

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.537/Bang/2024
Assessment Year: 2017-18

Smt. Aruna No.6K, 462/1 Adarsha Blooms Gopal Reddy Layout Banasawadi Bangalore North 560 043 Karnataka  <b>PAN NO : BDMPA7455D</b>	<b>Vs.</b>	ITO Ward-1(2)(2) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Sukruth N. Segu, A.R.
<b>Respondent by</b>	:	Shri Ganesh R. Ghale, Standing Counsel for department.

<b>Date of Hearing</b>	:	22.04.2024
<b>Date of Pronouncement</b>	:	22.04.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against the order of NFAC for the assessment year 2017-18 dated 24.1.2024.

2. In this case, assessment order was passed by the ld. AO u/s 144C of the Income Tax Act, 1961 (in short “The Act”) without participation of assessee. The ld. AO while pursuing the records noticed that assessee has not filed return of income for the assessment year 2017-18 as per provisions of section 139(1) of the Act. Accordingly, notice u/s 142(1)(i) of the Act was issued to the assessee on 14.3.2018. The same was duly served on the assessee. However, the assessee failed to file return of income for the assessment year 2017-18 on or before 31.3.2018 inspite of having cash deposit into bank during the relevant financial year at

Rs.18,30,591/-. Later, the assessee has also failed to comply with the notice issued u/s 142(1) of the Act. As such, the ld. AO framed the assessment u/s 144 of the Act by making addition towards the deposit of cash in assessee's SB account No.35169776141 with SBI Horamavu as follows:

Small cash deposit	-	Rs.11,16,000/-
Sum of credits other than cash	-	<u>Rs. 7,14,591/-</u>
Total:	-	<u>Rs.18,30,591/-</u>

2.1 Even after issuing the show cause notice to explain the above amount on or before 15.10.2019, the assessee failed to give any explanation regarding source of that deposit. Accordingly, the addition was made to the tune of Rs.18,30,591/-. Against this assessee went in appeal before ld. CIT(A). Before ld. CIT(A), assessee pleaded that the assessee has earned income by giving two tractors for hire and that income to be considered u/s 44AE of the Act and as per this provision of the Act, income to be estimated at certain percentage of that total gross receipts, other than unexplained credits. However, assessee has not filed any evidence to support that assessee has given two tractors for hiring in the assessment year under consideration. The assessee has also taken a plea before ld. CIT(A) that earlier cash was available to the assessee but redeposited to bank account and also explained that the source of deposit to bank account was hire charges collected from plying two tractors and loan borrowed from the parties. However, the assessee has not placed any evidence to support the claim. Hence, the NFAC observed that she has not substantiated the source of deposit with any evidence and in the absence of same, the addition has been confirmed by the NFAC. Against this once again assessee is in appeal before us.

3. The ld. A.R. submitted that in assessment years 2018-19 and 2019-20 the assessee's income has been accepted u/s 44AE of the

Act and on the same principle, in this assessment year also assessee's income has to be assessed u/s 44AE of the Act. Further, he relied on the judgement of Bangalore Bench of Tribunal in the case of Girish Yalakkishettar Vs. ITO (2020) 115 [taxmann.com](http://taxmann.com) 489 and narrated the details of that case as follows.

**3.1** He submitted that the facts of the case are squarely covered by the decision of Income Tax appellate Tribunal Bangalore in case of Girish Yalakkishettar Vs ITO cited (supra). In this case the assessee was a small contractor and trader. He had turnover of less than 1 crore. He had offered income under Section 44AD. Assessing officer was of the view that assessee had not carried out any construction, nor he had details of contract receipts, he deposited cash into bank account whenever it was required to make payment. Accordingly, addition was made under section 68 of the Act by making general observations that there is no material on record to show that the assessee was engaged in contract work and construction activities. In the above background, The Income Tax Appellate Tribunal held that the officer is not entitled to make any guess work and he had to make assessment with reference to evidence and material brought on record. There must be something more than suspicion to support the Assessment. It was further held that there was no necessity of maintaining books of accounts when the income was offered under section 44AD of the Act. He submitted that by making above observations the Tribunal deleted the addition made under section 68 and directed that income should be computed under Section 44AD of the Act. Further, he submitted that as the Tribunal is very well aware that, presumptive taxation is brought into Income Tax Act to facilitate ease of doing business to the small entrepreneurs and not to burden them with drudgery of maintaining books of accounts and getting the same audited.

**3.2** The Id. A.R. submitted that the Assessing Officer has wrongly assumed that the entire unexplained income of the assessee. In fact,

some credits represent loan taken by the assessee. The AO should have considered that the source of deposits collections from the business of plying two tractors. Moreover, the entire collections from business cannot constitute taxable income as only the net profit embedded in the turnover can be taxed. However, the assessee was eligible to file the return of income U/s 44AE of the Act, benefit of which was denied to her.

**3.3** In this regard, the ld. A.R. placed reliance on the following judgements:

- Mrs. S. Bakkiam Vs. ITO Ward-1, Namakkal (ITA No.1404/Chennai/2019 dated 12.9.2019)
- CIT Vs. Jain Construction Co. & others (1999) 156 CTR (Raj) 290.
- Balaji Construction vs. ACIT (2000) 66 TTJ (Pune) 718; (2000) 72 ITD 559 (Pune)
- Abhi developers v. ITO (2007) 12 SOT 444 (Ahd)

**3.4** He submitted that in all the above cases, the principle is,

- a) The amount taxable is the net income based on percentage of receipts, on case-to-case basis and not the gross receipts completely.
- b) Presumptive taxation is allowed for eligible assessee.  
(Assessee is eligible assessee and benefit has to be given).

**3.5** He submitted that even if 8% of total receipts are considered, the income works out to  $1830591 \times 8 / 100 = 146448$ , which is in fact less than income computed under section 44AE of Rs.180000. Sec 69A is applicable only in cases where Books of Accounts have to be maintained. The assessee is not required to maintain Books of Accounts hence Sec 69A is not applicable. In this regard, he relied on the decision of Hon'ble Delhi High Court in Hersh Washesher Chadha case reported in (2023) 157 taxmann.com 418 (Delhi). He submitted that even if the Assessing officer is not satisfied with the explanation, addition U/s 69A is not automatic. It should be decided on the facts of the case. The assessee is a woman with income from transport

contract business (U/s 44AE). She has no means/avenues to make any Unexplained income. On similar facts he relied on the judgement in the case of P K Noorjahan reported in (1999) 103 Taxman 382 (SC), wherein Hon'ble Supreme Court upheld the order of ITAT and High Court deleting the addition made U/s 69 and laid down that addition U/s 69 of the Act is not automatic. In law as well as on facts the addition U/s 69A of Rs.18,30,591 is not tenable. Further she also offered an explanation regarding source of deposits, by engaging tractors for transporting debris and requested for deletion of the addition. Further, the ld. A.R. submitted that in identical facts and circumstances, the Jaipur bench of Tribunal in case of Vishan Swaroop Gupta Vs ITO relied on the decision of Mumbai high court in case of CIT Vs Bhaichand N Gandhi (1983) 141 ITR 67 wherein held that the bank passbook do not constitute books of account. He submitted that the relevant case law of Jaipur bench in the same order, the Jaipur bench referred to the case of Smt. Manshi Mahendra Pitkar Vs. ITO 1 (2), Thane (2016) 73 taxmann.com 68 (Mumbai Trib.) wherein it was held as under: —

*'I have carefully considered the rival submissions. In the present case the addition has been made by the income tax authorities by treating the cash deposits in the account as an unexplained cash credit within the meaning of section 68 of the Act. The legal point raised by the assessee is to the effect that the bank Pass book s not an account book maintained by the assessee so as to fall within the ambit of section 68 d! the Act. Under section 68 of the Act, it is only when an amount is found credited in the books of accounts of the assessee for any previous year that be deeming provisions of section 68 of the Act would apply in the circumstances mentioned therein. Notably, section 68 of the Act would come into play only in a situation Where any sum is found credited in the books of an assessee the case of Shri Bhaichand Gandhi (supra) has approved the proposition that a bank pass book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68 of the Act:*

**3.6** He submitted that factually speaking, in the present case assessee is not maintaining any books of account and section 68 of the Act has been invoked by the Assessing Officer only on basis of

the bank Pass Book. The invoking of section 68 of the Act has to fail because as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand N. Gandhi (1983) 141 ITR 67, the bank Pass Book or bank statement cannot be to be a book maintained by the assessee for any previous year as understood for the purposes of section 68 of the Act. Therefore, he submitted that assessee is very small entrepreneur, and requested to give finality to the issue by directing AO to compute income under presumptive taxation as per section 44AE. He submitted that for the detailed reasons submitted above, provisions of sec 69A are not applicable to the facts of the assessee's case and the treatment of Rs.18,30,591 of the cash deposited into bank account as Unexplained Investment u/s 69A of the Act is not tenable in law and on facts. He humbly and earnestly prayed that addition of Rs.18,30,591 as unexplained investment u/s 69A of the Act made in the assessment order is deleted and justice rendered.

**4.** The ld. D.R. relied on the order of lower authorities.

**5.** We have heard the rival submissions and perused the materials available on record and gone through all case laws relied by ld. A.R. The main plea of the assessee is that total deposit to bank account was Rs.18,30,591/-, which consists of following:

(a) Cash deposit u/s 69A of the Act	-Rs.11,16,000/-
(b) Cheque/RTGS deposit	-Rs. 7,14,591/-
Total:	<u>-Rs.18,30,591/-</u>

**5.1** The assessee explained before us that a sum of Rs.11,16,000/- is emanated from the receipts received from plying tractors and balance Rs.7,14,591/- is sourced from the following:

- a) Loan taken on 16.12.2016 through NEFT from Suryanarayan Reddy Rs.3,00,000/-
- b) Loan taken on 23.12.2016 through cheque No.13397 from Viswanath Patel Rs.2,00,000/-

- c) An amount of Rs.2,00,000/- was repaid to Viswanath Patel on 7.2.2017 through RTGS.

**5.2** In case of above deposit, assessee is required to prove the identity and capacity of the parties and genuineness of transaction. The assessee never filed any confirmation letter from any of the above parties and without furnishing any details and with regard to authenticity of these transactions or identity of parties, assessee wants relief and assessee pleaded that no addition could be made. In our opinion, the argument of assessee's counsel is totally misconceived. If the assessee received the above amount from various creditors, it is incumbent upon the assessee to prove the identity and creditworthiness of the parties and genuineness of transaction. Mere bank transactions won't go out of the purview of provisions of section 69A of the Act. The other ingredients of section 69A of the Act has to be satisfied. However, the assessee has not filed any evidence with regard to PAN and confirmation letters from the parties. Hence, we have no hesitation in confirming the addition made in respect of Rs.7,14,591/-.

**5.3** The ld. A.R. submitted that an amount of Rs.11,16,000/- this is emanated from plying of two tractors and pleaded that the income cannot be assessed u/s 69A of the Act.

**5.4** Section 44AE of the Act as in assessment year 2017-18, which deals with the presumptive taxation scheme, particularly for business involved in leasing, plying or hiring goods carried with less than 10 vehicles in a given period, presumptive income is calculated at Rs.7500/- per vehicle per month, if the assessee has not owned more than 10 vehicles at any time during the previous year. In the present case, ld. AO has adopted the amount of total credits found deposited in assessee's bank account with State Bank of India have been considered as total income of the assessee for the assessment year under consideration. The assessee pleaded before us that the total credits reflected in said account were in fact in the nature of

receipts of the assessee obtained from the business of plying two tractors. However, there was no iota of evidence produced by assessee to suggest that assessee was owing two tractors in the assessment year under consideration.

**5.5** The assessee's plea is that in subsequent assessment years the assessee's income has been assessed u/s 44AE of the Act and as such for the assessment year under consideration also, it is to be considered as income derived from plying two tractors u/s 44AE of the Act. At a cost of reputation, we make it clear that inspite of controversy of treating the assessee's income as unexplained, the assessee has not able to produce Registered Certificates (RCs) of tractors at any stage of proceedings. The bench has put specific query to the Id. A.R. whether assessee is having vehicle registration certificates from the RTO but the Id. A.R. expressed his inability to produce the same in view of the paucity of time and submitted that it is very old case. If the assessee wants any relief from this Tribunal, it is the duty of the assessee to preserve the RCs issued by the RTO in respect those two tractors said to be owned by the assessee. But the assessee has not made any effort to produce the same before us.

**5.6** Even otherwise, assessee pleaded before us that income of the assessee to be estimated atleast 8% of the total deposit made into assessee's bank account. Even this argument of the assessee's counsel is not able to show that assessee received its income only in the form of cheque and not in the form of cash also. There is other possibility of receiving money in cash form also and not only by way of cheque. More so, the assessee has not produced any evidence to suggest that assessee has been carrying on the business in the assessment year under consideration by producing any license issued by Government authorities like GST, Labour License etc. In such circumstances, we are not in a position to appreciate the argument of assessee's counsel that income of the assessee to be estimated at fixed percentage of total deposits made into bank

account. In other words, total deposit into bank account is required to be explained by the assessee that it is from business, then only we could estimate the income of the assessee at prescribed percentage. In the absence of proving the carrying on business in the assessment year under consideration, we are not in a position to apply in presumptive taxation.

**5.7** Further, it is to be noted that in the present case, assessee has never opted for computation of income on presumptive basis u/s 44AE of the Act and not only she has not maintained the books of accounts but also never filed the return of income. In these circumstances, the tax authorities below are not bound with the provisions of section 44AE of the Act and once the assessee has waived the recourse available to her to assess her income on presumptive taxation basis and the revenue authorities are not bound to extend the benefit on presumptive income to the assessee as prescribed u/s 44AE of the Act. In view of the above we are unable to see any infirmity/perversity or any valid reason to interfere with the impugned orders of the lower authorities. Accordingly, we are of the opinion that entire deposit made in to assessee's bank account to be considered as income of the assessee in the assessment year under consideration and we do not find any merit in the argument of assessee's counsel. The addition made by the lower authorities is sustained and appeal of the assessee is dismissed.

**6.** In the result, appeal of the assessee is dismissed.  
Order pronounced in the open court on 22<sup>nd</sup> Apr, 2024

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 22<sup>nd</sup> Apr, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**