

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH 'B': NEW DELHI

**BEFORE SHRI C. N.PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.217/Del/2024, A.Y. 2012-13

Gaurav Jain C/o. C.S.Anand, Advocate 104 Pankaj Tower, 10 LSC, Savita Vihar, Delhi-110092 PAN : AGZPJ3742M	Vs.	Income Tax Officer Ward 60(3), Delhi
(Appellant)		(Respondent)

Appellant by	Sh. C.S.Anand, Adv.
Respondent by	Sh. Sanjay Tripathi, Sr.DR

Date of Hearing	08/05/2024
Date of Pronouncement	20/05/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Assessment Year [In short, the 'AY'] 2012-13, preferred by the appellant/assessee, challenges an order dated

29.12.2023, of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [In short, the 'CIT(A)'] by questioning, vide initial and revised grounds of appeal, the legality of reopening of the assessment and also the taxability of Rs.26,21,634/-.

2. The relevant facts, in brief, are that the appellant/assessee deals in mobile phone accessories. During the relevant year the Assessing Officer [In short, the 'AO'], based on the AIR information, reopened the case of the assessee on the reasoning that the cash deposits aggregating to Rs. 24,92,670/- made by the appellant/assessee, who was non-filer of the income tax return, in his bank account in the relevant year, was nothing but the income escaped assessment.

3. After reopening the assessment, the AO issued various notices u/s 142(1) of the Act as detailed in para 4 of the assessment order. However, the appellant/assessee failed to ensure compliance of any of the statutory notices. Hence, the AO made ex-parte assessment treating the entire deposits aggregating to Rs. 26,21,634/- made by the appellant/assessee in his bank account in the relevant year as income. The appeal of the appellant/assessee was dismissed by the CIT(A). Hence, he appealed before the Tribunal.

4. The Ld. Authorised Representative of the appellant/assessee (In short, 'AR') submitted the cash flow chart of the appellant/assessee and put emphasis on the fact that the appellant/assessee deposited cash aggregating to Rs.25,02,670/- during the relevant year (every month); spanning from 4th April, 2011 to 31st March, 2012. It was contended by the Ld. AR that the pattern and frequency of cash deposits and withdrawals into/from bank account were such which buttressed the claim of the appellant/assessee that the said cash deposits were nothing but the business receipts/proceeds in cash. It was further submitted by the Ld. AR that the cash deposits and withdrawal into/from bank account were Rs.25,02,670/- and Rs.25,20,000/- during the relevant year.

4.1 It was claimed that the business of the appellant/assessee was small; therefore, the appellant/assessee was not mandated by the law to maintain books of account. The maximum cash deposit on one day was Rs. 83,000/- on 19.09.2011. Most of the cash deposits in the bank account were below Rs. 50,000/- on one day and the cash were deposited in every month of the financial year. The Ld. AR, emphasizing on various noting in the format of recording the reasoning for reopening the assessment by the AO and approval of

the same under section 151 of the Act by the PCIT, contended that the reopening was mechanical in nature as section 147(a) of the Act mentioned in the reopening format by the AO was not inexistence since 1988 onward.

4.2 Further, it was contended by the Ld. AR that the AO was not sure of the quantum of cash deposits in the bank account and that was why he mentioned the sum/cash deposit in bank account might vary in assessment. The Ld. AR also claimed that the AO had not carried out any field inquiry before reopening the assessment for ascertaining the truth. It was also contended by the Ld. AR that the AO had failed to serve any notice under section 148 and 142(1) of the Act on the appellant/assessee as the address on which notices sent were not the correct address on or after the date of issue of notices. On these facts the genuineness of reopening of the assessment was challenged by the Ld. AR.

4.3 Alternatively, it was also argued by the Ld. AR that the cash deposits made in the bank even on peak basis did not go beyond Rs.2,00,000/- on a single day as the deposits and withdrawals into/from bank account were regular on day-to-day basis. Hence, the cash deposits, on peak basis, also could be lesser than the taxable income. Thus, it was contended by the Ld. AR that the

appellant/assessee did not file its return of income as he was not having the taxable income.

4.4 The Ld. AR further contended that the appellant/assessee's case of the AY 2011-12 was reopened on the similar reasoning (cash deposits in the bank account) under section 147 of the Act. The reopened assessment of the AY 2011-12 was completed under section 143(3) r.w.s. 147 & 148 of the Act vide order dated 16.12.2018 determining the income at Rs.4,48,910/- by treating the cash deposit in bank account as sales. The Ld. AR thus prayed that when the cash deposits in bank account of the AY 2011-12 was treated as sales and income imbedded therein was assessed @ 8% & odd by the AO then the same logic, at most, needed to be applied in this year also as no contrary material had been brought on the record by the AO. The Ld. AR admitted that he would not press the legal ground i.e. reopening the assessment, if the income would be determined @ 8% of the cash deposits as done in the reopened assessment of the preceding year in similar facts and circumstances by the AO.

5. The Ld. Sr. DR placing reliance on the findings of the AO and the CIT(A) prayed for dismissal of the appeal.

6. Heard both the parties at length and perused the material available on record.

7. We find force in the arguments and contentions of the Ld. AR. We are surprised to see two different findings of the AO on similar sets of facts in reopened assessments of the appellant/assessee; one in the AY 2011-12 and another in the 2012-13. The assessments of these two years; AY 2011-12 and 2012-13 were reopened on the similar reasoning that the cash deposits in bank account were nothing but the income escaping assessment in absence of any return of income filed by the appellant/assessee. However, the AO treated cash deposits in the bank account as sales and assessed the income embedded therein at Rs.4,48,910/- in AY 2011-12, whereas in the AY 2012-13 entire cash deposits as income without bringing any material on the record to strengthen the finding therein.

8. In the interest of justice and considering all the afore-stated observations, we are of the considered opinion that the AO, during the AY 2012-13, cannot deviate from his stand taken in the reopened assessment proceedings of the preceding year; AY 2011-12 without bringing contrary facts on the record. We, therefore, direct the AO to work out the income of the appellant/assessee @ 8% on his total

cash deposits in his bank account(s) in the relevant year; AY 2012-13 and assess it accordingly.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open Court on 20th May, 2024.

Sd/-

**(C. N. PRASAD)
JUDICIAL MEMBER**

Sd/-

**(A. K. MISHRA)
ACCOUNTANT MEMBER**

Dated:20/05/2024

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI