

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

**BEFORE,  
SHRI G. S. PANNU, VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.2592/Del/2017  
(ASSESSMENT YEAR 2012-13)**

Income Tax Officer Ward-49(2) New Delhi	Vs.	Shri Avtar Singh Plot No.206, Sector-6, IMT, Manesar PAN-ABLPS3186K
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	None
Department by	Shri Kanv Bali, Sr. DR (Through Hybrid Mode)

Date of Hearing	27/02/2024
Date of Pronouncement	09/05/2024

**ORDER**

**PER ANUBHAV SHARMA, JM:**

This appeal of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-17 New Delhi [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.260/2015-16 dated 20/02/2017 against the order dated 02/03/2015 passed by Income Tax Officer, Ward-49(2), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. None appeared for the assessee at the time of hearing and the record shows randomly on some occasions the Authorized Representative of the assessee has appeared and otherwise assessee has been not represented. The notices issued for the hearing for today have been received back with the report of 'refusal' to accept the notice. No further notices are justified. Ld. DR was heard who has placed the written submission. We have taken into consideration the matter on record and the written submission.

3. The following grounds are raised by the Revenue:

*"1. The Ld. CIT(A) erred in deleting the addition of Rs.1,79,84,978/- on the ground that once the AO have estimated the higher profit on total contract receipts after rejecting of books of account invoking the provisions of section 145(3), no separate addition can be made on account of unexplained cash credit under section 68 of the Income Tax Act, 1961.*

*2. The Ld. CIT(A) has erred in not considering the decisions of the Hon'ble Supreme Court in the case of CIT v. Devi Prasad Viswanath Prasad (72 ITR 194) wherein the Apex Court held that there is nothing in law which prevents the ITO in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained and the business income estimated by him, after rejecting the books of account of the assessee as unreliable.*

*3. The Ld. CIT(A) has erred in not considering the decision of the Hon'ble Supreme Court in the case of Kale Khan Mohammed Hanif vs. CIT (1963) 50 ITR 1 (SC), wherein it was held that the ITO having assessed the income of the assessee on percentage basis, was also justified in treating the unexplained cash credit as profit from an undisclosed source.*

*4. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

4. Brief facts of the case are that assessee is engaged in the business of manufacturing and job work. Return declaring an income of Rs. 8,87,160/- was filed on 30.09.2012. The case was selected under scrutiny assessment and notice u/s 143(2) was issued on 06.08.2013. Assessment in this case has been completed u/s 144 of the Act on account of repeated non compliance by the assessee to the opportunities given to him by the Assessing Officer.

4.1 In view of the non compliance and lack of evidence, the AO rejected the accounts of the assessee and completed the assessment by applying the net profit @8% of gross turn over in the case of the assessee. An addition of Rs. 3,26,514/- was made.

4.2 The assessee had availed unsecured loans and creditors in its business concern to the extent of Rs. 1,79,84,978/-. The assessee was asked by the AO to file the details and confirmations of such creditors and loans. After affording opportunities the Assessing Officer made an addition of Rs. 1,79,84,978/- under section 68 of the I.T. Act.

4.3 The CIT(A) upheld the addition of Rs. 3,26,514/- as discussed in 4.1 above as the assessee failed to produce books of accounts and could not substantiate the reasonableness of the profit shown with the corresponding books of accounts/ details. (Para 4.2 of CIT(A), Page- 5). However, the CIT(A) deleted the addition u/s 68 by holding that when account books are rejected, it would follow, as necessary corollary, that entries in the account books whether suspicious or not cannot be relied by the revenue or the assessee. It was further held that account books once rejected, are ruled out of consideration and cannot be pressed into service whether by assessee or the revenue. The AO having estimated the higher profit rate after rejection of books of accounts invoking the provisions of section 145(3), no separate addition can be made on account of unexplained cash credit u/s 68 of the Act. CIT(A) relied upon Hon'ble Punjab & Haryana High Court judgment in the case of CIT Vs. Dulla Ram in ITA No. 122 of 1999 and of Hon'ble High Court of Rajasthan in CIT Vs. G K Contractor ITA No. 13 of 2009.

5. Ld. DR has relied on Hon'ble Supreme Court decisions in the case of **Kale Khan Mohd. Hanif Vs. CIT 50 ITR 1 (SC)** and **CIT Vs. Devi Pfasad Vishwanath Prasad 1969 72 ITR 194 (SC)**.

6. Giving thoughtful consideration to the material and the judgments relied by Ld. DR we are of view that only because the books are rejected and addition is made on the basis of some estimate, an alleged income from undisclosed source represented by an unexplained credit entry in the books cannot be held to be subsumed in income assessed on basis of estimates after rejecting the books of account. Same will not result in double taxation of the same income as the estimated income is based on source as disclosed in the books, though not relied but the other is from source, not disclosed or explained. It is not a case where the income sought to be taxed was held to be undisclosed income of a disclosed source, the income of which source had previously been taxed on the basis of an estimate.

7. On the basis of aforesaid we find substance in the grounds raised. Appeal of Revenue is allowed and the issue is restored to

CIT(A), to take into consideration the aforesaid observations of the Bench and the judgments of Hon'ble Supreme Court, cited by the Department, to pass an order afresh. An opportunity of hearing be given to assessee also.

Appeal is allowed for statistical purpose.

Order pronounced in the Open Court on 09/05/2024.

Sd/-

**(G.S.PANNU)**  
**VICE PRESIDENT**

Dated: 09/05/2024

PK/PS

Copy forwarded to:

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

Sd/-

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI