

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "SMC" KOLKATA

BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No. 449/KOL/2022
Assessment Year: 2010-11

MOHD. ZULKARNAIN ALI 98, Ramanujam Road, B-Zone, Durgapur-713205. PAN: AHSPA 0354 N (Appellant)	Vs.	ITO, Durgapur Ward-1(1), (Respondent)
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Present for:

Appellant by : Shri Miraj D. Shah, AR
Respondent by : Shri Vijay Kumar, Addl. CIT

Date of Hearing : 31.07.2023
Date of Pronouncement : 31.07.2023

ORDER

PER SONJOY SARMA, JM:

This appeal by the assessee for the Assessment Year 2010-11 is directed against the order dated 17.06.2022 passed by the Id. CIT(A), NFAC, Delhi. The assessee has raised following grounds of appeal:

- "1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 17.06.2022 which is completely arbitrary, unjustified and illegal.*
- 2. For that on the facts of the case, the impugned order is at best capable of being classified as a case of mere change of opinion, hence, the assessment is bad in law should be quashed.*
- 3. For that on the facts of the case, the Ld. CLT.(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.30,09,728/- as House Property Income as per 26AS report on estimated basis which is completely arbitrary, unjustified and illegal.*
- 4. that on the facts of the case, the A.O. was wrong in not considering the facts that the assessee carrying on business as electrical equipment and light renting and should be deducted @2% on Rent of plant & machinery as per section 19414, but some deductor more than 2% deducted and the A.O. enhancing the income on estimate basis which is confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.*
- 5. For that on the facts of the case, the Ld. CIT(A) ought to have considered that the assessee had discharged its onus by furnishing all*

the relevant documents in connection with the income as per 26AS report and reconciled, Bank statement and also proved the identity, creditworthiness and genuineness, but the Ld. CIT(A) confirmed the order only ground of delay fling the appeal, thus his action is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, the Ld. CLT.(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.20,000/- [50% of Rs.40,000/-] as Professional Income as per 26AS report on estimated basis which is completely arbitrary, unjustified and illegal.

7. For that on the facts of the case, the A.O, was made addition on professional income by invoking section 44ADA of the I.T. Act which is confirmed the Ld.CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

8. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.1,36,422/- [12% of Rs.11,36,851/-] as Income from Contractual Business as per 26AS report on estimated basis which is completely arbitrary, unjustified and illegal.

9. For that on the facts of the case, the A.O. was made addition on by invoking section 44AD of the 1.T. Act which is confirmed the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

10. For that on the facts of the case, the assessee is not liable to keep and maintain books of accounts u/s. 44AA of the I.T. Act and not liable to get the accounts audited u/s. 44AB of the I.T. Act as the assessee's income beyond the threshold limit, thus A.O. was wrong in applying various section on penalty which is confirmed by the Ld. CIT(A), as such his finding is completely arbitrary, unjustified and illegal.

11. For that on the facts of the case, the A.O. was wrong in charging interest u/s. 234A at Rs.7,47,575/- and u/s. 234B at Rs.8,00,345/- are mechanically wrong and illegal.

12. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

2. Brief facts of the case are that the assessee did not file its return of income for the assessment year under consideration, therefore, the ld. AO after getting the necessary approval from the competent authority. The case of the assessee was reopened by issuing notice u/s 148 of the Act. However, during the proceeding initiated by the AO, assessee never appeared before him in compliance of various notices issued from the ends of AO. Therefore,

the case of the assessee was completed u/s 144 of the Act by making the following additions in the hands of assessee:

<i>i. Income from house property</i>	<i>Rs. 30,09,728/-</i>
<i>ii. Income from profession fees</i>	<i>Rs. 40,000/-</i>
<i>iii. Income from contractual business</i>	<i>Rs. 1,36,422/-”</i>

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A). However, ld. CIT(A) dismissed the appeal of the assessee without look into the submission made by the assessee and even he did not consider the merits of the case and dismissed the appeal by sustaining the order passed by the AO.

4. Aggrieved by the order of ld. CIT(A), assessee is in appeal before the Tribunal raising multiple grounds of appeal. However, the core issue need to be decided in this appeal is that the ld. CIT(A) did not consider the submission made before him while dismissing the appeal of the assessee. The ld. AR brought to our notice that the assessee was carrying electrical equipment and light renting business. During the pendency of assessment proceeding before the ld. AO, assessee was suffering from acute disease and was bed ridden and for the reasons as stated, he could not be able to attend the office of the ld. AO during the period of assessment proceeding and the ld. AO made an arbitrary over pitch assessment against the assessee. The ld. AR submitted before us that the assessee is a supplier of electronic equipment to the various parties and the various contractee who has deducted tax @ 2% under the head of 'rent of plant & machinery. However doing so, the contractee deducted tax u/s 194C @ 2% while making the payment to the assessee. While framing the assessment, the ld. AO treating the contractual work under two different heads namely (i) income

from house property and (ii) contractual work. Therefore, the assessing officer assessed the income of the assessee under the head of income from house property, income from profession fees and income from contractual business in the hands of assessee. In such situation, the various additions made by the AO in the hands of assessee are quite illegal and arbitrary. He further contended that assessee has total gross receipt of Rs. 54,76,462/- from the various parties from supplying electronic equipment for rent. Therefore, the computation of income shall be made u/s 44AD of the Act by calculating profit @ 8% on the gross receipts.

5. On the other hand, ld. DR relied on the decision of ld. CIT(A). However, he could not controvert the fact before us.

6. We after hearing the submission of the parties and perused the material available on record, we notice that the ld. AO made high pitch assessment without having any contrary material against the assessee. It was made only by taking into consideration of marginal figure and similarly ld. CIT(A) also did not consider the submission made before him at the time of hearing by simply dismissed the appeal of the assessee by sustaining the order passed by the AO. Besides that we notice from the facts of the case that the assessee is a small businessman earning his livelihood by renting electronic equipment to the various parties and earning gross receipt of Rs. 54,76,462/- during the assessment year under consideration. Therefore, we feel it to be justified to direct the AO to re-compute the income of assessee by applying section 44AD of the Act @ 8% on the total gross receipt received by the assessee which would come to Rs. 4,38,116/- and calculate the tax on the figures

so arrived u/s 44AD of the Act. In terms of the above direction, the appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.07.2023

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 31.07.2023
Biswajit

Copy to:

1. The Appellant: Mohd. Zulkarnain Ali
2. The Respondent: ITO, Ward-1(1), Durgapur.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata