

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

**BEFORE,  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3212/Del/2023**

**(ASSESSMENT YEAR 20215-16)**

Shuaib Ahmad B-2/278, Yamuna Vihar, Delhi-110053 <b>PAN:- AGHPA0834H</b>	Vs.	ITO Ward 57(3) New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Anil Jain, Adv & Sh. Hanuman Sahni, Adv
Respondent by	Shri Anuj Garg, Sr. DR

Date of Hearing	09/05/2024
Date of Pronouncement	14/06/2024

**ORDER**

**PER YOGESH KUMAR U.S.JM:**

This appeal is filed by the Assessee against the order of Income Tax Department/National Faceless Appeal Centre ('NFAC' for short), dated 17/10/2023 for the Assessment Year 2015-16.

2. The Grounds of Appeal are as under:-

*"1. That on the facts and circumstances of the case and the provision of law, that the Ld. CIT(A) has failed to*

*appreciate the facts that the assessment order passed by the Ld. AO under Section 143 (3) of the Income Tax Act is illegal and bad in law.*

*2. That on the facts and circumstances of the case and the provision of law, that the Ld. CIT(A) has failed to appreciate the facts that the impugned assessment order passed is in violation of the principle of natural justice and without giving adequate time and opportunity to the assessee to represent his case, and thus, the assessment order passed is bad in the eyes of law and liable to be quashed.*

*3. That on the facts and circumstances of the case and the provision of the law, the Ld. CIT(A) has erred in sustaining the addition of Rs. 1,21,27,329/- u/s 68 as unexplained cash deposit in the bank accounts and car purchased in cash.*

*4. That on the facts and the circumstances of the case and the provisions of the law, the Ld. CIT(A) has erred in forming an incorrect opinion without confronting the same and in using the same adversely without providing the reasonable opportunity of defending, which inaction of the CIT(A) makes the first appeal proceedings and consequential order as null and void.*

*5. That on the facts and circumstances of the case and the provision of the law, the Ld. CIT(A) has failed to appreciate that the Ld AO has erred in ignoring the explanation given, evidences and material placed and available on record. The same have not been properly considered and judicially interpreted and the same do not justify the addition made with preset mind of the Ld AO and his order is based on surmises, conjectures and suspicion.*

*6. That on the facts and the circumstances of the case the Ld. CIT(A) has failed to appreciate that the initiation of the*

*penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is illegal and bad in law.*

*7. That on the facts and the circumstances of the case the Ld. CIT(A) has failed to appreciate that interest charged by the Ld. AO u/s 234A and 234B is illegal and without prejudice it is excessive.*

*8. That the appellant craves leave to reserve to itself the right to add, alter, amend, vary, modify and/or withdraw any ground(s) of appeal at or before the time of hearing.”*

3. Brief facts of the case are that, the Assessee filed ITR for Assessment Year 2015-16 declaring total income of Rs. 6,06,270/-. The case was selected for scrutiny through CASS. The reason for scrutiny selection was ‘Low income from TCS receipts and large cash deposits in saving bank account(s)’. The assessment was concluded u/s 143(3) of the Act on 29/12/2019 determining total assessed income of the Assessee at Rs. 1,27,33,599/- by making disallowance u/s 68 read with Section 115BBE of the Act on account of unexplained cash deposits. Aggrieved by the order dated 29/12/2017, the Assessee filed an appeal before the CIT(A). The Ld. CIT(A)/NFAC vide order dated 17/10/2023, dismissed the Appeal filed by the assessee. As against the order of the CIT(A), the assessee preferred the present Appeal on the Grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the assessee is not pressing the Ground No.1. Recording the submission made by the Assessee's Representative, the Ground No. 1 of the assessee is dismissed as not pressed. In so far as ground No. 2 & 4 relating to not providing opportunity to the assessee is concerned, we find that both the Lower Authorities have provided proper opportunities of being heard to the assessee and the assessee has also filed written submission which has been considered by the Lower Authorities. Thus, we find no merit on the Ground No. 2 & 4, accordingly Ground No. 2 & 4 are dismissed.

5. Addressing the argument on Ground Nos. 3 & 5, the Ld. Counsel for the assessee submitted that the A.O. accepted the income declared in the return on the basis of 8% of the turnover of Rs. 85,41,071/-, therefore, the A.O. should have also estimated the income on the balance cash deposit of Rs. 1,11,66,429/- in the bank accounts @ 8% by treating the same as cash generated out of the cash sales of PVC and Iron scrap instead of taxing the entire amount of Rs. 1,21,27,329/- u/s 68 of the Act. The Ld. counsel further submitted that an assessee has to be taxed at real earned

income i.e. the profit earned on the unaccounted sales and even under the peak theory instead of taxing the cash deposit in the bank account, the peak cash deposited is required to be taxed, thus the Ld. CIT(A) erred in not deleting the addition made by the A.O.

6. Per contra, the Ld. Departmental Representative submitted that as per VAT return of all four quarters, the total turnover shows Rs. 85,41,071/- which matches with turnover declared in the Return of Income for Assessment Year 2015-16. The assessee filed return u/s 44AD of the Act declaring presumptive income @ 8.02% of gross turnover of Rs. 85,41,071/-. The assessee has not produced any evidence of sale in respect of unexplained cash deposit, the assessee also not filed tax audit in Form 3CD in respect of Assessee's claim that cash deposit was out of cash sales. The provision of Section 44AD is not applicable to the case of the assessee as the turnover of the assessee will become more than one crore. Therefore, by relying on the order of the Ld. CIT(A), sought for dismissal of the Appeal filed by the Assessee.

7. We have heard both the parties and perused the material available on record. The assessee filed its Return of Income declaring turnover of Rs. 85,41,071/-. It was noticed that the assessee deposited cash and other credits in the saving bank account of Rs. 7,71,89,947/- and in the current account of Rs. 1,22,97,685/-, the total purchase made by the assessee in the purchase account for the Financial Year 2014-15 was Rs. 5,66,97,127/-. The difference between the bank credit and the purchase was Rs. 3,27,90,505/- for which the assessee has given no explanation. The Assessee has no other business except the business of scrap materials. It is the case of the Assessee that, the entire cash deposits made in the current account as well as the SB account by way of cash are the business income. It is seen from the record that the cash were not deposited on a single day, rather it has been deposited on various occasions throughout the year and some of the amount deposited in the saving bank account have been transferred to current account which is evident from the Page No. 12 to 15 of the Paper Book. It is the case of the Assessee that the cheques have been issued for the purpose of purchasing PVC and iron scrap and such PVC and iron scrap purchased have been

sold in the Kabadi Market in cash, thus, the source of balance cash deposit of Rs. 1,11,66,429/- in the bank accounts are the cash sales of PVC and iron scrap purchased out of the funds generated by way of total cash deposit of Rs. 2,33,07,500/- in both the bank accounts.

8. Apart from the same, the entire addition of Rs. 1,11,66,429/- made u/s 68 of the Act are the cash deposits made in the bank accounts of the Assessee. There is nothing on record to infer that the cash deposits are not the business income of the Assessee. The Assessee has not maintained any books of accounts, since the Assessee filed his return u/s 44AD, the A.O. found that the cash deposited in the Assessee's bank account are liable to be taxed u/s 68 of the Act. As observed above, the Assessee had no source of income other than the business and capital gain, therefore, we can only infer that the cash deposited by the Assessee is out of business receipts.

9. It is difficult to estimate the rate of net profit in the business of the Assessee without any data and details. The Assessee should be taxed on the real income earned by him as held by the Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd reported in 1975 AIR 32 and CIT Vs. Excel Industries Ltd. reported in 2013 SC 175. Even as per the peak theory, instead of taxing the entire tax deposit in the bank account, only peak cash deposit is required to be taxed as held by the Hon'ble High Court of Andhra Pradesh in the case of Commissioner of Income-tax-VI Vs. Purushottam Jhawar reported in [2013] 40 taxmann.com 533(Andhra Pradesh). In the present case, the peak of cash deposit in the saving bank account and the current account both taken together comes to Rs. 9,70,000/-. The Assessee has provided the working at Page No 80 & 81 of the Paper Book. In view of the above facts and circumstances, by applying the peak theory, the addition on the unaccounted money of Rs. 1,11,66,429/- is restricted to Rs. 9,70,000/-. Thus the Grounds No. 3 & 5 of the Assessee are partly allowed.

10. Ground No. 6 & 7 are being consequential and Ground No. 8 being general require no adjudication.

11. In the result, the Appeal of the Assessee is partly allowed.

Order pronounced in open Court on 14<sup>th</sup> JUNE, 2024

Sd/-

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 14/06/2024

*R.N, Sr.ps*

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

