

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1001/DEL/2020  
Assessment Year 2011-12

Sanjay Bhatia, House No.25/BL, New Colony Palwal-121102, Faridabad.	Vs.	ITO, Ward-2(3), Faridabad.
TAN/PAN: AHBPB4435A (Appellant)		(Respondent)

Appellant by:	Shri Rohit Tiwari, Adv. Ms. Tanya, Adv. Ms. Shivani, Adv. Shri Jaind Kumar Jaiswal, Adv.		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	23	11	2023
Date of pronouncement:	23	11	2023

**ORDER**

**PER PRADIP KUMAR KEDIA-A.M. :**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), Faridabad ('CIT(A)' in short) dated 30.12.2019 arising from the assessment order dated 17.12.2018 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. The Id. counsel for the assessee submits that the assessee is engaged in the business of trading in building material and having regard to nature of business received cash against trading business and deposited the same in the bank account from time to time. Similarly, cash has been withdrawn to be utilized in trading

business and for personal needs. The Assessing Officer has reopened the assessment for Assessment Year 2011-12 in question for the reason that assessee has not filed the return of income despite cash deposits of Rs.30,09,000/- in aggregate in the bank account maintained with Axis Bank and Union Bank of India. The ld. counsel submitted that in pursuance of the reopening of assessment, the assessee filed return of income and declared an amount of Rs.1,59,650/-. The assessee has declared turnover of Rs.28,05,500/- on such trading and declared a book profit of Rs.2,24,450/- being 8% of the turnover under the presumptive taxation scheme available under Section 44AD of the Act. In this background, the ld. counsel submits that the assessee filed objection before the Assessing Officer that while taking into account the cash deposits, the cash withdrawal also needs to be considered which has been recycled and re-circulated in the trading operations and peak credit at any point of time in the bank account does not exceed Rs.3 lakh. The ld. counsel submits that the assessee is a very small trader and the facts need to be seen in prospective to determine the taxable income.

3. The ld. DR for the Revenue relied upon the first appellate order and submitted that the assessee has failed to justify its trading business and has not filed any VAT return or any contemporaneous cogent document to support ongoing trading business as claimed. The ld. DR also submitted that the onus is upon the assessee to justify the source of cash deposit which was not discharged and therefore no other recourse was available with the Department in the matter.

4. I have carefully considered the rival submissions.

5. The objections of the assessee are two fold: firstly, the assessee seeks to challenge the proceedings under Section 148 and the assumption of jurisdiction; and secondly, merits of the additions.

5.1 As regards first challenge, I do not see any merit for the simple reason that the return was filed pursuant to notice issued under Section 148 of the Act and in the wake of large cash deposits, the AO was well within its right to form *prima facie* believe towards escapement of chargeable income. No return was filed prior to issuance of notice under Section 148 of the Act. The assessee has also argued that disposal of objection to such reasons are not satisfactory which is again a subjective exercise and shall be examine while adjudicating the merits.

5.2 Turning to the merits of the case, it is the case of the assessee that having regard to the nature of trading business, the assessee continuously deposits as well as withdraws the cash which is self evident from the bank statements. The ld. counsel submits that, at any point of time, the bank balance does not exceed Rs.3 lakh which itself underlines small nature of business. The ld. counsel for the assessee also pointed out that objection towards non furnishing of VAT returns etc. is not justified, as such, complex rules and requirements of filing returns are not applicable to small traders.

6. In the totality of circumstances, I find merit in the plea of the assessee. The assessee has already declared Rs.2,24,440/- under presumptive taxation on the turnover. The cash deposits form integral part of the trading business and therefore, cannot be seen in isolation. The assessee has broadly justified the source of

cash deposit which is stated to be recycled from earlier withdrawals. Such fact emerges from the bank statement too. The plea of the assessee thus appears convincing. Therefore, the first appellate order is set aside and the AO is directed to reverse and cancel the addition made on this score on merits.

7. In the result, the appeal of the assessee is partly allowed.

**Order was pronounced and dictated in the open Court on 23/11/2023**

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: /11/2023

*Prabhat*