

**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. 6012/DEL/2019
[Assessment Yr: 2012-13]**

Amit Kumar Bhati, D-28, South Extension Part-I, New Delhi-110049.	<u>Vs</u>	Income Tax Officer, Ward-3(4), New Delhi.
PAN- ANNPB6290K		
APPELLANT		RESPONDENT
Assessee represented by		Dr. Rakesh Gupta, Adv. & Sh. Deepesh Garg, Adv.
Department represented by		Shri Kanv Bali, Sr. DR
Date of hearing		22.02.2024
Date of pronouncement		14.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 13.02.2019 passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. 330/17-18 for the assessment year 2012-13, arising out of the order dated 27.12.2017 u/s

143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income-tax Officer, Ward-3(4), Gurgaon (hereinafter referred in short as “Ld. AO”).

2. Brief facts are that the Assessing Officer received information that there were repeated cash deposits and credit entries in the bank account of the assessee. As per the information there were deposits of Rs. 22,50,000/- and Rs. 52,76,000/- in the two bank accounts of the assessee. The Assessing Officer noted that the assessee had not filed return of income. The Assessing Officer accordingly recorded reasons and issued notice u/s 148. The assessee filed the return declaring income of Rs.1,60,670/- in response to this notice. As per the return filed by the assessee, the assessee had shown turnover of Rs.24,55,871/- and profits of Rs.1,96,470/- under the provisions of section 44 of the Income Tax Act.

2.1 The Assessing Officer asked the assessee to explain the sources of deposits amounting to Rs.75,26,000/- in the two bank accounts. After considering the assessee's submission the Assessing Officer held that the assessee had failed to explain and justify these sources of deposits in the bank account and accordingly added 25% of the amount of Rs.75,26,000/- i.e. Rs.18,81,500/- to the total income of the appellant.

2.2 The assessee had claimed that assessee is in the business of property dealer having income from commission from sale and purchase of property. Assessee is an expert in arranging land for prospective buyers as they are advancing money at various point of time for arranging lands for them and getting the land registered in their name whenever any good deal comes into his knowledge. As with regard to

the deposit of Rs. 75,26,000/- in ICICI Bank accounts, the assessee claimed Rs. 44,00,000/- was from withdrawals of previous month, Rs. 6,70,129/- was advance received from prospective customers and Rs. 24,55,871/- was business receipts. Based on cash flow and bank account, the amount of Rs. 44,00,000/- was established to be out of withdrawals of the previous month and this aspect was sustained by learned CIT(A). Learned CIT(A) also sustained the claim of the assessee that customer advance of Rs. 6,70,129/- were supported by the confirmations. However, the business receipts of Rs. 24,55,871/- were doubted by the learned CIT(A) by following relevant findings:

“(iii) Business receipts of Rs.24,55,871/-.

In this regard, no evidence of cash business receipts was furnished by the appellant. Even otherwise it is evident from the facts on record and the submissions of the appellant that as against the receipts of Rs. 24,55,871/- claimed to be from the business of the appellant which were deposited in the bank accounts, only Rs.4.5 lacs was withdrawn from the bank for meeting office expenses and paying salary to the staff. In these circumstances, the appellant was not justified in declaring profit of Rs. 1,96,470/- against this income u/s 44AD of the I.T. Act. As pointed out by the Assessing Officer the provisions of section 44AD do not apply to the appellant. Keeping in view, the turnover of the appellant and after accounting for these expenses of Rs.4.5 lacs and income declared of Rs.1,96,470/- the balance of amount is held to be the unaccounted income of the appellant. This unaccounted income works to almost the same amount which was added by the Assessing Officer to the total income of the appellant.”

3. Learned AR has primarily submitted that learned CIT(A) has accepted the business of the assessee and income arising out of the commission as a property dealer, but denied benefit of Section 44AD. Learned DR, however, supported the order of learned CIT(A).

4. After taking into consideration the findings of learned CIT(A) we are of the considered view that once the nature of business of the assessee was accepted to be one arising out of income from commission then there was no question to dispute the declaration of profit u/s 44AD by questioning the quantum of receipts and corresponding expenditures. Doing so, the very purpose of section 44AD of the Act gets defeated. Learned CIT(A) thus erred in sustaining the addition. Grounds are allowed. Appeal of the assessee is allowed.

Order pronounced in open court on 14.05.2024.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI