

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

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.43/Del/2021  
(ASSESSMENT YEAR 2017-18)**

Rajiv Kumar Khurana Individual C-3, Khasra No.755 3 <sup>rd</sup> Floor, Sai Bhawan Hall, Delhi-110084 PAN:ANFPK9817K <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-36(6), Delhi  <b>(Respondent)</b>
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Assessee by	Sh. Dishant Sethi, Jitin Singhal & Sh. Shyam Sunder, Adv.
Respondent by	Ms. Sapna Bhatia, CIT-DR

Date of Hearing	30/05/2024
Date of Pronouncement	14/08/2024

**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)-13, Delhi ["Ld. CIT(A)", for short], dated 28/08/2020 for Asst. Year 2017-18.
2. At the outset, there is a delay of 84 days in filing of appeal by the assessee before us. The assessee had filed an affidavit and stated that due to acute weakness and prolonged illness, appeal could not be completed and filed within time. When this was

confronted with the ld. DR, he did not raise any serious objections for condonation of delay. Hence, we are inclined to condone the delay and admit the appeal of the assessee for adjudication.

**3.** The brief facts of the case are, assessee is small trader engaged in the business of trading of watches and running its proprietorship firm under the name and style of M/s Top Trading Co., from last so many years. Assessee is filing his return of income on presumptive basis from last so many years and in the present year also i.e., for AY 2017-18 ROI was filed on presumptive basis as provided u/s 44AD of the Act declaring turnover of Rs.34,35,546/- and income u/s 44AD amounting to Rs.3,25,357/-. Copy of return of income dated 21/12/2019 along with the computation of income is placed at PB Pages 49-57.

**4.** At the time of hearing, the Ld. AR submitted as under:-

It is submitted that cash deposits were made in the normal course of business and was already a part of turnover declared in the return of filed on the presumptive basis as provided u/s 44AD of the Act. Further it is relevant to state that most of the cash was deposited by the several outstation customers against the purchases made by them from the assessee's proprietary concern. Details of cash deposit (Rs. 2,69,850/-, Rs. 76,170/- and 708/-) for which addition (total Rs. 3,46,728/-) made by the Ld. AO is tabulated hereunder for the

sake of convenience and copy of bank statements are already placed in the Paper book filed.

S No.	Date	Description	Amount	Remarks
Axis Bank Account Statement for account number 914010009071718				
1.	11.05.2016	Mobile t/f (not a cash deposit)	39,850/-	Cash deposits was out of sales duly declared, further all the cash deposits have been made directly by different parties and even in the different cities and states. (Bank statement placed at <b>PB Page 58-60</b> )
2.	15.06.2016	By cash/Sagar- Mansarovar Garden, New Delhi	25,000/-	
3.	02.08.2016	By cash/Jagdish, Rajendra Nagar	25,000/-	
4.	08.09.2016	By cash/Jagdish, Rajendra Nagar	25,000/-	
5.	04.11.2016	By cash/Gorakh, Imphal	25,000/-	
6.	20.02.2017	By cash/Rituraj, Chapra	50,000/-	
7.	01.03.2017	By cash/Rituraj, Chapra	40,000/-	
8.	06.03.2017	By cash/Abhishek, Chapra	40,000/-	
<b>TOTAL</b>			<b>2,69,850/-</b>	

S No.	Date	Description	Amount	Remarks
Axis Bank Account Statement for account number 916010058400668				
1.	03.10.2016	Initial funding (deposited while opening A/c)	27,555/-	Cash deposits was out of sales, which was duly disclosed while filing ROI on presumptive basis u/s 44AD. (Bank statement at <b>PB Pg. 61</b> )
2.	28.03.2017	By cash/sell', Mirzapur (U.P)	48,000/-	
*		Miscellaneous credits on different dates	615/-	
<b>TOTAL</b>			<b>76,170/-</b>	

SNo.	Date	Description	Amount	Remarks
Kangra Co-Operative Bank for account number 00070160001907				
1.		Miscellaneous credits on different dates (No cash deposit)		No cash deposit involved.
<b>TOTAL</b>			<b>708/-</b>	
				(Bank Statement at PB Pg 62)

5. From the perusal of the aforesaid cash deposit in the bank accounts it may be observed that cash deposit made in the bank account was in the normal course of business and most of the cash deposits made in the bank accounts was directly by the different parties in different cities and states, to whom the sales were made. Moreover, the aforesaid cash deposited was already a part of total turnover declared and income

declared u/s 44AD of the Act while filing the return of income. Further Assessee seeks to place its reliance on the following case laws wherein it has been observed that addition made on account of cash deposit is not valid when the same was included in turnover offered for tax u/s 44AD of the Act.

**Virender Kumar Vs ITO (ITAT Jaipur), ITA No. 1100/JP/2019, dated 31.03.2021**

*"5. We have heard the rival contentions and perused the material available on record. It is noted that the assessee is in the diary business in the name and style of Mis Mohan Diary, Tijara and in pursuant to notice u/s 148, he has filed his return of income u/s 44AD declaring gross receipts from his diary business amounting to Rs 14,56,230/- The return so filed u/s 44AD has been accepted by the Assessing officer which in effect means the declarations and disclosure so made by the assessee in terms of carrying on diary business, non-maintenance of books of accounts and gross receipts from such business amounting to Rs 14,56,230/- has since been accepted by the Assessing officer In such a scenario, where there are cash and other credits in the bank account maintained by the assessee amounting to Rs 11,38,000/- which are less than the gross receipts from diary business so declared by the assessee, we find the explanation offered by the assessee that such deposits are from his diary business as a plausible explanation in absence of anything contrary on record in terms of any other*

*source of income. Our view is fortified by the decision of the Hon'ble Punjab and Haryana High Court decision in case of Surinder Pal Anand....*

*6. We therefore find force in the contention so advanced by the id AR that the source of cash and other deposits in the bank account is out of assessee's dairy business and gross receipts thereof have already been offered in the return of income. In light of the aforesaid discussion, the addition so made by the Assessing officer is hereby directed to be deleted."*

**Mansukh K. Vaghasia v. Income-tax Officer, [2022] 139 taxmann.com 84 (Surat- Trib.)**

*"14. In the light of the provisions of section 44AD of the Act, we note that assessee has filed his return of income under section 44AD of the Act and shown turnover of Rs. 16,02,300/- which falls in the scope of provisions of section 44AD of the Act. The cash deposit in the bank account is to the tune of Rs. 13,87,000/- as noted by the Assessing Officer. As per assessee, the said cash deposited in bank account is out of cash turnover of Rs. 16,02,300/- as declared by the assessee, therefore, we note that such small assessee has proved his bona fide, about the cash so deposited in the bank account.....*

6. It is further necessary to state that it was specifically brought to notice of the CIT(A) that assessee had already filed the return of income on 21.12.2019 i.e., much before the completion of assessment, however Ld. CIT(A) without appreciating this fact stated that no return of income was filed originally and only return was filed in response to the notice u/s 153 A of the Act. While upholding the addition of account of cash deposit Ld. CIT(A) at para 4.4 observed "Since no ITR

was filed u/s 139(1) declaring his taxable income, he was duty bound to file his return in compliance to the notice u/s 153A of the Act, which he did not. It is submitted that this observation and finding is itself contrary to the facts on records as the return of income against the notice issued u/s 153A was duly filed on 21.12.2019 i.e., well before the completion of assessment proceeding and this fact was also brought to the notice of Ld. CIT(A) in the written submissions filed during the appellate proceeding. Therefore, it is submitted that source of cash deposited in the bank account was duly explained along with the supporting documents and hence Ld. CIT(A) erred in coming to the contrary finding.

7. To sum-up. the arguments in brief are as hereunder:

Firstly, it is submitted that cash deposit in the bank account amounting to Rs. 3,46,728/- was out of the cash sales and the sales amounting to Rs. 34,35,546/- was duly declared in the return of income filed on presumptive basis as provided u/s 44AD of the Act and the same has already been taxed.

Secondly, it is submitted that most of the cash deposits made in the bank accounts was directly by the different parties in different cities and states, to whom the sales were made.

Thirdly, it is submitted that cash deposit made in the bank account was in the normal course of business which cannot be ignored when assessee is engaged in the same business from last so many years and has having its turnover in lacs.

Fourthly, it is submitted that the assessment order was framed vide order dated 25.12.2019 and the return of income was already filed on 21.12.2019 i.e., much before the assessment. However, the same was not considered before making the assessment addition was made at the fag end. But detail of return of income filed was duly brought to notice of the CIT(A) as stated Para 11 of CIT(A) order, however the same has not been appreciated by the Ld. CIT(A).

**5.** On the other hand, the Ld. DR relied on the findings of the lower authorities.

**6.** Considered the rival submissions and material placed on record, we observed that assessee is declaring his return of income under presumptive tax basis u/s 44AD of the Act. Accordingly, declared taxable income of Rs.3,25,357/-. Assessee also filed a copy of the same in the form of paper book, we observed that Assessing Officer has made an addition of Rs.3,46,728/- for the reason that cash were deposited in assessee's bank account u/s 68 of the Act. Considering the fact that assessee declared income u/s 44AD of the Act and it is not required for the assessee to submit any books of account. The Assessing Officer observed that assessee has made cash deposits in his bank account to the extent of Rs.3,46,728/- in various dates. Considering the overall facts on record, we are inclined to direct the Assessing Officer to delete the additions based on the fact that assessee has declared the income u/s 44AD of the

Act on 21/12/2019 itself. The gross receipt is Rs.34,35,546/- and the cash deposit is only Rs.3,46,728/-. The cash deposited is part of above turnover. Accordingly, appeal filed by the assessee is allowed.

**7.** In the result, the appeal filed by the assessee is allowed.

Order pronounced on 14<sup>th</sup> August, 2024.

Sd/-

**(MS. MADHUMITA ROY)  
JUDICIAL MEMBER**

Sd/-

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

Dated: 14/08/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI