

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “SMC”, HYDERABAD**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.98/Hyd/2024		
Assessment Year: 2017-18		
Gangadharan Renganathan Komal, Hyderabad. C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082. PAN : ADFPK5189C	Vs.	The Income Tax Officer, Ward –14(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Krishna, C.A.	
Revenue by:	Shri B. Yadagiri, Sr.AR	
Date of hearing:	07.03.2024	
Date of pronouncement:	13.03.2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.15.12.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

*“1. The order passed by the Ld. CIT(A) u/s 250 of the Act dt. 15.12.2023 is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.*

*2. The Ld. CIT(A) erred in passing the order upholding the addition made by AO for an amount of Rs. 6,72,000/- without actually considering the facts of the case and submissions made by the assessee which is against the provisions of law and principles of natural justice.*

3. *The Ld. CIT(A) ought to have fairly appreciated the fact that the AO erred in treating the cash payments of credit cards of Rs.6,72,000/- as unexplained cash payments u/s 68 of the Act.*

4. *The Ld. CIT(A) erred by not considering the fact that the assessee has made total payment of credit card in cash at Rs. 6,72,000/- during the year under consideration and out of that cash payment during the demonetisation period i.e., 08.11.2016 to 31.12.2016 is Rs. 60,000/- only.*

5. *The Ld. CIT(A) erred by not considering the facts judiciously that the assessee received professional income and declared u/s 44ADA of Rs. 8,66,660/- as gross receipts and credit card payments were made out of the above receipts only which is already offered to tax in return of income.*

6. *The Ld. CIT(A) erred by not considering reasonably the fact that the assessee discharged his onus by establishing the source, genuineness and the credit worthiness of the amount received.*

7. *The Ld. CIT(A) has erred by not giving telescoping effect for the cash payments of credit card against the income offered by the assessee in the current year and previous years.*

8. *The Ld. CIT(A) ought to have appreciated the fact that when the income of the assessee has been declared u/s 44ADA of the IT Act, 1961, no books of accounts are required to be maintained and there is no basis for invoking the provision of Section 68 of the Act.”*

3. The brief facts of the case are that assessee is an individual deriving income from profession and interest income. The assessee filed his return of income for the Asst Year 2017-18 on 29-09-2017 by declaring total income at Rs.5,31,470/-. The case was selected for scrutiny through CASS to verify substantial payments for credit card purchases in cash. Thereafter, notice u/s 143(2) of the Income Tax Act, 1961 was issued through ITBA Portal. As per the information available on record, it is noticed that the assessee has made cash payments for purchases made through credit card(s) during the FY 2016-17. Hence, a notice u/s.142(1) was issued to assessee requesting to furnish details like nature and sources of

these payments. In reply, assessee stated that credit card payments were made through bank transfers and also provided credit card statements as evidence.

3.1. However, upon verification of Citi Bank Credit Card Statements, Assessing Officer found that cash payments of Rs. 6,72,000/- were made for FY 2016-17 and he asked to explain the nature and sources of these cash deposits. In reply, the assessee stated that only Rs.60,000/- was paid in cash during demonetization (08.11.2016 to 31.12.2016) out of total deposit of Rs. 6,72,000/- during the relevant year. These payments were made from professional income declared under section 44ADA of Rs.8,66,660/-. The professional income was received from M/s. Heritage Eldercare Services Private Limited and M/s. Swathi Health Care Private Limited through bank transfers after deduction of TDS. Upon verifying the mode of professional income/receipts, it was confirmed that income was received via bank transfers without any cash involvement. Additionally, no significant cash withdrawals were noted from the bank account. Hence, the explanation given by the assessee was not accepted by the Assessing Officer and he considered Rs.6,72,000/- as unexplained cash credits and added it to the income from other sources under section 68 of the Income Tax Act. Accordingly, the Assessing Officer completed the assessment and passed order dt.11.12.2019 u/s 143(3) of the Act.

4. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal before the Id.CIT(A), who dismissed the appeal of the assessee by observing as under :

“ 3.1. The submissions made by the appellant have been carefully perused. The appellant presses on the fact that he is filing his return u/s 44ADA (Presumptive taxation) and that he is not required to maintain books of accounts. The appellant also states that the payment of Rs. 6,72,000/- was made out of **gross receipts received** by way of professional income and declared under section 44ADA of Rs. 8,66,660/-.

3.2. The appellant further **challenges the revocation of section 68** by the AO stating that the identity, genuineness and creditworthiness of the amount stands proven.

3.3. The assessment order of the AO was carefully perused and it was observed that on verification of Citibank Credit Card Statements, it was seen that the appellant had made cash payments of Rs. 6,72,000/- to Citi Bank Branch in cash on the following dates :

27.07.2016	Rs.2,00,000
18.10.2016	Rs.24,000
28.06.2016	Rs.1,63,000
16.11.2016	Rs.60,000
16.09.2016	Rs.2,25,000

3.4 On being asked by the AO to explain the source, the appellant has simply stated that the payment is out of the gross professional receipts of the appellant. The AO then went a step further to examine the way professional income was received by the appellant.

3.5 It was observed by the AO that the professional income was received from M/s. Heritage Eldercare Services Private Limited and M/s. Swathi Health Care Private Limited. On verification of the bank account statement it is noted that the professional income was received **by bank transfers** and the **professional income was received after properly deduction of TDS**. Hence, it was concluded by the AO that the appellant had received professional services income from these companies through **bank transfers not by cash**. Moreover no instances of cash withdrawals were noticed by the AO, from the bank account statement except some nominal cash withdrawals.

3.6. The appellant, **instead of explaining the source of such cash deposits**, is trying to mislead the Department by academically analysing section 68 and bending/manipulating it to his own benefit. The fact

*remains that the appellant has not discharged its onus to prove the source of the cash deposits.*

*3.7 In the case of CIT Vs. Durga Prasad More, the Hon'ble Supreme Court had held that section 68 casts the initial burden of proof on the assessee to prove identity, creditworthiness and genuineness of the transaction. The appellant has not been able to prove either his creditworthiness nor the genuineness of the transaction nor demonstrated from **where the cash has come into his possession for settling his credit card bills in cash**. As the explanation for the nature and source of the amount credited towards credit card payments remain unexplained, therefore, **no interference** is required in the order of the AO. The taxpayer has a greater responsibility of explaining the transaction and also explaining why all these payments were made on a recurring basis in **cash** towards credit card dues. The appellant cannot shirk from his responsibility of proving the source of the cash with which he could settle his credit card bills.*

*3.8 In view of the above, Ground Nos. 1 to 6 are **dismissed**."*

5. Before me, ld. AR submitted that assessee has made the payment of credit card bills through banking channels. However, the cash payments were deposited in the bank by the assessee. The ld. AR further submitted that the amount deposited by the assessee was of the assessee and that assessee was able to explain the same before the Assessing Officer. However, the Assessing Officer has not considered the explanation given by the assessee for the reasons best known to him. The ld. AR also submitted that the assessee was having the consultancy income and was regularly filing the return of income. For the year under consideration also, the assessee has filed the return of income. The assessee used to receive the amount as consultancy charges by way of cash or by cheque and that assessee used his credit card for his travelling and service purposes.

6. On the other hand, ld. DR has submitted that the assessee has received the remuneration from the consultancy services through banking channels and no amount has been received by the assessee in cash as the payer has deducted the TDS as and when the amount was paid to the assessee, which is very much clear from Page 3 of the assessment order. The ld. DR further submitted that there is a mismatch between the income received and the income declared by the assessee in the return of income. It is also the contention of ld. DR that no amount has been received by the assessee in cash for rendering services from M/s. Heritage Eldercare Services Pvt. Ltd and M/s. Swathi Health Care Private Limited. It is the case of ld. DR that no indulgence is required by the Tribunal in the case of the assessee as the ld.CIT(A) has rightly dismissed the appeal of the assessee.

7. In rebuttal, the ld. AR has submitted that the expenditure was required to be spent in cash for travelling purposes and therefore, the money was paid through credit cards after depositing the cash in the bank account. He did the same even in previous assessment years also.

8. I have heard both sides and pursued the material available on record. It is the case of the assessee, the assessee has made the payment through the credit card after depositing the cash in his bank account through his declared sources. However, the case of the revenue is that the assessee was doing consultancy services, and the amount was received by the assessee through the banking channels only. There was no other source of income for the assessee except

the consultancy services from the two establishment namely M/s. Heritage Eldercare Services Pvt. Ltd and M/s. Swathi Health Care Private Limited. In my view, the rendering of consultancy services to these two entities is not in dispute. It is also not in dispute that the assessee was making the payment through the credit card. However what is in dispute, is the source of cash deposited in the Bank Account to clear the credit card bills and the source of the same was not disclosed for making the payment. In my opinion the assessee was required to render the services for earning the consultancy income, and for that purpose, the assessee was required to travel by various modes and for that purpose the assessee was required to incur the expenditure. In the present case the assessee has not given any evidence to the satisfaction of the revenue authority disclosing a source of consideration save and except the income declared by him, therefore on the face of it the assessee was not able to prove the source of making the cash payment of the credit card. However, there cannot be any denial of rendering of services for earning the consultancy income and incurring the expenditure through the credit card. In the light of the above when the rendering of services is not in dispute, the assessee, is entitled to spend some expenditure for earning the income. In the present case the assessee had declared the professional income of ₹ 8, 66, 660/-and had claimed the expenditure of rupees 672000/-to earn said income. In my view, the spending of the amount of ₹ 6,72,000, is on the higher side to earn the income of Rs.8,66,660/- and therefore the same cannot be permitted as it is disproportionate to the income earned by the assessee. In my opinion, the disallowance is required to be restricted for a sum of Rs.1,72,000/- (Rupees One Lakh Seventy-two thousand

only) and the remaining amount of Rs.5,00,000/- is considered to be explained, being necessary from the view of the potential source. In the result the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 13<sup>th</sup> March, 2024.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Hyderabad, dated 13<sup>th</sup> March, 2024.

**Pvv/SPS**

Copy to:

S.No	Addresses
1	Gangadharan Renganathan Komal, Hyderabad. C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082.
2	The Income Tax Officer, Ward –14(1), Hyderabad.
3	Pr1.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*