

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH MUMBAI**

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

**ITA No. 766/Mum/2023
(Assessment Year: 2015-16)**

MehjabeenMasoodKhan, A/503, Akansha CHS Apartment, Yari Road, Versova, Andheri (W), Mumbai-400061.	बनाम/ Vs.	ITO, 16(1)(3), Aayakar Bhavan, M.K.Road, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIBPK9930R		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Mr.Sumit Mantri.AR
प्रत्यर्थी की ओर से/Respondent by :	Mr.Abhishek Kumar Singh.DR

सुनवाई की तारीख / Date of Hearing	21/06/2023
घोषणा की तारीख /Date of Pronouncement	22/06/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/s 250 of the Act.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal and filed an affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and the Ld. DR has no specific objections. Accordingly, condone the delay and admit the appeal. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case, the learned Commissioner of Income Tax (A) erred in confirming the addition of Rs.14,73,600/- under section 68 without appreciating that the appellant had opted for presumptive taxation under section 44AD and not maintaining book of accounts, therefore the section 68 is not applicable.*

2. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (A) erred in confirming the addition under section 68 i.e. unexplained cash credit without appreciating that the said credits i.e. Professional Fees are duly explained and the assessee had offered said receipts under section 44AD and paid due taxes.*

3. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (A) erred in not granting the deduction of expenses incurred for earning the said receipts of Rs.14,73,600/-.*

The appellant craves leaves to add, to delete or amend any of the above grounds of appeal at the time of hearing

3. The brief facts of the case that, the assessee is engaged in professional service as production supervisor and the assessee has not filed the return of income for the A.Y 2015-16. The Assessing Officer (A.O) has received information that the assessee has deposited cash of Rs.3 Crores in the bank accounts and also as per Form no 26AS the assessee is in receipt of income u/s 194J of the Act of Rs. 14,76,600/- The A.O. has reason to believe that the income has escaped the assessment and issued notice u/s 148 of the Act and

there was no compliance. Further, the A.O has issued notice u/s 142(1) of the Act to explain the sources of cash deposits in bank and the taxability of receipts u/s 194J of the Act and reasons for not filing the return of income for A.Y 2015-16. Subsequently, the A.O has issued notice u/s 133(6) of the Act to (i) Oriental Commerce Bank and (ii) Abu Jani Sandeep Khosla. Whereas the assessee has filed the return of income for A.Y 2015-16 on 22.12.2018 disclosing a total income of Rs.1,95,160/- and notice u/s 143(2) of the Act was issued. As per the return of income, the assessee was working with the fashion designer and TDS was deducted u/s 194J of the Act on the receipts/ income.

4. The AO found that the assessee has computed the income u/s 44AD of the Act @ 8% of the gross receipts. The AO has dealt on the facts with respect to TDS deduction u/s 194J of the Act and further the notice u/s 142(1) of the Act was issued to submit the documentary evidence/details. In compliance, the assessee has filed the explanations and furnished the details vide letter dated 27-12-2018 referred at Para 6 of the order. Whereas the AO was not satisfied with the submissions of the assessee and observed that the TDS was deducted u/s 194J of the Act and the assessee has submitted the details of professional receipts which are disclosed in Form.No.26AS and the assessee has not specified the profession but working with the renowned professional firm who are engaged in the business of fashion

designing. Therefore the AO is of the opinion that the assessee has not maintained books of account and does not have professional skills. The AO found that the assessee has filed the return of income for the A.Y 2011-12 and offered the business income and for A.Y 2015-16, the assessee has adopted presumptive basis u/s 44AD of the Act. Whereas for the A.Y 2016-17 to A.Y. 2018-19 the assessee has been employee and TDS has been deducted as per the provisions applicable to salary income. Finally, the AO was not satisfied with the explanations and offering of income u/s 44AD of the Act @ 8% and made addition as undisclosed income U/sec68 of the Act of Rs. 14,73,600/-and assessed the total income of Rs. 15,50,870/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 28.12.2018.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but confirmed the addition made by the AO and dismissed the assessee appeal. Aggrieved by the order the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the facts and submissions and various information filed before the A.O and in the proceedings. The contentions of the Ld. AR are that the assessee has offered income as per the provisions of Sec

44AD of the Act which is permissible to the assessee and whereas in subsequent years the assessee being an employee, the salary income was offered and the Ld.AR substantiated the submissions with paper book and prayed for allowing the assessee appeal. Contra, the Ld. DR relied on the order of the CIT(A).

7. Heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in confirming the action of the AO overlooking the various facts and information filed in the course of hearing. The Ld. AR's contentions are that the assessee has filed ITR Form No.4S for A.Y 2015-16 adopting the provisions of Sec. 44AD of the Act prescribed under income tax Act. The Ld. AR has highlighted the reply filed in response to notice, placed at page 8 to 9 of the paper book where the assessee mentioned that the professional receipts are from the fashion designer and TDS was deducted u/s 194J of the Act. Further the assessee has filed a letter dated 26.12.2018 furnishing of computation of income, ITR, bank account statement placed at page 10 of the paper book. Prima-facie the assessee has adopted the provisions of Sec. 44AD of the Act which mandates offering of the income on presumptive basis, the assessee has offered the income @ 8% of professional receipts for the present assessee year and for the subsequent years from A.Y 2016-17 to A.Y.2018-19 the assessee being an employee

and TDS was deducted on salary income under the provisions of section 192 of the Act which is not disputed. Therefore considering the facts and circumstances, that the assessee has adopted provisions of section 44AD of the Act which is permissible and the addition of professional receipts as undisclosed income U/sec68 of the Act is not tenable. Accordingly, set-aside the order of the CIT(A) and direct the assessing officer to delete the addition. And the grounds of appeal are allowed in favour of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22.06.2023.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22 /06/2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai.