN - ACMFS6850L but he has submitted his individual PAN into the bank.

5.2 I have gone through the assessment order and submission of the assessee. I noticed that the above mentioned SB A/cs are opened in the name of Mr. Shakir Ali (Individual) not in the name of M/s Shakir Ali (Firm) while assessee claimed in his submission that both SB A/cs are opened in the name of the firm.

5.3 Since, both SB A/cs No. 19161930000756 & 19168730000039 in which cash deposits were made are opened in the name of Shakir Ali in the

capacity of Individual. Therefore, it is clear that the cash deposits of Rs. 94,94,613/- (1,15,19,613 - 20,25,000) was unexplained.

5.4 Thus the submission of appellant that the accounts were opened in the name of firm M/s Shakir Ali is misleading since both the accounts are in the name of individual i.e. Mr. Shakir Ali. In view of the above facts, it is held that the deposits in the bank accounts have been correctly considered in the hands of the appellant by the AO. Further the rate of 8% is also most reasonable rate adopted by the AO because firstly the books are not audited and secondly the appellant has himself filed his ITR at net profit rate of 8%. Therefore, the addition made by the AO amounting to Rs. 7,59,569/- is confirmed and the appeal of the appellant is dismissed.”

6. It is noticed from the order of the Id. CIT (Appeals) that the assessee contended that the cash deposits made in to S. B. account maintained by the assessee belong to partnership firm and, therefore, addition cannot be made in the individual hands. This contention of the assessee was rejected by the Id. CIT (Appeals) in the absence of any evidence. The estimation of net profit by the Assessing Officer at 8% of suppressed turnover was sustained by the Id. CIT (Appeals).

7. On perusal of the records before me it is noticed that the assessee has filed written arguments contending as under:-

*BEFORE THE HON'BLE TRIBUNAL MEMBER OF INCOME TAX, APPLATE TRIBUNAL
NEW DELHI, BENCH - SMC*

I.T. Appeal No..

Shri Shankir AMAppailant
R/O Mohalla Chak Suar,
Distt. Rampur (U.P.)

Versus

Income Tax Office -1 (3) Respondent
Distt. Rampur (U.P)

Sub:- Written agrument regarding at the time of hearing of the appeal for the
Ass - year 2013 -14 [u/s 143 (3)]

Hon,able Sir,

It is most respectfully submitted as under:-

- 1- That Mr Shakir AM (Assessee) is a semiliterate person and hence, does not know much about banking system and type of account for different purpose and due to lack of knowledge.
- 2- That the assessee is operating one, saving bank A/C in his name having No. 191619300000756 in HDFC Bank Rampur.
- 3- That Mr Shakir AN is a partner in Shakir AN (Firm), having PAN - ACMFS6850L and is operating a Current Account no. 19168730000039 in HDFC Bank, Rampur in the name of Shakir AN (Firm).
- 4- That the Mr Shakir AM is opreated only one Saving Bank Account No. 191619300000756 in HDFC Bank, Rampur and is operated only one Current Account No. 19168730000039 in HDFC Bank, Rampur in the name of Shakir Ali (Firm).
- 5- That the Mr Shakir AM (Individual) deals in sanitary goods Business, having PAN NO. AMRPA3453E and has filed his Income Tax Return (I.T.R - 4) by e-filing acknowledgement no. 279145060290714 dated 29.07.2014 for the Ass Year 2013-14 and mentioned (Individual) S B A/C No. 191619300000756 in the schedule BA of FORM. ITR - 4 Of which photo copy is attached for your knid persusal
- 6- That the Shakir Ali (Firm) deals in Sanitary Goods Business, having PAN NO. ACMFS6850L and has filed firm Income Tax Feturn (I.T.R-5) by E Filing acknowledgement No.175093830070414 dated 07.04.2014 for the Ass Year 2013-14 and mentioned (firm) Current Account No 19168730000039 in HDFC Bank, Rampur, in the sehedude BA Of FORM ITR-5, of which photo copy is attached for your kind persusal.
- 7- That the addition of Rs 759569 is unlawful and it is bonafide mistake below one Crore Rupees

PRAYER

In view of the above forgoing facts, it is, therefore, prayed, that the orde/- u/s 143 (3) of the Income Tax Act 1961 may kindly be set aside.”

8. The assessee also filed various evidences in the form of copy of I. T. Returns, computation, trading & profit and loss account, balance sheet, capital accounts, bank statement of the firm and copy of partnership deed in respect of the firm in which the assessee is one of the partners. Similarly various evidences were filed by the assessee in the form of copy of acknowledgement of I. T. Returns, computation of income, trading and profit & loss account with balance sheet in his individual capacity where

assessee was also doing business. The contention of the assessee was that the deposits were made into the bank account maintained by the firm and they belong to the firm and does not belong to him as his individual capacity. On perusal of record these evidences suggest some merit in the submissions of the assessee. Since the lower authorities have not examined thoroughly the contentions and evidences available with the assessee, in the interest of justice, the addition made in the assessments should go back to the file of the Assessing Officer for de novo adjudication after considering the evidences. Thus, the order of the Id. CIT (Appeals) is set aside and the addition made by the Assessing Officer for assessment years under consideration is restored to the file of the Assessing Officer for de novo assessment in accordance with law, after providing adequate opportunity of being heard to the assessee. Since the appeal of the assessee in quantum addition has been restored to the file of the Assessing Officer for de novo adjudication, the penalty orders passed by the Assessing Officer under Section 271(1)(c) and 271B of the Act will not survive and these orders are also set aside and the same are restored to the file of the Assessing Officer.

9. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on : 14/07/2022.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 14/07/2022.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	11.07.2022
Date on which the typed draft is placed before the dictating Member	12.07.2022
Date on which the typed draft is placed before the Other Member	14.07.2022
Date on which the approved draft comes to the Sr. PS/PS	14.07.2022
Date on which the fair order is placed before the Dictating Member for pronouncement	14.07.2022
Date on which the fair order comes back to the Sr. PS/PS	14.07.2022
Date on which the final order is uploaded on the website of ITAT	14.07.2022
Date on which the file goes to the Bench Clerk	14.07.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	