

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.422/DEL/2024  
(Assessment Year: 2012-13)**

Rakesh Bhatia,  
1J/17A, NIT,  
Faridabad – 121 001 (Haryana).

vs.

ITO-NMR-W-52 (2),  
Faridabad.

**(PAN : AAXPB4916F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajay Kumar Agarwal, CA  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 02.04.2024  
Date of Order : 08.04.2024

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the orders of the Id. CIT (Appeals)/National Faceless Appeal Centre dated 21.11.2023 for the assessment year 2012-13.

2. Ground of appeal raised by the assessee read as under :-

“1. That the Ld CIT (A) has erred In confirming the action of Id AO for Initiation of reassessment proceedings u/s 148 of the Income Tax Act (Old Regime) on tile basis of merely AIS information being cash deposited, whereas the assessee has offered the income under presumptive taxation u/s 44AE ( plying of trucks) of the Income Tax Act for the cash deposited with ICICI BANK And SBBJ, thus the initiation was illegal, being void ab initio, since .there was no tangible material & application of mind as contemplated in section 147 with the assessing officer regarding escapement of income prior to recording of reasons under section 148 of the Income Tax.

2. That the Id. CIT(A) has erred in dismissing the appeal vide appeal order dated 21/11/2023 for non complying of notices, ignoring the fact that in response to hearing notice dated 14/11/2023 due for submission by 21/11/2023, the appellant has uploaded online detail on 18/11/2023 to 21/11/2023 in the form of Application under Rule 46A and Revised Grounds of Appeal vide e acknowledgement no:517991741181123, 518063371181123, 518141011181123, 518360601181123, (uploaded on 18/11/2023) 519193821201123 (uploaded on 20/11/2023) and 520462051211123, 520472181211123( Uploaded on 21/11/2023) , which is against the principle of natural justice.

3. That the Ld CIT(A) has erred in confirming the Ld AO assessment order dated 25/10/2019 passed under section 144 rws 147 of the income Tax Act issued without quoting mandatory DIN in view of CBOT circular 19/2019 dated 14/08/2019, thus the said assessment order is VOID and NON EST.

4. That both the lower Authorities failed to appreciate that the assessee has already offered income from Plying of Trucking under the presumptive section (U/S 44AE of the Income Tax Act) for the addition made on account of Cash deposited with Bank accounts maintained with ICICI Bank & SBBJ Bank. Such addition of cash deposits is DUPLICATE in nature.

5. That both the lower authorities have erred in the action of adding income of Rs.35,18,300/- being cash deposited into bank accounts with ICICI bank & SBBJ without invoking any specific section for making such income, specially when the cash deposited is out of business of plying trucks.

6. That both the lower authorities have erred in the action of adding income of Rs.35,18,300/\_ being cash deposited In assessment order under section 144 of the Income Tax, ignoring the fact that the total cash withdrawal 34,10,706/- against the total cash deposited amounting to Rs.35,86,100/- in bank accounts with SBBJ and S81 and assessee offered income under section 44AE amounting to Rs.4,20,000/-.

7. With out prejudice to above, both the rower authorities have failed to appreciate that no separate addition warranted, where the assessee offered the net income under presumptive taxation.

8. The appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of appeal

Humble Prayer:

1) To delete the addition of Rs.35,18,300/- on account of cash deposited with two banks, whereas the income already offered in the Return of Income

ii) To quash the assessment order in absence of non compliance of mandatory requirement of DIN in view of CBDT Circular

iii) To quash the reassessment proceeding in absence of tangible material and issued without application of mind merely on the basis of AIR information.”

3. In this case, Assessing Officer made addition in an ex-parte order of cash deposit in his bank account of Rs.35,18,300/-. Upon assessee's appeal, Id. CIT (A) also dismissed the appeal for non-prosecution noting non-compliance of notices by the assessee.

4. Against this order, assessee is in appeal before the ITAT. I have heard both the parties and perused the records.

5. Ld. Counsel for the assessee prayed that there was genuine reason for non-compliance before the authorities below. He prayed that an opportunity may be granted to the assessee to canvass the appeal before the Id. CIT(A).

6. Ld. DR for the Revenue did not have any objection to this proposition.

7. Accordingly, in the interest of justice, I remit this issue to the file of Id. CIT (A). Ld. CIT (A) is directed to consider the issue afresh after giving the assessee an opportunity of being heard.

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

**Order pronounced in the open court on this 8<sup>th</sup> day of April, 2024.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 8<sup>th</sup> day of April, 2024/TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**