

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.500/Del/2022  
(Assessment Year : 2011-12)

<b>Ashok Kumar</b> House No.77, Sector – 22, Gurgaon, Haryana – 122 015	Vs.	<b>Pr. CIT</b> Faridabad, Haryana – 122 001
<b>PAN No. AOAPK 9635 H</b> <b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri K. Sampath, Adv. and Shri V. Rajkumar, Adv.
Revenue by	Shri Amit Katoch, Sr. D.R.

Date of hearing:	14.11.2024
Date of Pronouncement:	19.11.2024

**PER SHAMIM YAHYA, AM :**

This appeal filed by the assessee is directed against the order of learned Pr. Commissioner of Income Tax – Faridabad ('Pr. CIT' in short) dated 17.03.2021 pertaining to Assessment Year 2011-12.

2. The grounds of appeal filed by assessee, reads as under:

*“That on the facts and in the circumstances of the case and in law the Pr. Commissioner of Income Tax, Faridabad erred in passing order under section 263 of the Income Tax Act, 1961 ('the Act' for short) holding the order passed by the Income Tax Officer, Ward-5, Gurgaon to be erroneous and prejudicial to the interest of revenue and directing the Assessing Officer to make a fresh assessment de novo.*

*The order being without jurisdiction, arbitrary, misconceived, erroneous and unlawful must be quashed..”*

3. In this case, Pr. CIT noted that on perusal of the assessment records of the aforesaid assessee for the A.Y. 2011-12, following discrepancies are noticed :

The case was selected u/s 147 for cash deposit of Rs.44,72,000/- and notice u/s 148 was issued on 14-03-2018. In reply to notice, assessee filed return u/s 44AD and stated that during previous year he was doing business of petty contractor of civil labour work in Rajasthan. On further perusal of the assessment record and scrutiny of bank statement for cash deposit, it is revealed that the assessee deposited cash in multiples of lakh and hence, could not be treated as petty contractor as claimed. No detail of business, clients and business address or related bills, purchase/sales invoice were attached to authenticate the business. No documentary evidence is available on record which can prove the source of cash deposit. No enquiry was made in this connection in this case. Hence, the entire cash deposited was required to be treated as unexplained and taxed u/s 68 of the Act.

4. The Pr. CIT noted that the assessee has not given any response. He concluded as under :

*“5. On perusal of assessment record of the assessee, it noticed that the case was selected u/s 147 for cash deposit of Rs.44,72,000/- and notice u/s 148 was issued on 14-03-2018. In reply to notice, assessee filed return u/s 44AD and stated that during previous year he was doing business of petty contractor of civil labour work in Rajasthan. On further perusal of the assessment record and scrutiny of bank statement for cash deposit, it was revealed that the assessee deposited cash in multiple of lakh and hence, could not be treated as petty contractor as claimed. No details of business, clients and business address or related bills, purchase/sales invoice were attached to authenticate the business. No documentary evidence is available on record which can prove the source of cash deposit. No enquiry was made by the assessing officer in this connection in this case. Hence, the entire cash deposited remained unexplained and required to be treated as unexplained and taxed u/s 68 of the Act.*

6. *Keeping in view the facts and circumstances of the case, I am of the considered view that the assessment order under consideration passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue in the light of Explanation 2 to section 263 of the I t Act, 1961 and it needs to be suitably revised. Therefore, the assessment order dated 02.11.2018 passed by the AO u/s 143(3)/147 of the I.T. Act for the AY 2011-12 is hereby set-aside u/s 263(1) of the I.T. Act, 1961 and restored to the AO for making fresh assessment with direction to verify the source of cash deposit and take action as discussed in Para 5 above. The AO is directed to make a judicious and logical order as per law after providing due opportunity of being heard to the assessee.”*

5. Against the above order, the assessee is in appeal before us.

6. We have heard both the parties and perused the records. The learned Counsel for the assessee gave following submissions:

*“It is submitted that the Pr. CIT is wrong in that the return of income was filed u/s 44AD by the assessee which does not envisage the maintenance of any Books of Accounts. On the other hand, Section 68 of the Act can be invoked only if there is any entry in the Books of Accounts. Absent books of accounts u/s 68 has no application. The Pr. CIT observation that "No one appeared nor any submissions made" is not in accord with the true facts for the submission as per page 3 of the Paper Book was duly provided to his office. Sub-section (5) of Section 44 AD which was substituted by the Finance Act, 2016 w.e.f 01.04.2017 is not applicable to the subject reassessment order.*

*Prayer: It is pleaded that the Revision Order of the Pr. CIT passed u/s 263 of the Act be quashed for the assessee had answered his notice and the issue in question complained of by the Pr.CIT had been gone thoroughly by the AO, The Pr. CIT has not pointed out any error in that respect. If at all there is any error it is in the action of the Pr.CIT, who ignored the basic fact that in the absence of books of accounts in Sec.44AD case no addition u/s 68 of the Act could be made. Even otherwise the order of the Ld. AO impugned by the Pr.CIT is blemishless and deserves to be / affirmed. The appeal of the Assessee merits to be allowed.”*

7. Per contra, learned DR relied upon the orders of the Pr. CIT.
8. Upon hearing both the parties and perusing the records, we find considerable cogency in the submissions of learned Counsel of the assessee. Since, the return of income was filed by the assessee under section 44AD of the Act, there is no requirement of maintenance of any Books of Accounts. Furthermore, section 44AD of the Act provides for presumptive rate of taxation. The amendment in section 44AD of the Act bringing curbs on cash deposits was not there in the extant assessment year. In this view of the matter, we are of the opinion that Pr. CIT has erred in assuming jurisdiction. Hence, in the background of the aforesaid discussion, we set aside the order of Pr. CIT and quash the order under section 263 of the Act.
9. In the result, appeal filed by the assessee stands allowed.

**Order pronounced in the open court on 19.11.2024**

**Sd/-**

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

Date:- 19.11.2024

*Priti Yadav, Sr. PS\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI