

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA Nos.2235 to 2238/Del/2022
[Assessment Years: 2013-14 to 2016-17]**

Kamal Kumar Jain, C/o-Kapil Goel, Adv. F-26/124, Sector-7, Rohini, Delhi-110085	Vs	ITO, Ward, Baraut, Room No.101, Income Tax Office, CGO Complex-1, Purani Hapur Chungi, Ghaziabad, Uttar Pradesh-201002
PAN-ABYPJ8345C		
Assessee		Revenue

Assessee by	Sh. Kapil Goel, Adv.
Revenue by	Sh. T. James Singson, CIT-DR

Date of Hearing	19.09.2023
Date of Pronouncement	21.09.2023

ORDER

PER SHAMIM YAHYA, AM,

These are appeals by the assessee against the respective orders of the National Faceless Appeal Centre (NFAC), New Delhi, all dated 28.07.2022 pertaining to Assessment Years 2013-14 to 2016-17.

2. Since, the issues are common and connected and the appeals were heard together, these are being consolidated and disposed of together for the sake of convenience by this common order.

3. For the sake of reference, we are referring to grounds of appeal and facts and figures of Assessment Year 2013-14.

4. The Ld. Counsel for the assessee has pressed only merits of the case. The assessee is an individual and filed his return of income on

08.02.2014 declaring total income of Rs.2,61,280/-. The return was processed u/s 143(1) of the Act. Subsequently, the information received from DDIT(Inv.), Unit-2, Meerut. As per the Insight portal of the Department, the assessee during the relevant year has made aggregate cash deposits Rs.37,14,350/- and had also withdrawn aggregate cash of Rs.36,76,000/- from his bank account maintained with Axis Bank, Punjabi Bagh, New Delhi. On the basis of this information, the case was reopened. During the assessment, the Assessing Officer made addition of cash deposits. The Assessing Officer has completed assessment u/s 147/143(3) r.w.s. 144B of the Act determining total income of Rs.39,75,630/- considering the said cash deposits of Rs.37,14,350/- as unexplained and added the same u/s 68 of the Act.

5. Upon assessee's appeal, the Ld. CIT(A) confirmed the same.
6. Against this order, the assessee is in appeal before us. We have heard both the parties and perused the records.
7. The Ld. Counsel for the assessee submitted that the assessee has filed his return of income on the basis of presumptive business income return filed in Form Sugam ITR 4S wherein the said bank account was duly shown and the amount in dispute as under:-

Sl. No.	Assessment Year	Income declared u/s 44AD (sole lubricant business) trading	Gross receipts declared u/s 44AD (Rs.)	Sole Dispute Bank deposit added u/s 68/Rs.(unexplained cash credit sole subject matter of dispute in extant cases (being Sole impugned Addition made u/s 68 in impugned asst. Order para 9 of asst. Order as sustained by CIT-A)

				Without disturbing returned status of assessee u/s 44AD
1.	2013-2014	299,700 @ 8% of gross receipts	37,45,200	37,14,350
2.	2014-2015	266,000 @ 9.75% of gross receipts	27,26,300	27,83,450
3.	2015-2016	643,200 @ 8% of gross receipts	80,36,200	82,79,551
4.	2016-2017	753,800 @ 8.62% of gross receipts	87,40,000	93,28,595

8. Referring to the above, the Id. Counsel for the assessee stated that the assessee has submitted the return u/s 44AD that there is no requirement in section 44AD that the assessee should maintain books of account. Hence, he pleaded that the addition of deposits in bank account is not permissible. He further submitted that apart from the receipts, other credits have also been taken into account in making addition in three Assessment Years 2014-15 to 2016-17. Hence, he again pleaded that the addition is not sustainable in law.

9. Per Contra, Ld. DR relied upon the orders of the authorities below.

10. Upon careful consideration, we note that the assessee has declared income u/s 44AD of the Act. Section 44AD provides for presumptive business income assessment and it also does not required the assessee to maintain books of accounts. Hence, the cash deposits to the extent of gross receipt cannot be added as unexplained income. As regards difference between 44AD gross receipts and deposits in Bank, we note that the same can be treated as income of the assessee and the profit rate as applicable can be applied. The Ld. Counsel for the assessee fairly agreed to the above proposition. The Ld. DR did not make any cogent

objection in this regard. Accordingly, the appeal of the assessee is partly allowed as indicated hereinabove.

11. Our above adjudication applies *mutatis mutandis* to all the appeals.

12. In the result, this appeal of the assessee stands partly allowed.

Order pronounced in the open court on 21st September, 2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 21.09.2023.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi