

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,  
NEW DELHI

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

ITA No. 5949/DEL/2019 [A.Y 2010-11]

Shri Naresh Tanwar  
1206, 12<sup>th</sup> Floor,  
Vikrant Tower  
New Rajendra Place  
New Delhi

Vs.

The Income tax Officer  
Ward 45(1)  
New Delhi

PAN: ACMPT 5610 K

Assessee By : None

Department By : Shri Om Prakash, Sr. DR

Date of Hearing : 25.10.2022

Date of Pronouncement : 26.10.2022

**ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 25.04.2019 of CIT(A) - 15 New Delhi pertaining to 2010-11 assessment year is assailed on various grounds including Ground No. 1, which reads as under:

1. That the impugned order under section 250 of Income Tax Act,1961 of Ld. CIT (Appeals)-15, New Delhi dated 25.04.2019 is bad in law and wrong, incorrect and illegal on the facts and in the circumstances of the case and legal position.

2. That on the facts and circumstances of the case and the legal position that Ld. CIT (Appeals)-15, Delhi has erred by **adding income of Rs.7,79,069/-** for the reason "...that LD. CIT (Appeals) do not find any reason to interfere with the findings of the AO". When, on the contrary:-
  - i. Substantial material /evidence was furnished during the proceedings to prove the details of cash deposits to the tune of Rs 11,00,650/- and no infirmity or short coming was pointed out by Ld. CIT(Appeals)-15, Delhi.
3. As per reasons recorded before issue of notice u/s 148, there is cash deposit of Rs 11,00,650/- only as per AIR Information (Please refer second para of assessment order on Page 1) and while passing the order the cash deposit is taken as 38,04,050/- for calculation of profit (Please refer para no '3' on page no. 2 of the assessment order).
4. If we calculate the profit on Rs 11,00,650/- (5) 20.48% (i.e. Rate taken by the LD. AO in the assessment order) the amount comes to Rs 2,25,413/- only.
5. **The Ld. CIT(Appeals)-15, Delhi remains silent of addition of Rs 1,60,000/-** (basic amount not chargeable to tax) when addition was made according to the rate of GP i.e. (5) 20.48% of Rs 38,04,050/-.
6. The appellant had furnished various submissions/source/material/evidences/documents depicting **clarification on amount of cash deposits to the tune of Rs 11,00,650/-** to the Ld. CIT(Appeals)-15, Delhi which was not considered while passing the order under section 250(4) of Income Tax Act,1961 ,and also not confronted with Ld. A.O.
7. That on the facts and in the circumstances of the case and legal position. The Ld. AO erred in levying interest U/s 234A, 234B, 234C & 234D. Particularly the said interest was not leviable at all in view of the arbitrary addition of Rs. 7,79,069/-.
8. That the appellant craves leave to add, alter, delete, modify, or vary any ground(s) of appeal before or at the time of hearing of appeal.

2. At the time of hearing, none was present for and on behalf of the assessee.

3. Attention of the Id. Sr. DR was invited to the impugned order wherein it is seen that the explanation offered by the assessee found not acceptable is not discussed. The Id. Sr. DR relied upon the order. However, could not controvert the fact that the replies of the assessee were not found discussed. It is seen that the addition made by the Assessing Officer by an order passed u/s 144/147 of the Act has been confirmed by holding as under:

"After considering the report of the Assessing Officer and subsequent replies filed by the appellant, it is seen that the assessee has shown estimated profit @ 9% of total turnover of Rs.57,81,250/- in his computation of income for A.Y. 2010-11 without any basis which is totally based on estimation, surmises and presumption and is not supported with any documentary documents. The AO is also correct in pointing out that the assessee has shown estimated profit for A.Y. 2012-13 & 2013-14 @11% of total turnover and further that the assessee has reduced his estimated profit to 9% .for which no justification was provided by the assessee. Therefore, considering the facts and circumstances of the case, I do not find any reason to interfere with the findings of the AO and accordingly the addition of Rs. 7,79,059/- made by the AO is hereby confirmed."

4. What were the replies of the assessee are not found discussed in the order. Accordingly, in view of a lack of discussion on the reasoning for

discarding the explanation the correctness of the order cannot be ascertained. Hence, the order cannot be sustained. Accordingly, it is set aside back to the file of Id. CIT(A) with a direction to pass a speaking order in accordance with law after giving reasonable opportunity of being heard to the assessee.

5. While so directing, it is made clear that the assessee in its own interest should ensure full and proper participation before the First Appellate Authority and not to abuse the trust reposed in him. At the same time it is made clear that in the eventuality of the abuse of the trust reposed the Id. CIT(A) shall be at liberty to pass an order in accordance with law on the basis of material available on record. Said order was pronounced in the open court at the time of hearing itself.

6. Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

Said order was pronounced in open court on 26<sup>th</sup> October, 2022.

Sd/-

**(DIVA SINGH)**  
**JUDICIAL MEMBER**

Dated: 26.10.2022

VL/PK