

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

ITA No.37/Ind/2024  
(Assessment Year: 2017-18)

ITO, Itarsi	Vs.	Shri Nadeem Khan, C/o N.K. Scrap, Managalwara Bazar, Pipariya, Madhya Pradesh
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: BGGPK8565H</b>		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.06.2024	
Date of Pronouncement	24.06.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by the department is directed against the order dated 29.11.2013 of Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi for the Assessment Year 2017-18.

2. None have appeared on behalf of the assessee when this appeal was called for hearing of 11 AM despite the fact that on the last date

of hearing i.e. on 29.5.2024 the Ld. AR requested for adjournment and hearing was fixed for today i.e. 20.06.2024. The matter was again taken up at 1 PM for hearing but nobody on behalf of the respondent appeared nor any application for adjournment was filed. Accordingly, the bench proposed to hear and dispose off this appeal as ex-parte.

3. The department has raised following grounds of appeal:

*1 on the facts and the circumstances of the case, the CIT(A) is not justified in deleting the addition of Rs. 14291500/- on account of unexplained income u/s 69A of the IT Act, 1961 on the basis of additional evidence submitted by the assessee without following the due procedure required under rule 46A of Income Tax Rules.*

*2 on the facts and the circumstances of the case, the CIT(A) is not justified in deleting the addition of Rs. 10051500/- on account of unexplained expenditure u/s 69C of the IT Act, 1961 on the basis of additional evidence submitted by the assessee without following the due procedure required under rule 46A of Income Tax Rules.*

3. The Ld. DR has submitted that it is a case of no-return of income filed by the assessee and on the basis of information received by the Assessing Officer that the assessee has a huge amount of cash deposits as well as cash withdrawals from the current account totaling to Rs.2,43,43,000/- during the previous year relevant to the assessment year under consideration, the Assessing Officer issued a notice u/s 148 of the Act on 31.3.2021. But there was no response on behalf of the assessee to the said notice. Thereafter the Assessing Officer issued notice u/s 142(1) of the Act on 26.11.2011. However, there was no response on behalf of the assessee to the notices issued

by the Assessing Officer. Ld. DR has further submitted that the Assessing Officer has finally completed the assessment on best judgment assessment basis u/s 144 r.w.s 147 of the Act. Before the CIT(A) assessee has explained the reasons of non-appearance before the Assessing Officer and also submitted the documents and details to explain the source of deposits and withdrawals made in the current bank account of the assessee. The assessee claimed that he was dealing in scrap goods and the deposits made in the current account is from the sale of scrap and withdrawals were used for purchase of scrap from local dealers. The assessee claimed that the gross turnover for the year was Rs.86,40,426/-. The CIT(A) has accepted this explanation and contention of the assessee and deleted the additions made by the Assessing Officer. Further CIT(A) directed the Assessing Officer to estimate the profit @8% on the turnover claimed by the assessee. The Ld. DR has submitted that the CIT(A) has considered the additional evidence as well as details and explanation filed by the assessee without giving an opportunity to Assessing Officer to verify the same and submit his response. Therefore, there is a violation of Rule 46A of the Income Tax Rules. He has thus pleaded that the impugned order of CIT(A) be set aside and the matter may be remanded to the record of Assessing Officer for fresh adjudication after verification and consideration of relevant details and supporting evidences to be filed by the assessee.

4. We have considered the submissions of the Ld. DR and carefully perused the orders of the authorities below. Since nobody has appeared on behalf of the respondent/assessee therefore, we do not

have a privilege to hear the argument on behalf of the assessee. It is evident from the assessment order that the assessee did not respond to the notices issued by the Assessing Officer u/s 148 and u/s 142(1) of the Act. It is also matter of record that the assessee did not filed any return of income u/s 139 or in response to the notice issued u/s 148 of the Act. Therefore, in those circumstances the Assessing Officer had left with no option but to frame the assessment as best judgment assessment. The Assessing Officer has assessed the total income of the assessee by making the addition of both of total deposits as well as total withdrawals without even considering the withdrawals made from the bank as source for subsequent deposits. Before CIT(A) the assessee explained that the assessee is proprietor of M/s Black Moon Industries and engaged in the business of purchase and sale of scrap goods. The assessee then explained the non-appearance before the Assessing Officer due to unfortunate death of his CA Mr. Murli Manohar Maheshwari who expired on 01.06.2017. Thus the assessee pleaded that he was not aware about the proceedings before the Assessing Officer as the e-mail of Mr. Murli Manohar Maheshwari was given to the IT portal for the purpose of issuing notices. The assessee then submitted that his gross turnover for the year under consideration was Rs.86,40,426/- as per the VAT assessment and he offered the income on presumptive basis u/s 44AD of the Act. The CIT(A) accepted this contention of the assessee and consequently deleted the addition in para 6.2 to 7.1 as under:

*"6.2 Decision on account of Cash deposits: The AO in his assessment order has treated an amount of Rs 1,42,91,500/- as unexplained income u/s 69A*

of the I.T.Act 1961. From the submission made by the appellant during the appellant proceedings it is observed that there are cash deposits of only Rs 13,90,000/- but not Rs 1,42,91,500/- which can be evident from the bank statement filed by the appellant. The appellant further stated that these cash deposits are out of cash business sales only. The other credits are transfer entries from the CC account held by the appellant in Bank of Baroda bearing account number 40480500000108. Since there are no cash deposits of Rs 1,42,91,500/- but only to the extent of Rs 13,90,000/- in assessee's current account which was the basis of completion of assessment and the appellant states that these cash sales are out of his cash sales. The appellant states that he collects the scrap and sales it to different customers after making some modifications. Considering the nature of business the appellant is engaged in the contention of the assessee regarding cash sales is acceptable. As per the appellant the other deposits are in the form RTGS/cheques/NEFT are related to the sales made to various parties which are reflected in VAT turnover. Copies VAT return and VAT assessment order filed by the appellant strengthens the submissions made by the appellant. Regarding the other credits, the appellant stated the same are transfer entries from the CC account held by the appellant in Bank of Baroda bearing account number 40480500000108. From the above submission the source of deposits in bank account stands explained and Hence the addition made on account of cash deposits of Rs 1,42,91,500/- is deleted.

### 6.3 Decision on account of Cash withdrawals of Rs 1,00,51,500/-

The appellant stated that the Appellant is engaged in the business of purchasing the scrap from auctions and from local persons and selling the modified scrap to the interested buyers. The appellant stated that he has to purchase the scrap from local dealers and has to pay the amount in cash to most of the parties. These are regular casual labours who collect the scrap and make sales to the appellant. The payments usually vary from Rs 1000/- to Rs 5000/- at regular intervals. The undersigned has also paid the tax on these cash purchases which is mandatory in nature. It is also worthwhile to mention here that these cash withdrawals are out of credits in bank accounts. Credits are on account of sales and transfer from CC account. Further the appellant stated that there are cash withdrawals of only Rs 51,18,000/- from the current account and not Rs 1,00,51,500/- as stated in the Assessment order. From the submission of the assessee and on perusal of the bank statement it is seen that there are no cash withdrawals of Rs 1,00,51,500/-, Considering the nature of business, the appellant is in and the contention of the appellant that he has to purchase the scrap from the casual labours which varies from Rs 1000/- to Rs 5000- on daily basis is accepted. The appellant stated that he has shown these purchases in sales tax return and corresponding taxes have been also paid. Contention of the appellant on the issue of cash withdrawals is acceptable and addition made to the extent of Rs 1,00,51,500/- is deleted on account cash withdrawals For

*the reasons mentioned above, the addition made on account of cash deposits us 69A amounting to Rs 1,42,91,500/- and Rs 1,00,51,500/- u/s 69C on account of cash withdrawals totalling to Rs 2,43,43,00/- is deleted. The grounds No 2.3 and 4 on these issue are Allowed.*

*7. Ground No 5 to 6 are regarding applicability of profit ratio on account of turnover:*

*Ground No 5: The AO was not justified in making the addition of Rs.2,43,43,000 without appreciating that only profit rate can be added Into the income. Whole deposits and withdrawals cannot be treated as Income of the appellant.*

*Ground No 6: The AD was not justified in making the addition of Rs.2,43,43,000 without appreciating the judicial pronouncements wherein it is held that profit rate should be applied on the cash deposits and only that much addition can be done.*

*7.1 From the submission made by the Appellant and ENT on perusal of sales tax/VAT returns is seen that the appellant has shown a turnover of Rs 86.40.426- VAT. After considering the Net profit shown by the appellant in earlier A.Y.'s in income tax proceedings, it would be reasonable to estimate the profit @ 8% on the total turnover. The AO is directed to estimate the profit 8% which comes to Rs 6,91.234/ For statistical purpose the appeal filed by the on this account is allowed."*

5. It is apparent from the impugned order of CIT(A) that he had considered the relevant details and evidences filed by the assessee without confronting the same to the Assessing Officer despite the fact that the assessment was framed as best judgment assessment when there was no response on behalf of the assessee to the notices issued by the Assessing Officer and no return of income was filed by the assessee for the year under consideration. Therefore in the facts and circumstances of the case we find merit and substance in the contention of Ld. DR that CIT(A) has violated the provisions of Rule 46A of Income Tax Rules 1962 while passing the impugned order. Accordingly the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the jurisdictional Assessing

Officer for fresh adjudication after considering the relevant details and evidences to be filed by the assessee. Needless to say that the assessee be given an opportunity of hearing before passing the fresh order.

6. In the result appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open court on 24.06.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 24.06.2024**

***Dev/Sr. PS***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*