

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.449/RJT/2017  
Assessment Year: 2009-10**

Ilaba Ranjitsinh Jadeja,  
B/h. Deval Motor Garage,  
Neminath Society,  
Street No.3,  
Khodiyar Colony,  
Jamnagar.  
[PAN – ARSPJ 5717 E]  
(Appellant)

vs.

The Income Tax Officer,  
Ward – 1 (5), Jamnagar.

(Respondent)

Appellant by : None  
Respondent by : Shri B.D. Gupta, Ld. Sr. D.R.

Date of hearing : 25.07.2022  
Date of pronouncement : .....08.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This appeal is filed by the assessee against the order dated 24.10.2017 passed by the CIT(A), Jamnagar for the Assessment Year 2009-10.

2. The assessee has raised the following ground of appeal:

- “1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in observing that the cash deposit transaction are in addition to turnover shown u/s 44AD by correctly treating Assessee as Government Contractor & Govt .Contract receipt received by cheque.*
2. *That on the facts and in the circumstances of the case, the order of Ld. CIT(A) was perfunctory, casual and not based on consideration of relevant and material facts.*
3. *That based on the facts and in the circumstances of the case, the order of CIT(A) is legally untenable inasmuch as, the failure to apply mandatorily binding provision of the Section 44AD was overlooked and*

*was not even noticed as applicable even where the A.O. failed to apply the said provision of Section 44AD was overlooked and was not even noticed as applicable even where the A.O. failed to apply the said provision.*

4. *That, on the facts and In the circumstances of the case, the order of CIT(A) failed to consider that the logic adopted to treat major part of bank deposit as unexplained was contrary to the accounting logic and principle and the resultant addition made was thus unsustainable.*
5. *That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not giving, at least, one specific opportunity to the appellant to explain the nature and source of bank deposit and erred in upholding addition of alleged unexplained bank deposit without allowing reasonable and sufficient opportunity to the appellant to explain the same.*
6. *That, on the facts and in the circumstances of the case, Ld. CIT(A) failed to invoke his power of enquiry u/s 250(4) either on his own or through remand to the A.O for proper and comprehensive enquiry on guideline to be issued by the CIT(A).*
7. *In the facts and circumstances of the case, while the assessee did not get justice from the Assessing Officer, he was denied the principles of natural justice by the Ld. CIT (A) also, which is unjustified, illegal and against the provisions of the Act.*
8. *Ld. AO/CIT(A) erred in law as well as in facts for invoking proceeding u/s 271(1)(c)."*

3. The assessee filed return of income on 13.09.2011 declaring taxable income of Rs.2,28,500/-. The Assessing Officer observed that the husband of the assessee during the assessment proceedings in his case has filed Bank statement for the relevant Assessment Year. On verification, it is found that he is a Government Employee and has huge bank transfer including credit entries found in the said bank. On query, it was explained by the husband of the assessee that this is joint account with wife Smt. Elaba Ranjitsinh Jadeja who is engaged in Government Contract work. Major transactions in the said account which was carried out by her. The Assessing Officer made addition of Rs.34,88,584/- as undisclosed/unexplained income.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing, none appeared on behalf of the assessee despite giving notice. Therefore, we are proceeding on the basis of written submissions filed before us by the assessee as well as the submissions made by the assessee before the Revenue Authorities and Appellate Authorities.

6. The Ld. DR submitted that the CIT(A) has rightly dismissed the appeal of the assessee as the assessee merely filed copy of acknowledgement of Income Tax return and Bank statement of Commercial Co-operative Bank Limited and failed to explain the source of cash deposit of Rs.34,88,584/-. Thus, the addition under Section 69A of the Act is just and proper.

7. We have heard the Ld. DR and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has not taken cognisance of Section 44AD of the Income Tax Act, 1961 under which the assessee has filed the return of income. From the perusal of the legal submissions made before the CIT(A) by the assessee it can be seen that section 44AD of the Act is related to presumptive computation of profit for taxation of business and it applies to eligible assessee engaged in eligible business. The eligible business means any business other than the business of plying, hiring or leasing of goods carriage as given in section 44AE and whose turnover/gross receipt in the previous year does not exceed Rs.60,00,000 in A.Y. 2011-12 and 2012-13 and Rs.1,00,00,000/- in A.Y. 2013-14 or in the year succeeding the A.Y. 2014-15. An eligible assessee is defined as an individual, HUF, resident partnership firm, but excludes an LLP under the LLP Act, 2008 and any assessee who has claimed deduction under Sections bA, bAA, 10B, 10BA or section 80IA and 80IB. The Ld. AR before the CIT(A) stated that 8% of total turnover or gross receipt of the assessee on account of such business or any higher amount declared by him shall be deemed to be his income chargeable to tax. The assessee further submitted that where an assessee is engaged in the business of civil construction or supply of labour for civil contract work, income shall be estimated at 8% of the gross receipts paid or payable to the assessee in the previous year on account of such business or a sum higher than the aforesaid sum as may be declared by the assessee in his return of income filed under section 44AD of the Act. The assessee before the CIT(A) as well as before the Assessing Officer submitted that the gross receipt shown under Section 44AD for working 8% profit and banking transaction which is below the

turnover/gross receipt as shown in the return of income can never be treated in income from undisclosed source. It is pertinent to note that the assessee has given all the details related to the gross receipts which were confirmed by the husband of the assessee. At no point of time the Assessing Officer doubted the confirmation made by the husband of the assessee. Therefore, the Assessing officer as well as the CIT(A) was not right in making the addition. Appeal is, therefore, allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 26<sup>th</sup> day of August, 2022.

*Sd/-*  
**(ANNAPURNA GUPTA)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 26<sup>th</sup> day of August, 2022**

***PBN/\****

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Rajkot Bench, Rajkot*