

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.4801/Del/2019  
[Assessment Year : 2010-11]**

Lamba Construction CO, 17051, ATS Paradiso, Sector CHI V, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201310. <b>PAN-AAFL1242P</b>	vs	ITO, Ward-62(4), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Suresh Wadhwa, Adv.	
<b>Respondent by</b>	Shri Om Prakash, Sr.DR	
<b>Date of Hearing</b>	18.08.2022	
<b>Date of Pronouncement</b>	31.08.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2010-11 is directed against the order of Ld. CIT(A)-38, New Delhi dated 28.03.2019.

2. The assessee has raised following grounds of appeal:-

1. *"That the order of the Ld. Commissioner of Income Tax (Appeals) dated 28.03.2019 upholding the additions of INR 8,09,697/- made by the Ld. Assessing Officer vide his assessment order passed on 07.12.2017 under section 144 read with section 147 of the Income Tax Act, 1961, is bad in law and on the facts and circumstances of the case.*
2. *That the Ld. Commissioner of Income Tax (Appeals) has grossly erred in law while upholding the Order passed by Ld. AO in the light of the fact that the Appellant has not been served any valid notice u/s 148 of the Income Tax Act, 1961.*
3. *That the Ld. Commissioner of Income Tax (Appeals) has grossly erred in law while upholding the Order passed by Ld. AO, without*

*providing to the Appellant (a) a copy of reasons recorded in writing for opening the assessment proceedings u/s 148; (b) copy of AIR Information in the possession of the Ld. AO and (c) without providing reasonable opportunities to present the case.*

4. *That the Ld. Commissioner of Income Tax (Appeals) has grossly erred in law while upholding the Order passed by Ld. AO, treating the Cash Deposits of INR 6,10,000/- in the Bank Account of the Firm, solely based upon AIR Information received, as Unexplained Money u/s 69A of the Income Tax Act, 1961.*
5. *That the Ld. Commissioner of Income Tax (Appeals) has grossly erred in law while upholding the Order passed by Ld. AO, without adjudicating/addressing the issue of difference between two amounts of contractual receipts i.e. (a) Amount of INR 24,96,217/- as per AIR Information in the possession of Ld. AO and (b) Amount of INR 17,82,469/- as per Form-26AS filed by the Appellant for the AY under consideration.*
6. *That the Ld. Commissioner of Income Tax (Appeals) has grossly erred in law while upholding the Order passed by Ld. AO, disallowing a TDS credit of INR 66,511/- to the appellant which is duly reflected in the Form-26AS for the AY under consideration.*
7. *The above grounds are without prejudice to each other.*
8. *The appellate craves the leave to add, amend or alter all or any of the grounds of appeal.”*

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that the case of the assessee was re-opened for assessment u/s 147 of the Income Tax Act, 1961 [“the Act”] on the basis that the assessee did not file any return of income. However, as per details provided in AIR Report against PAN- **AAAF1242P**, it is disclosed that the assessee received a sum of Rs.24,96,217/- on which TDS u/s 194C of the Act was deducted. Further, the assessee had deposited cash of

Rs.6,10,000/-. Accordingly, a notice u/s 148 of the Act was issued to the assessee. It is recorded by the Assessing Officer [“AO”] that the assessee did not raise any objection regarding re-opening of the assessment proceedings u/s 148 of the Act. Further, the assessee did not challenge the jurisdiction of the AO. It is also noted that no one attended the assessment proceedings on behalf of the assessee. Therefore, the AO framed the assessment u/s 144/147 of the Act vide order dated 07.12.2017 and made addition of Rs.8,09,697/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition made by the AO and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that detailed submissions were made by the assessee but none of the submissions were adverted by Ld.CIT(A) and the appeal is dismissed in a casual manner, without considering the submissions of the assessee in a right perspective. He further stated that the notices issued by the AO were not served upon the assessee. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity, written submissions of the assessee are reproduced as under:-

**BRIEF SYNOPSIS/ ARGUMENTS ON THE BEHALF OF THE APPELLANT:**

***May it please Your Honour,***

1. *The issue involved in this case is with regarding the wrong, erred and unlawful additions of INR 8,09,697/- made by the Ld. Assessing Officer vide assessment order passed on 07.12.2017 under section 144 read with section 147 of the Income-tax Act, 1961.*
2. *The Appellant is a Partnership Firm as per it's basic constitution document as well as per PAN Card to it whereas the Ld. AO has completed his Assessment in the status of an Individual which is bad in law.*
3. *During the last hearing(s) held in the case, the Hon'ble Bench had directed to the Ld. DR to collect and produce all file records from the office of Income Tax Officer, Ward 62(4) to demonstrate the service of notice(s) to the Appellant.*
4. *In this case, one of the additions of INR 6,10,000/- has been made on account of Cash Deposits into the bank account of the Firm. The Ld. Assessing Officer has grossly failed to note and understand that being a Construction Firm, there have been regular cash deposits as well as regular cash withdrawal during the normal course of business and that only for business purposes.*
5. *The statement of Cash Withdrawals and Cash Deposits was furnished before the Ld. CIT(A) during the course First Stage Appellate proceedings. This statement clearly indicates that impugned Cash Deposits of INR 6,10,000/- have been made only out of the Cash Withdrawals from the same bank account. Therefore, the source of deposits is clearly established from the withdrawals from the same bank account.*
6. *The Ld. CIT(A) had completely ignored the submissions made by the Appellant and upheld the Cash Deposits amounting to INR 6,10,000 treating the same as unexplained income u/s 69A of the Income-tax Act, 1961 by completely ignoring the Cash Withdrawals of INR 19,55,000 during the same AY under consideration.*

7. *That the Ld. AO has grossly erred in law by treating the difference amount with AIR Information Report and Form 26AS - as Contractual Receipts and applying thereon Section 44AD as well.*

*Contractual Receipts as taken by Ld. AO from AIR Information INR 24,96,217/- and Contractual Receipts as per Form-26AS issued to the Appellant by the Income Tax Department INR 17,82,469/- for the AY under consideration. The AIR Information Report has been solely considered as the primary source by the Ld. AO without giving any regard to Form 26AS.*

8. *The difference between the AIR Information Report and Form 26AS is INR 7,13,748/-. While viewing the Form 26AS, it can be seen that there has been a **reversal entry of similar amount reflected on 31.08.2019 which would not have been available in AIR Information Report.***

9. *The Ld. AO Officer has grossly erred in law by making wrongful additions totaling INR 6,67,100/- comprising*

- (a) *INR 6,10,000/- on account of unexplained income and*  
(b) *INR 57,100/- being 8% of difference between receipts as per AIR Information Report and Form 26AS) i.e. 8% of INR 7,13,748/- = INR 57,100/-.*

10. *The Ld. AO has completely failed to allow the legitimate TDS credit of INR 66,511/- to the appellant which is duly reflected in the Form-26AS while framing his ex-parte assessment order.*

11. *As the main Partner of the Appellant Firm had already expired somewhere in the year 2014-2015, It is hereby respectfully submitted that that the assessee had total Gross Receipts of INR 17,82,469/- and not at all INR 24,96,217/- after giving effect to the reversal entry of INR 7,13,748/- as reflected in Form 26AS. The income of the Appellant firm may kindly be computed @ 8% of this Correct Contractual Receipts of INR 17,82,469/- comes to INR 1,42,598/- only.*

12. *The amount of tax on this presumptive income of INR 1,42,598/- comes to INR 42,779/- as against TDS credit of INR 66,511/- thereby entitled to refund of INR 23,732/-."*

7. On the contrary, Ld. Sr. DR opposed the submissions of the assessee and supported the orders of the authorities below. He submitted that the assessee cannot take advantage of his own negligence.

8. I have heard Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. In respect of the impugned addition, the Ld. CIT(A) had admitted the additional evidences. However, Ld.CIT(A) sustained the impugned addition by observing as under:-

**4.5. "Ground of appeal No.6 and 8- relate to the addition of Rs.8,09,697/-. The appellant filed an application dated 21.01.2019 under Rule 46A submitting additional evidence. The same was forwarded to the Assessing Officer but till the date of order, no reply has been received. Therefore, in the interest of natural justice, the additional evidence filed by the appellant are being admitted. The evidences pertain to two additions: -**

i) *Rs.1,99,697/- as presumptive taxation @8%.*

ii) *Rs.6,10,000/- as unexplained income U/s 69A.*

*As for (i) above, the Assessing Officer has taken Rs.24,96,217/- as contractual receipts on the basis of AIR information. The appellants contention that this figure is incorrect cannot be entertained. This income relates to a PAN whose income has not been disclosed by the appellant to the department Since the amount of Rs.24,96,217// appears in the AIR record of die department, the onus on the appellant has not been discharged by merely filing copies of bank statements.*

*As for (ii) above, the cash deposit of Rs.6,10,000/- is also added back as per information received in AIR record. Merely filing an account statement of the cash withdrawal and deposits without any books of account cannot*

*establish the source of the cash deposits. Therefore, the cash deposit addition is also being sustained.”*

9. From the above finding of Ld.CIT(A), it is evident that the assessee had stated that the firm had deposited a sum of Rs.6,60,000/- in the bank account of the assessee however, the AO took it as Rs.6,10,000/-. Secondly, the AO did not take note of cash withdrawals of Rs.19,55,000/- by the assessee during the Assessment Year. This submission of the assessee is not adverted by Ld.CIT(A). In my considered view, I find that the assessee had given a plausible explanation to the lower authority. I find merit into the contention of the assessee that if the gross receipts are taken at Rs.17,82,469/- but not at Rs.24,96,217/- after giving effect to the reversal entry of Rs.7,13,748/- as reflected in the Form 26AS. The income of the assessee firm would be at Rs.1,42,598/- if computed @ 8% of the contractual receipts on the presumptive basis. Hence, looking to the totality of the facts, the impugned addition as made by the AO and sustained by the Ld.CIT(A) is unjustified and deserves to be deleted. Therefore, I hereby delete the impugned addition and allow the grounds of appeal.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 31<sup>st</sup> August, 2022.

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

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI