

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 44/DEL/2024
Assessment Year: 2011-12

Vishal Sharma, H-310, Sushant Shopping Arcade, Sushant Lok-1, Gurgaon-122001. PAN- AKCPS 2300 K	<u>Vs</u>	Income-tax Officer, Ward-4(5), Gurgaon
APPELLANT		RESPONDENT
Assessee represented by	Shri Amit Rai, CA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	25.04.2024	
Date of pronouncement	20.06.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 18.09.2023, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“GROUND NO. 1:

That the Learned Commissioner of Income Tax (Appeals) ["Ld.CIT(A)"] has grossly erred both in law and on facts in an appellate order dated 18

September 2023 passed under section 250 read with section 254 of the Income Tax Act, 1961 (Act") and in confirming the assessment order passed by Learned Assessing Officer ("Ld.AO") dated 29 November 2018.

That the Ld.CIT(A) has further failed to appreciate the explanation tendered by the Appellant to explain in the legal submission and such order made in the disregards of the evidence furnished and documentary evidence is incorrect, Invalid and untenable, Further, entire assessment order is based on whimsical, fanciful assumption, arbitrary interference and overlooks the legal position on records and therefore, is invalid, and hence unsustainable.

That on the facts and circumstances of the case and in law, the Ld.CIT(A) failed to appreciate the fact that the order passed by Ld.AO under section 147/144 if the act, was bad in law and was liable to be struck down.

GROUND NO.2:

That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in upholding the addition of INR 11,00,000/- as unexplained cash deposits made by the Appellant in his Bank Account without appreciating the facts of the Appellant's case.

GROUND NO.5:

That on the facts and circumstances of the case and in law, the Ld.CIT(A) failed to appreciate the fact that the Appellant was civil contractor engaged in the business of civil construction and the said source for the deposits in the Bank Account were contract business receipts and therefore the same was not liable to be added as unexplained deposits.

GROUND NO.6:

That the Ld. CIT(A) has grossly erred in framing the appellate order and not understanding the fact that since the total income of the Appellant is below exemption limit, he was not liable to file ITR for impugned AY.

GROUND NO.7:-

That the Appellant prays for the leave to add amend or vary and ground either before or at the time of hearing of appeal."

2. Facts, in brief, are that case of the assessee was reopened on the basis of information available with the Assessing Officer ("AO"), for cash deposit in his

bank account amounting to Rs. 11,00,000/-. It was noticed by the AO that assessee did not file return of income. The AO issued letter/notice to the assessee requiring him to explain as to why return was not filed. However, there was no response from the assessee. Therefore, case was reopened u/s 147 of the Income Tax Act, 1961 (the "Act") and a notice u/s 148 was issued. There was no response with regard to the notice issued u/s 148. The assessee also did not respond to the statutory notices issued u/s 142(1) of the Act. Accordingly, the AO proceeded to make ex parte assessment. Thereby he made addition of Rs. 11,00,000/- as unexplained cash deposit and assessed assessee's income at Rs. 11,00,000/-, accordingly. Aggrieved against this assessee preferred appeal before learned CIT(A) assailing the assessment order on multiple grounds. However, the learned CIT(A) sustained the addition made by the AO and dismissed the assessee's appeal. Now the assessee is in appeal before this Tribunal.

3. Before this Tribunal the assessee has assailed the impugned order on multiple grounds. Firstly, that assessment so reopened is not justified. The evidences furnished before learned CIT(A) were not appreciated and considered. Secondly, the authorities below committed gross error in treating the cash deposits as unexplained despite the fact that the assessee's claim before the lower authorities was that the assessee is engaged in the business of civil contractor and the amounts deposited were business receipts. It was contended that these receipts

could be taxed u/s 44AD of the Act. But learned CIT(A) failed to advert to these submissions appreciating the same in right perspective.

4. Apropos to the grounds, learned counsel for the assessee made oral as well as written submissions. Learned counsel submitted that the assessee is an individual, engaged in running sole proprietorship business in the name of Vishal Sharma and is engaged in the business of civil contractor. The assessment was framed without providing adequate opportunity of being heard. He contended that notices were not received by the assessee and before learned CIT(A) assessee had duly made submissions and the submissions of the assessee were not appreciated by the lower authorities in right perspective.

5. On the other hand, learned DR opposed the submissions and supported the orders of authorities below. He contended that assessee has been thoroughly negligent. He had not filed his return of income, therefore, the contention that no opportunity was granted is not correct.

6. I have heard rival submissions and perused the material available on record. The stand of the assessee is that no notice issued by the AO was ever received by the assessee and before first appellate authority the evidences adduced by the assessee in support of his claim that the amounts deposited in his bank account were business receipts as civil contractor were not appreciated by the learned

CIT(A). Looking into totality of facts of the present case and to subserve the interests of natural justice and to come to a correct conclusion, it is deemed proper to provide an opportunity to the assessee to effectively represent his case before the Assessing Officer. Accordingly, orders of authorities below are set aside and the matter is restored to the file of AO for decision afresh, after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 20th April, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**