

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 834/DEL/2020
[Assessment Year: 2010-11]

Varun Nagpal, 635/17, Sector-17A, Gurgaon, Haryana-122001.	<u>Vs</u>	Income-tax Officer, Ward-4(5), Gurgaon. .
PAN- AkGPN7648K		
APPELLANT		RESPONDENT
Assessee represented by	Sh. Jitender Wadhwa, CA.	
Department represented by	None	
Date of hearing	04.01.2023	
Date of pronouncement	18.01.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-1, Gurgaon, dated 23.07.2018, pertaining to the assessment year 2010-11. The assessee has raised following concised grounds of appeal:

- “1. That the appellant denies its liability to be assessed at a total income of Rs. 19, 90,620/- and accordingly denies his liability to pay tax and interest thereon.*
- 2. That the Hon’ble CIT(A) has erred in law and on facts by ignoring the following points for the year under consideration, submitted by the assessee*

during the appeal proceedings:

- a. Opening cash in hand of Rs. 2,86,728/-,*
- b. Opening Stock of Rs. 6,10,000/-, and*
- c. Opening debtor of Rs. 3, 70,500 /-.*

3. *That having regard to the facts and circumstances of the case, the Hon'ble CIT(A) is not justified in upholding the adding back of the sum of Rs. 18,51,200/- as an unexplained expenditure under section 69 of the Income Tax Act, 1961 . The said addition is unwarranted and not sustainable in the eyes of law as the profit from the business @ 8% had been returned by the appellant under section 44 AD of the Income Tax Act, 1961.*

4. *That having regard to the facts and circumstances of the case, the Hon'ble CIT(A) and the Ld. A.O has erred in law and on facts not following the judgment of the **Honorable Punjab & Haryana High Court** in the case of **CIT v. Surinder Pal Anand [2010] 192 Taxman 264 (Punj. & Har.)** that once the assessee is assessed on presumptive basis u/s 44AD, separate addition of cash deposit in bank is not upheld.*

5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.*

2. The facts giving rise to the present appeal are that case the Assessing Officer has recorded that assessee did not file his return of income for assessment year 2010-11. Therefore, the case of the assessee was reopened u/s 147 of the Income-tax Act, 1961 (in short "the Act"). Thereafter, a notice u/s 148 of the Act was issued on 29.03.2017 after recording the reasons for re-opening of assessment. It is also recorded by the Assessing Officer that in response to notice u/s 148 on 3.10.2017 return of income was filed at Rs. 1,39,420/-. Thereafter a notice u/s 143(2) of the Act was issued on 13.10.2017. However, no one attended the assessment proceedings. On 20.11.2017 Shri Tajender Bhardwaj attended the proceedings and furnished power of attorney. The case was adjourned for 23.11.2017, but yet again no one attended the proceedings. The Assessing Officer

provided final opportunity vide notice dated 4.12.2017, but remained unattended. Therefore, the Assessing officer proceeded to make assessment on the basis of the material available on record. The Assessing Officer noticed that the assessee had deposited cash in his bank account amounting to Rs. 16,51,922/-. Treating the same as unexplained, the Assessing Officer made addition u/s 69 of the Act and assessed the income at Rs. 17,91,342/-. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who dismissed the appeal and further enhanced the income of the assessee. Aggrieved against this the assessee is in appeal before this Tribunal.

3. On behalf of the Revenue learned DR sought adjournment on the ground that the DR is on leave. The request was not allowed looking to the facts of the present case.

4. The learned counsel for the assessee submitted that the authorities below failed to appreciate the facts in right perspective, as the business receipts of the assessee have been treated as unexplained income. The assessee was not given sufficient opportunity by the authorities below.

5. I have heard the learned counsel for the assessee and perused the material available on record. It is stated by the assessee that the assessee was having opening cash in hand of Rs. 2,86,728/-; opening stock of Rs. 6,10,000/- and opening debtor of Rs. 3,70,500/-. The assessee has also filed paper book. It is stated that the authorities below did not appreciate the facts in right perspective. Had the evidences filed by the assessee considered then there was no occasion to make addition u/s 69 of the Act. I find that the learned CIT(Appeals) has decided the issue by observing as under:

“3.3 Perusal of the documents filed by the appellant reveals that during the year under consideration, the appellant had deposited total amount of cash

amounting to Rs. 23,52,500/- in his three bank accounts. The details of cash deposits and withdrawals from these bank accounts has filed by the appellant are as under:

<i>Detail of funds received and utilized during the year ended 31/03/2010</i>							
<i>Particulars</i>	<i>Op. Bal.</i>	<i>Cash Deposit</i>	<i>Intt. Income</i>	<i>Cheque</i>	<i>FDR</i>	<i>Total</i>	
<i>Syndicate Bank</i>	136851	630000	3750	1790	453618	1226010	
<i>Corporation Bank</i>	365000	1650000	3417			2018417	
<i>Bank of India</i>	1029	72500	555	20970		95054	
<i>Total 'A'</i>	502880	2352500	7722	22760	453618	3339481	
<i>Cash in hand</i>	251200	0	0	0		251200	
<i>Total 'B'</i>	754080	2352500	7722	22760	453618	3590681	
<i>Particulars</i>		<i>Cash</i>	<i>Bank</i>	<i>Cheque</i>	<i>FDR /Lokesh</i>	<i>Total</i>	
		<i>Withdrawn</i>	<i>Charges</i>				
<i>Syndicate Bank</i>		400000			820000		1220000
<i>Corporation Bank</i>		100000	0	0	1464000	450000	2014000
<i>Bank of India</i>		1300	271	49001	0	0	50572
<i>Total 'C'</i>		501300	271	49001	2284000	450000	3284572
<i>Net (B-C)</i>		1851200	7451	-26241	-1830382	-450000	306108
<i>Closing Balance of cash at bank</i>							54908

3.4 It is seen that out of the cash deposits made by the appellant, most of the amounts have been utilized towards converting the balance in the bank accounts into FDRs and pail of the amount has been given to Sh. Lokesh. Further, there are cash withdrawals of Rs. 5,01,300/- during the year under consideration. The total amount of cheque payments are only Rs. 49,001/-. It is therefore evident that there is no expenditure by cheque incurred by the appellant during the year under consideration. The total amount of cash withdrawals amounting to Rs. 5,01,300/- can either be held to be available for depositing the same in cash or may be allowed as expenditure incurred by the appellant. In any case, it is seen that from the facts submitted by the appellant, there was net cash deposits of Rs. 18,51,200/- during the year under consideration. These facts were brought to the notice of the AR of the appellant vide order sheet entry dated 15/06/2018 and the AR of the appellant was asked to explain why the addition may not be enhanced to Rs.

18,51,200/-. No reply was furnished by the appellant in response to this show cause for enhancement. Moreover, no evidence for carrying out business activities during the year under consideration was furnished.

3.5 I have carefully considered the facts of the case and the submissions of the appellant as also the documents filed by the appellant. As discussed above, there were huge amounts of cash deposits in the bank account of the appellant amounting to Rs. 23,52,500/- as against which there were cash withdrawals of only Rs. 5,01,300/- In the given facts and circumstances of the case, it is held that the whole of the cash withdrawals of Rs. 5,01,300/- was available with the appellant for depositing the same in cash in the bank account and as such the net cash deposits in the bank account during the year under consideration was Rs. 18,51,200/-. The onus to explain the sources of these cash deposits in the bank account is on the appellant. The appellant's contention that these deposits were made out of business carried out by the appellant is without any supporting evidence. Moreover, as mentioned above, there were no payments by cheque during the year under consideration and as such even if for argument sake, it is accepted that the appellant has carried on some business activities during the year under consideration, the total amount of Rs. 18,51,200/- during the year, being net cash deposits in the bank account would still represent the net income of the appellant after accounting for any expenses which apparently in the facts and circumstances of the case would have been incurred in cash. It may also be relevant to mention here that this income earned by the appellant has been deposited in the bank account and thereafter converted into FDRs amounting to Rs. 22,84,000/- thus, establishing that the amount of Rs. 18,51,200/- deposited in the bank account was the net income of the appellant. The addition made by the Assessing Officer on account of cash deposits in the bank account is accordingly enhanced to Rs. 18,51,200/-. Penalty proceedings u/s 271 (1)(c) for concealment of income to the extent of Rs. 1,99,278/- being the income enhanced as above (18,51,200 - 16,51,922) are being initiated separately. The ground of appeal filed by the appellant is accordingly dismissed with enhancement as above”.

6. It is also seen that before the Assessing Officer there was no effective representation on behalf of the assessee. Therefore, looking to the totality of the

facts and to verify the correctness of the claim of the assessee that he was doing business and the cash deposit was out of business receipts, I hereby set aside the impugned order and restore the assessment to the Assessing Authority to make assessment afresh after giving opportunity to the assessee. Grounds raised in this appeal are allowed for statistical purposes.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 18th January, 2023.

**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**