

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 3104/DEL/2023
Assessment Year: 2011-12

Parmod Kumar, C-9, 9553, Vasant Kunj, New Delhi-110070. PAN- AFUPK6599M	<u>Vs</u>	Income-tax Officer, Ward-45(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri G.S. Kohli, CA	
Respondent by	Shri Om Parkash, Sr. DR	
Date of hearing	21.12.2023	
Date of pronouncement	29.12.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 14.09.2023, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1(1). The learned CIT (Appeal) failed to appreciate the submission made before him.

(ii) That irrespective of the fact that the learned CIT(Appeal) reproduced the submission of the appellant in appellate order but in his decision has given the contrary facts.

2(i). The learned CIT(Appeal) was not justified in confirming the estimation of profit @25% on receipts.

(ii) The aggregated receipts ascertained by the learned A.O. is to be reduced by an amount of salary, inter transfer and contra entries.

3. That an estimation @ 25% is on very very higher side where the declared results @ 2% has been accepted in the earlier years.

4. The appellant is lawfully eligible to have the credit of TDS deducted by the deductors.

5. That the appellant craves his right to amend, delete or add any grounds of appeal at or before the time of hearing.”

2. Apropos to the grounds of appeal learned counsel for the assessee submitted that the assessment order was passed ex parte to the assessee. He submitted that the assessee has been filing income-tax returns and declaring profit from business carried out by him. He submitted that during the year under appeal the assessee suffered brain hammarage and, therefore, he could not carry out the business. He submitted that the AO on the basis of cash deposited in the bank account treated the same as gross profit and applied 25% profit, thus added Rs. 49,83,916/- to the income of the assessee. Aggrieved against this the assessee preferred appeal before learned CIT(A), who also sustained the addition without making due inquiry in respect of the nature of business and the past history.

3. On the other hand, learned DR opposed the submissions and supported the orders of authorities below.

4. I have heard rival submissions and perused the material available on record. The Revenue has not disputed the fact that the assessee has been filing his return of income and during the year under consideration the return was filed in response to the notice u/s 148 of the Act. However, the learned DR opposed this submission that any return was filed in response to the notice u/s 148. However, the learned counsel for the assessee has demonstrated that return was filed in the office of the AO.

4.1 Considering the totality of the facts and the material placed before me, there is no dispute with regard to the fact that the AO had applied profit rate @ 25% of the gross receipts, meaning thereby the AO has treated the cash deposit into the bank account as business receipts of the assessee. Hence, the AO, in my considered view, ought to have examined the past history and the profit declared by similarly situated assesseees. Under these facts the orders of the authorities below cannot be sustained. Hence, I hereby set aside the impugned order and restore the assessment to the file of the AO to make assessment afresh, in accordance with law, after making due inquiry regarding business carried out by the assessee and also take into consideration the past history of the profit declared by the assessee. Needless

to say, the AO will provide adequate opportunity to the assessee of being heard.

Grounds raised in this appeal are allowed for statistical purposes.

5. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 29.12.2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**