

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE, SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.2840/Del/2017
(Assessment Year: 2009-10)**

Sh. Ganesh Negi, C/o- Sudhanshu Sharma & Associates, Saket, Near Jamuna Palace, Opposite Vodafone Store, Haridwar	Vs	Income Tax Officer, Kotdwar, Uttarakhand
PAN – ADYPN8415F		
(Appellant)		(Respondent)

Appellant By	None
Respondent by	Smt. Poonam Sharma, Addl. CIT
Date of Hearing	20.06.2023
Date of Pronouncement	23.06.2023

ORDER

This is an appeal against order dated 22.02.2017 passed by learned Commissioner of Income Tax (Appeals) [hereinafter referred to as the learned CIT(A)], Dehradun, pertaining to assessment year 2009-10.

2. None appeared on behalf of the assessee despite service of notice on various occasions on the address mentioned in Form No. 36. This appeal was filed by the assessee on 08.05.2017. The first notice of hearing was issued on 10.11.2021, on which date, the case was adjourned at the request of the assessee. Later on, the matter was listed for hearing on 20.01.2022, 24.05.2022, 26.08.2022, 16.10.2022, 27.04.2023 and on 20.06.2023, i.e., today. On none of these occasions, the assessee was present either in person or through Authorized Representative. Since, sufficient opportunities have been given to the assessee, we proceed to dispose of this appeal on hearing the learned DR and after perusing the material available on record. The assessee raised the following grounds of appeal before us:-

1. *Because on facts and in circumstances of the case, the CIT (A) Dehradun has erred in confirming the addition of Rs 4,79,305.00 in the hands of the assessee although the same income was also assessed to the income of another assessee - Sh. Vinod Kumar, as has also been confirmed by the AO.*
2. *Because on facts and in circumstances of the case, the CIT(A), Dehradun has erred in treating the receipts of rs 9,50,000.00 as relating to liquor business, although the same pertain to contract business, and thus not allowing the benefit presumptive income u/s 44ad*

3. *Because on facts and in circumstances of the case, the CIT(A), Dehradun has erred by not appreciating the submissions made by the assessee as well as - brushing aside the various court pronouncements & material made available to him.*
4. *That the assessee reserves the right to introduce any other ground of appeal and new facts with the kind permission of your Honours.*

3. We have heard learned DR and perused the materials available on record. The original return of income was filed by the assessee on 08.03.2010 and assessment was framed under section 144 of the Act on 28.11.2011 determining the total income at Rs.51,85,026/-. After completion of assessment proceedings, based on AIR information received regarding cash deposits made by the assessee in the bank account to the tune of Rs.81,51,305/-, the learned Assessing Officer issued notice under section 133(6) of the Act to the assessee on 14.06.2012, which was not complied by the assessee. Later, the copy of savings bank account was obtained from the AIR Filer i.e. the Punjab National Bank (PNB). Perusal of the said bank statements revealed that the cash deposit in PNB was not considered by the learned Assessing Officer during the course of framing original assessment under section 144 of the Act.

4. Accordingly, the assessment for assessment year 2009-10 was sought to be reopened by learned Assessing Officer after recording reasons that the income of the assessee has escaped assessment. A notice under section 148 of the Act was issued on 30.09.2013. The assessee through his Authorized Representative replied that the original return filed may be treated as a return in response to notice under section 148 of the Act. The learned Assessing Officer observed that the assessee has maintained bank account with PNB Bank, Syndicate Bank, ICICI Bank and Allahabad Bank. Since the cash deposits made in the ICICI Bank and Syndicate Bank were already considered in the original assessment framed under section 144 of the Act on 28.11.2011, the learned Assessing Officer sought an explanation together with the source for making cash deposit in PNB Bank from the assessee in the impugned proceedings. During the course of reassessment proceedings, the assessee claimed that apart from retail trading of garments, he is also engaged in the business of petty civil contracts. However, no details with regard to assessee carrying on civil contract business were furnished with cogent evidence before the learned Assessing Officer. Accordingly,

with regard to cash deposits made in PNB amounting to Rs.81,51,305/-, the assessee stated that he was working as sales man for liquor licensee Sh. Vinod Kumar and all the transactions were made on behalf of Sh. Vinod Kumar.

5. The assessee has also submitted affidavit of Sh. Vinod Kumar along with the evidence of award of liquor licence to Sh. Vinod Kumar. A statement on oath of Sh. Vinod Kumar was also recorded under section 131 of the Act by learned Assessing Officer, who confirmed the statement of the assessee. The assessee merely stated that all the transactions in the said bank account belong to Sh. Vinod Kumar and his bank account was merely used by Sh. Vinod Kumar for the purposes of meeting day-to-day expenses of wine shop, such as, payment of excise duty, Adhibhar, licence fees, staff salary, rent, business promotion, electricity, telephone, freight etc. The assessee also submitted copies of excise challans, excise records and TCS certificate of Sh. Vinod Kumar in support of his claim. Learned Assessing Officer observed that out of total deposits in the bank account amounting to Rs.83,40,029/-, he gave benefit of Rs.4,70,482/-, which was paid to M/s. Jagjeet Industries and

M/s. National Industries, which was also declared as purchase by Sh. Vinod Kumar. After deducting the said sum, the remaining amount of Rs.78,69,574/- was added as unexplained money of the assessee in the assessment.

6. With regard to cash deposit of Rs.9,50,000/- made in Allahabad Bank, the assessee stated that he was a petty civil contractor and the said deposits were made out of the payments received against civil construction work. In support of this claim, the assessee submitted affidavits of Sh. Rajneesh Singh, Sh. Kamal Singh, Sh. Jagdish Singh, and Sh. Jaswant Singh. The assessee also produced Sh. Rajneesh Singh, Sh. Kamal Singh and Sh. Jaswant Singh before learned Assessing Officer for recording statements from them. Those parties also filed affidavits before the learned Assessing Officer. The learned Assessing Officer, however, brushed aside the affidavits and statements of these persons by stating that this exercise was made only to justify the incorrect claim of the assessee. The learned Assessing Officer observed that all these three persons claimed their income to be below Rs 1 lakh in a year, whereas, they had made payments of Rs.3,40,000;

Rs.4,25,000/- and Rs.13,90,000/- respectively to the assessee. No details of payments made by Sh. Jagdish to the assessee were filed. Learned Assessing Officer also observed that not a single person was found owner of the house, on which construction work was claimed allegedly by the assessee. The Inspector of Income Tax Department attached to the Assessing Officer was also deputed to make spot inquiries in the case of Sh. Kamal Singh, which revealed that only some grout work on the roof was made 4 to 5 years back, which contradicts the statements given by Sh. Kamal Singh that he paid Rs.4,25,000/- to the assessee for such small work.

7. With the aforesaid observations, learned Assessing Officer disbelieved the existence of business of civil construction work carried out by the assessee. The learned Assessing Officer also obtained the entire bank statements of Allahabad Bank account by issuing notice under section 133(6) of the Act to the bank. On an analysis of the transactions in the said bank account, the learned Assessing Officer concluded that no payments were made in connection with civil construction work allegedly carried out by the

assessee. This strengthens the belief of the learned Assessing Officer that no civil construction business was, indeed, carried out by the assessee. Accordingly, the learned Assessing Officer treated the deposits in the Allahabad Bank amounting to Rs.9,50,000/- as unexplained money belonging to the assessee and added the same in the assessment year.

8. A written submission was filed before the learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT(A)] on behalf of the assessee. Based on the contentions raised in the written submission, learned CIT(A) called for a remand report from learned Assessing Officer. The remand report was submitted by learned Assessing Officer vide letter dated 20th January, 2017. Learned CIT(A) after considering the remand report and the written submissions of the assessee, disposed of the grounds raised by the assessee before him by observing as under:

"14. I have duly considered the facts and circumstances of the case. Since the AO after examining the case of both, the assessee and Sh. Vinod Kumar is now convinced that the cash deposit of Rs. 76.72 lacs made in the PNB Saving Bank account of Sh. Ganesh Negi were the sale deposits of liquor business of Sh. Vinod Kumar and that the income from such liquor business was to be assessed in the hands of Sh. Vinod Kumar as he was the actual owner and

the assessee was only a salesman, it is clear that the deposit in the bank account at PNB, Pauri cannot be added to the income of the assessee. Therefore, of the addition of Rs. 78,69,574/-, a sum of Rs. 76.72 lacs identified as cash deposit on account of liquor business cannot be sustained in the hands of the assessee. This leaves the balance of Rs. 1,97,574/- which is still unexplained. It is observed that there is no explanation for this excess amount and also no explanation for the remaining deposit of Rs. 2,81,731/- that, total up to deposit of Rs. 81,51,305/- in the said account. Therefore, of the total of Rs. 81,51,305/-, a sum of Rs. 4,79,305/- is assessed as unexplained investment in the bank account at PNB, Pauri while the balance is treated as cash deposit of liquor business of Sh. Vinod Kumar and no adverse inference is drawn against the same. Accordingly, the same is deleted.

15. *With regard to the explanation of deposit of Rs. 9,50,000/- in the account at Allahabad Bank, it is quite - clear from the detailed analysis of the withdrawals and deposits done by the AO that this account was not used for contra business as submitted by the assessee but also used for making payments for liquor business. The assessee has not furnished a satisfactory explanation for the receipts in the bank account. The persons from whom the payments are purported to be received are, men of no means and the houses on which the work was supposed to have been done were not owned by them. No details or proof of payment could be provided. Hence, the deposit is quite clearly unexplained and deserves to be brought to tax as unexplained investment u/s 69. The addition is accordingly confirmed.*

16. *In the result, the appeal is partly allowed."*

9. The assessee before us was not able to controvert the aforesaid findings of learned CIT(A) and hence, we do not deem it fit to interfere in the said order of learned CIT(A). Accordingly, grounds raised by the assessee are dismissed.

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

Order pronounced in Open Court on 23rd June, 2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/06/2023

RK/Sr.PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI
(Dehradun Circuit Bench, Dehradun)