

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1996/Del/2023  
[Assessment Year : 2011-12]**

Swan Creations Pvt. Ltd., NIL-568, II-Floor, Malviya Nagar, New Delhi-110017. <b>PAN-AAOCS1246F</b>	vs	ITO, Ward-22(3), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Sushil Kumar Sharma, CA	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	20.09.2023	
<b>Date of Pronouncement</b>	27.09.2023	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 18.05.2023.

2. The assessee has raised following grounds of appeal:-

1. *“That the Ld. Commissioner of Income Tax (Appeal), has erred in considering contractual receipts at Rs 8,80,066/- which is double of actual contractual receipts amounting of Rs. 4,40,033 as appearing in Form 26AS. The technical and factual error was completely ignored, and the order was passed without application of mind.*
2. *That the Ld. Commissioner of Income Tax (Appeal), has erred in ignoring the fact that the amount of Rs. 5,70,000 deposited on various dates and appearing in bank statement was deposited out of cash in hand which was earlier withdrawn by the appellant during the course of business.*

3. *That the Ld. Commissioner of Income Tax (Appeal), has erred in confirming the assessment order passed by Ld. Assessing officer under section 144 without considering basic principles of business and without application of mind that some expenses are always incurred in earning Contractual Incomes. A "best judgment" assessment cannot be a wild one there should be at fair method for calculating Taxable Income. The Ld. Assessing Officer ignored all the payments shown in the Bank Statement.*
4. *That the Ld. Commissioner of Income Tax (Appeal), has erred in confirming the assessment order passed by the Ld. Assessing Officer, whereas assessing officer has erred in opening assessment of a company which was already closed on the date of taking permission of re-opening of Assessment under section 151 and finally passing order under section 147 rws 144.*
5. *The appellant craves leave to amend, alter or delete any of the above grounds of appeal."*

3. Facts giving rise to the present appeal are that the assessment was re-opened u/ 147 of the Income Tax Act, 1961 ("the Act"). A notice u/s 148 of the Act dated 31.03.2018 was issued. In response to the notice, no one attended the proceedings on behalf of the assessee. Therefore, the Assessing Officer ("AO") made assessment *ex-parte* to the assessee u/s 147 r.w.s 144 of the Act vide order dated 15.12.2018. The AO while framing assessment, made addition of Rs. 14,50,066/- u/s 68 of the Act in respect of cash deposited in the account of the assessee.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee reiterated the submissions as made in the written synopsis. He contended that the AO has made double addition of the same amount. He further contended that if reasonable opportunity was given to the assessee, the assessee could have explained the source of cash deposits.

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The contention of the assessee is that the entire process of selection and completion of assessment was made when the promoters of the assessee company had closed the operations of the assessee. Therefore, there was no representation on behalf of the assessee. He contended that requisite documents were filed before the Registrar of company. It is further contended that there was cash withdrawal and cash deposits by the assessee. It was further contended that the company had cash in hand of Rs.7,24,510/- and it had received a sum of Rs.4,40,033/- as a contractual receipt. Further, the AO had added the said amount twice thus, making addition of Rs.8,80066/-.

9. Considering the submissions and material placed on record, I am of the considered view that it would sub-serve the interest of natural justice, if the matter is restored back to the AO to make assessment afresh. The AO would

provide adequate opportunity of hearing to the assessee. I therefore, set aside the impugned order and restore the assessment to AO for making assessment afresh after affording adequate opportunity of being heard to the assessee. The AO would verify the correctness of the claim of the assessee that it had sufficient cash in hand and the factum of contractual receipt added twice by the AO. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 27<sup>th</sup> September, 2023.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI