

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'SMC' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.2691/Del./2022  
(ASSESSMENT YEAR : 2012-13)**

Aleenjeet,  
275, PLA,  
Hisar – 125 001 (Haryana).

vs. ITO, Ward – 1,  
Hisar.

**(PAN : AQBPA2045A)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : None  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 06.03.2023  
Date of Order : 09.03.2023

**ORDER**

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC) dated 07.09.2022 pertaining to the Assessment Year 2012-13.

2. The grounds of appeal taken by the assessee read as under :-

“1. Assessment framed u/s 147 rws 143 (3) of the Act is illegal as the order of Ld. AO is against the law, facts and out of jurisdiction. Assessee is doing job as a private teacher now a days and earlier was carrying on some small business of cellular phones in local market, some cash was deposited and withdrawn from her bank account due to this small business activity which was carried out by her for living. She does not have any other source of income except this small business at that particular time which is she later on closed due to no good profits and output in the competition market. Therefore it is prayed to abolish the demand and oblige. It is also prominent

to mention here that no income had escaped from tax. Kindly do the needful.”

3. In this case, Assessing Officer noted that assessee did not file return of income for AY 2012-13. As per CIB/AIR information, it was gathered that cash of Rs.30,68,000/- was deposited on different dates during FY 2011-12 into assessee's bank account. AO issued notices to the assessee. He noted that during the assessment proceedings, assessee has provided part reply which has been considered. AO did not mention what was the reply. AO also rejected the assessee's claim of furnishing return u/s 44AF of the Income-tax Act, 1961 (for short 'the Act'). AO proceeded to add certain amount after giving some relief. AO's order in this regard read as under :-

“However, keeping in view totality of the facts & circumstances, out of total cash deposited of Rs.30,68,000/- by giving benefit of Rs.17,00,000/- received/claimed from father through cheque on 16.06.2011 and considering the withdrawals made by the assessee remaining amount of Rs.13,68,000/- is treated as income of assessee from undisclosed sources which was deposited in cash.”

4. Upon assessee's appeal, Id. CIT (A) noted that there was no response from the assessee. He concluded as under by giving some part relief :-

“ At the outset It is noted that the appellant failed to respond to any of the notices and did not submit any legal or factual arguments other than what was filed with form 35. Without any documents in support of the ground of appeal, I have to rely on the assessment order of the AO. The AO has

already allowed relief by accepting the explanation of deposit of Rs 17 lakh through a cheque from the appellant's father. However, as pointed out by the appellant in the statement of facts she has already declared an income of Rs 2,73,320/- in her return of income from small business of cellular phones in - local market. Being an individual carrying on business in 2011 it is quite possible that proper accounts were not maintained and not readily available during reassessment proceedings in 2019. Therefore, out of the amount added by the AO ie Rs.13,68,000 credit for income already declared by the appellant needs to be given. For the remaining amount the submissions of the appellant are vague and unacceptable. Accordingly the same is treated as her unaccounted income and the addition made by the AO is upheld to the extent of Rs.10,94,6801-. This ground of appeal is partly allowed.

5. Against the above order, assessee is in appeal before me. I have heard the ld. DR for the Revenue and perused the records. An adjournment application was filed by the assessee. However, the same has been rejected as the matter can be decided by hearing ld. DR for the Revenue and perusing the records.

6. Upon careful consideration, I find that the authorities below have made the addition on surmises and conjectures. AO has noted that there was cash deposit in assessee's bank. However, despite assessee's furnishing income-tax return, AO chose to ignore the same. Assessee's submissions were not fully produced by the AO in his order and why he rejected the assessee's return u/s 44AF is also not mentioned. Giving part information in the reply, AO gave relief to the assessee and brought down the addition from Rs.30,68,000/- to Rs.13,68,000/-. Upon assessee's

appeal, ld. CIT (A) also did not mention the facts brought on by the assessee. He also chose to give some part relief and confirmed the addition to the extent of Rs.10,94,680/-. Upon careful consideration, I note that authorities below have made the addition merely on surmises and conjectures. They have not mentioned the assessee's reply fully. Without mentioning the reply and its implication, they have passed an order on surmises and conjectures. In my considered opinion, such an order is not sustainable in law. Accordingly, I direct that the addition of Rs.10,94,680/- sustained by the ld. CIT (A) be deleted.

7. In the result, the appeal of the assessee stands allowed.

**Order pronounced in the open court on this 9<sup>th</sup> day of March, 2023.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 9<sup>th</sup> day of March, 2023**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**