

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “B”: NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 976/DEL/2016  
[Assessment Year: 2011-12]**

<b>Vivek Chandela, J-11/29, GF Rajouri Garden, New Delhi-110027</b>	<u>Vs</u>	<b>Income-tax Officer, Ward-62(2), New Delhi.</b>
<b>PAN: ADSPC3753F</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Anil Chopra, CA	
<b>Department represented by</b>	Shri Vivek Upadhyay, Sr. DR	
<b>Date of hearing</b>	21.05.2024	
<b>Date of pronouncement</b>	28.06.2024	

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The assessee has come up in appeal against the order dated 10.12.2015 passed by the Commissioner of Income Tax (Appeals)-20, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. 208/2014-15 for the assessment year 2011-12, arising out of the order dated 27.03.2014, u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as

the “Act”), passed by the Income-tax Officer, Ward-38(2), New Delhi (hereinafter referred in short as “Ld. AO”).

2. The assessee is a registered Government civil contractor with MCD and has done work exclusively for the Department during relevant assessment year. The return of income filed by the assessee was processed u/s 143(1) of the Act and subsequently taken up for scrutiny for examining the source of cash deposits in savings bank account as per AIR information. The AO examined the source of deposit of Rs. 56,86,720/- in ICICI bank account and the payments of Rs. 2,57,796/- made against credit card bills to HDFC Bank during the year. The assessee claimed that the deposits were out of the sale proceeds of the two businesses, assessee was doing during the year and the return was filed u/s 44AD of the Act. The AO examined the issue and found absence of evidence to establish the source of income and made addition u/s 68 of the Act. The CIT(A) had partly allowed the appeal, by deleting addition made on account of payments to HDFC against the credit card but sustained addition u/s 68 of the Act, for which the assessee has come before the Tribunal raising following grounds:

*“1. The CIT (Appeal) has not considered the submission before passing order upholding additions of Rs. 56,86,720 which were deposits in the bank out of proceeds from his business M/s CM plastics inspite of giving ample proof of business transactions.*

*2. That CIT (Appeal) has erred in law as well as on facts in initiating penalty under section 271(1) (c) of Act.*

*3. That assessee craves leave to add, alter, and modify any of the grounds mentioned above.”*

3. Learned AR has pointed out that the AO has relied the report of Inspector who had allegedly inspected the office of the assessee and reported that there was

no manufacturing process going on at the given address. However, this report was not confronted. It is also pointed out that the assessee had converted the proprietary concern with name M/s CM Plastics into Private Limited Company with name M/s CM Plastics Pvt. Ltd. from 28.01.2011. However, these evidences were not considered.

3.1 Ld. DR, on the contrary, relied the orders on merits.

4. After giving due consideration to the material before us and the submissions, it comes up that assessee had claimed to be carrying out civil contract business and retail business of manufacturing and supplying of agricultural apparatus material etc. and that the purchasers use to deposit the amount directly. Thus claims that the amounts deposited are out of sale proceeds. CIT(A) has taken note of fact that turnover of M/s C M Plastis was not taken into account while filing return u/s 44D of the Act.

5. We are of the considered view that learned AO and also the CIT(Appeals) have both drawn inference against the assessee's explanation of the deposits in the bank account being out of the profits of business on the basis that the particulars of business provided by the assessee were not verified as per the Inspector's report. That may have happened due to the fact that assessee claims change of composition of the business from proprietorship to a Pvt. Ltd. Company. If the report of inspector was to be relied so heavily, we are of the considered view that in that eventuality the assessee should have been given an opportunity to rebut the report. The assessee has produced relevant evidences of sales summary, bills etc. but these were not considered by doubting the business activities itself. There seems to have been no attempt of AO to have independently verify the bills etc. or

to enquire from the customers of assessee, who are said to have deposited the amount directly in bank account of assessee.

6. Thus, we consider it an appropriate case to restore the issue on merits to the files of AO who shall given opportunity of hearing to the assessee and pass afresh order in accordance with law.

7. Appeal is allowed for statistical purposes.

Order pronounced in open court on 28.06.2024.

**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**