

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2727/Del/2023 : Asstt. Year : 2011-12

Sh. Harish Tyagi, H.No. 154, Hans Colony, Jeetpur, Rawli Road, Muradnagar, Ghaziabad-201206	Vs.	Income Tax Officer, Ward-1(3), Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. ADOPT0663K		

**Assessee by : Sh. Ved Jain, Adv. &
Ms. Supriya Mehta, CA
Revenue by : Sh. Om Parkash, Sr. DR**

Date of Hearing: 24.04.2024	Date of Pronouncement: 09.05.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 28.07.2023.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC) (hereinafter referred to as CIT(A), ITD) is bad both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in passing the order ex-parte without providing the reasonable opportunity of being heard to the assessee in clear violation of the principal of natural justice.

3. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in rejecting the contention of the assessee that the initiation of the reassessment proceedings and the reassessment order are bad

both on facts and in law and liable to be quashed as the statutory conditions and procedure prescribed under the statute have not been complied with.

4. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in rejecting the contention of the assessee that the reassessment order passed by the AO is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and has been recorded without application of mind on the part of the AO.

5. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the action of the AD despite the fact that the assessment order passed by the AO in the absence of notice under section 143(2) is bad in law.

6. On the facts and circumstances of the case, the learned CIT(A), ITD has erred, both on facts and in law, in confirming the action of the AO despite the fact that the reassessment proceedings initiated by the learned AO without obtaining valid approval of the prescribed authority under section 151 under the Act is bad in law and liable to be quashed.

7. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts & in law in confirming the addition of Rs. 15,55,000/- on account of cash deposits in the bank made by the AO treating the same as unexplained invoking the provisions of section 69A of the Income Tax Act."

3. During the year under consideration, the assessee was engaged in the business of stockiest of agriculture produce and Gur etc. and has filed return of income on 20.05.2011.

4. The assessee was asked to explain the source of cash deposited in his bank account amounting to Rs. 26,45,000/-. During the course of assessment proceedings, the assessee explained that the cash has been deposited out of his own withdrawals and cash sales of agricultural produce/products. The assessee also submitted a copy of his bank statement, cash flow statement along with a tabulated summary of cash withdrawals, deposits and cash generated from sale of agricultural produce/products.

5. The Assessing Officer ignored the explanation furnished by the assessee and made an addition of unexplained cash deposit u/s 69A amounting to Rs. 15,55,000/- (i.e. Rs.26,45,000 - Rs. 10,90,000) in the hands of the assessee.

6. Aggrieved, the assessee filed an appeal before the Id. CIT(A) who affirmed the action of the AO.

7. Aggrieved by the order passed by the Id. CIT(A), the assessee filed appeal before the Tribunal.

8. Heard the arguments of both the parties and perused the material available on record.

9. The tabulated summary depicting each cash withdrawal, deposit and sale of agricultural produce/products has also been submitted. Such chart is also being reproduced hereunder for the sake of ready reference:

Date	Sale of agriculture produce/product	Withdrawals	Deposits	Balance
Opening Balance as on 02.03.2010				3,16,502/-
02.03.2010		7,00,000/-		10,16,502/-
04.03.2010		1,30,000/-		11,46,502/-
17.04.2010			70,000/-	10,76,502/-
19.04.2010			1,80,000/-	8,96,502/-
08.05.2010		3,00,000/-		11,96,502/-
24.05.2010			2,00,000/-	9,96,502/-
19.06.2010		2,00,000/-		11,96,502/-
20.07.2010			60,000/-	11,36,502/-
28.07.2010			1,00,000/-	10,36,502/-
29.07.2010			50,000/-	9,86,502/-
02.08.2010			20,000/-	9,66,502/-
27.08.2010	1,80,380/-			11,46,882/-
30.08.2010			1,00,000/-	10,46,882/-
18.10.2010		1,00,000/-		11,46,882/-

13.11.2010		2,00,000/-		13,46,882/-
16.11.2010		1,00,000/-		14,46,882/-
02.12.2010	2,72,190/-			17,19,072/-
05.12.2010	4,00,000/-			21,19,072/-
09.12.2010	4,00,000/-			25,19,072/-
13.12.2010			13,00,000/-	12,19,072/-
27.12.2010			1,50,000/-	10,69,072/-
08.01.2011			40,000/-	10,29,072/-
10.01.2011			40,000/-	
17.01.2011			40,000/-	9,89,072/-
19.01.2011			45,000/-	9,49,072/-
25.01.2011			1,00,000/-	9,04,072/-
02.02.2011		6,50,000/-		8,04,072/-
17.02.2011		10,00,000/-		14,54,072/-
24.03.2011			1,50,000/-	24,54,072/-
Total	12,52,570/-	33,80,000/-	26,45,000/-	23,04,072/-

10. From the record, we find that the assessee had similar cash deposits in A.Y. 2012-13 which the revenue treated as profit deemed u/s 44AD of the Income Tax Act, 1961.

11. Both the parties fairly agreed that profit be determined @ 8% as per the provisions of Section 44AD. Hence, following the stand of the revenue for the subsequent year, the AO is directed to compute the profit @ 8% on the total cash deposits.

12. In the result, the appeal of the assessee is allowed.

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

Sd/-

(Kul Bharat)
Judicial Member

Dated: 09/05/2024

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member