

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

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2196/Del/2023
(ASSESSMENT YEAR 2012-13)**

Azad Singh H. No.153, Sector-10 Faridabad Haryana-121005 PAN-AGRPS8522J	Vs.	Income Tax Officer Ward-1-1 Faridabad
(Appellant)		(Respondent)

Assessee by	Ms. Rajkumari, CA
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	26/06/2024
Date of Pronouncement	24/07/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 08/06/2023 for Assessment Year 2012-13.

2. The brief facts of the case are, the assessee is an Advocate by profession and doing practice as Tax Consultant. He regularly files the return of income u/s 44ADA of the Act, 1961 ('the Act' for short) on presumptive basis. The Assessing Officer received

information that assessee has made cash deposit. In order to verify the same, issued notices u/s 148 of the Act and served on the assessee online. In response the AR of the assessee appeared and submitted the ITR, bank statement and cash book. The other notices u/s 143(2)/142(1) of the Act along with questionnaire were issued to the assessee. The Assessing Officer observed that assessee has not submitted any document relating to the cash deposit of Rs.16,00,000/- in his bank account maintained with Indusind Bank Ltd. Accordingly, he proceeded to make the addition u/s 68 of the Act.

3. Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and the assessee filed detailed submissions before him with an application under Rule 46A of the Income Tax Rules, 1962. The Ld. CIT(A) rejected the same and observed that adequate opportunity was offered to the assessee in the assessment proceeding itself and the Ld. CIT(A) proceeded to sustain the addition u/s 69A of the Act instead of section 68 of the Act.

4. Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

"1 That the orders passed on 22 11 2019 by the Assessing Officer as upheld by the Ld CIT(A) vide orders dated 08.06.2023 were perverse to the law and to the fact of the case, because both of them failed to appreciate that the appellant was prevented by opportunity of Being heard before made addition under section 68 of the income tax act, 1961.

2. That the appellate order passed by the Ld. CIT(A) thereby upholding the additions of Rs. 1600000/- was further not correct under the law and to the facts of the case because of rejecting the fresh evidence filed under Rule-46A(b) of the Income Tax Rules, thereby explaining source of cash deposited in bank account only on the basis of remand report sent by the Assessing Officer without taken into consideration that the appellant was prevented by reasonable and sufficient cause to file the same before the Assessing Officer.

3. That the Ld. CIT(A) further failed to appreciate while upholding the additions 1600000/- in the hands of the appellant as recommended by the Assessing Officer without independently examination of the facts contained in the Petition filed under Rule-46A(b) of the I.T. Rules with evidence containing therein that the appellant was prevented by reasonable and sufficient cause to file the same before the Assessing Officer due to lack of opportunity of Being heard.

4. That the appellate order passed by the Ld. CIT(A) was further perverse to the law and to the facts of the case, because of not taken into consideration that there is no case of section 68 in given case.

5. That the appellate order passed was further not correct under the law and to the facts of the case, thereby not adjudicating upon the proper evidence filed and placed upon records by the appellant under Rule-46A(b) of the I.T. Rules.

6. That the appellate order passed thereby upholding the additions of Rs. 1600000/- in the hands of the appellant were further unconstitutional as against the law and to the facts of the case, because of nol passing the speaking order on the merits of this case, as he has only relied upon the order passed by the Assessing Officer.

7. That no proper and reasonable opportunity of being heard was ever afforded by the Assessing Officer only 3 Hearing date opportunity provided.

8. That the Ld. CIT(A) has further failed to appreciate, that the addition made by the Assessing Officer to the tune of Rs.16,00,000/- under section 68 of the Income Tax Act, whereas no books of account maintained by the appellant.

9. On facts and circumstances of the case and in law, ld. CIT(A) erred in confirming the addition u/s 68 of Rs.16,00,000/- and ignoring the fact that such income is derived from profits of professional services covered u/s 44AD of the Act.

10. That the additions made of Rs.16,00,000/- of the Act, by Assessing Officer which were upheld by the Ld. CIT(A) were entirely based upon their mere presumption and guess work only, therefore, not tenable under the law and to the facts of the case.

11. That the penalty proceedings initiated u/s 271(1)(c) and interest charged u/s 234B of the Act while completing the order was further not in consonance of the illegal and impugned additions made in the hands of the appellant while finalizing the order.”

5. At the outset, the Ld. AR submitted that the assessee is an Advocate filing return of income on the basis of presumption. The assessee has requested for sufficient time to get the information from the Bank in order to reconcile cash deposit made by him, however, the Assessing Officer has not given sufficient opportunity for assessee to make the proper submissions. Further, he submitted that the assessee also filed the relevant document/ information before the Ld. CIT(A) under Rule 46A of the IT Rules.

However, the Ld. CIT(A) has rejected the same and proceeded to sustain the addition u/s 69A of the Act. He submitted that assessee was not given proper opportunity to explain the cash deposits before the lower authorities and prayed that this issue may be remitted back to the file of the AO to appreciate the various documents and evidences.

6. On the other hand, the Ld. DR relied on the orders of the lower authorities and submitted that the assessee has not utilized the opportunities given by the lower authorities, however, he has no specific objections remitting the issue back to the file of the Assessing Officer.

7. Considered the rival submissions and material placed on record. I observed that assessee has not submitted the relevant information during assessment proceedings and also assessee has filed the relevant information under Rule 46A before the Ld. CIT(A), however, the Ld. CIT(A) did not entertain the additional evidences submitted before him. For the sake of complete justice, I am inclined to remit this issue back to the file of Jurisdictional Assessing Officer (JAO) to re-do the assessment. Considering the

additional evidences/details of transactions filed by the assessee before us, we direct the Assessing Officer to redo the assessment *de-novo* after providing opportunity of being heard to the assessee. Accordingly, appeal filed by the assessee is allowed for statistical purposes.

8. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced on 24th July, 2024.

Sd/-

(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Dated: 24/07/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI