

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.29/Del/2020
Assessment Year: 2011-12

Sh. Raj Kumar Chhabra, 5248, Bali Nagar Palwal, Palwal, Haryana	Vs.	ITO, Ward-2(2), Faridabad
PAN :AEPPC2591H		
(Appellant)		(Respondent)

Appellant by	Sh. S.K. Virmani, Adv.
Respondent by	Sh. R.K. Gupta, Sr. DR

Date of hearing	30.06.2021
Date of pronouncement	16.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 20/11/2019 passed by the Learned Commissioner of Income-tax (Appeals), Faridabad [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds:

- (1) *That the orders of the Ld. CIT(A) in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- (2) *That the Ld. CIT(A) has accepted the assessee's eligibility for presumptive basis of taxation under section 44AD of the Income Tax Act, as evident from return filing of Income tax for the said period as per the CIT(A)'s order para - 2 under appeal but has not accepted the cash receipts of Rs. 22,42,700/- against turnover of the said year without giving any reasons whatsoever. Relief may please be granted by deleting the said addition.*
- (3) *That the Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.32,50,000/- in presuming that the entire cash deposit was undisclosed income of the assessee disregarding the fact that the said amount deposited in bank account were nothing but out of opening cash of Rs. 1,65,236/-, sale of shop (without assets & stock) at Rs. 6,00,000/-, sale of entire closing stock at Rs. 22,42,700/-(which shown as turnover u/s 44AD) and amount realized from debtors at Rs. 9 60,690/- during the year under consideration. Relief may please be granted by deleting the said addition. As per para 7 of CIT(A)'s order under appeal.*
- (4) *That the Ld. CIT(A) has erred on facts and in law in presuming that the appellant had sold the shop at Rs. 30,00,000/- whereas actually the appellant had sold tl shop at Rs. 600000 + sale of stock at Rs.2242700 + received from debtors Rs 157300 . Total amount received from shop sale 600000+2242700+157300 =3000000 and the same amount deposited in bank account. As is evident f om the CIT(A)'s order para no 7 under appeal.*
- (5) *That the Ld. CIT(A) has erred on facts and in law in confirming the entire cash deposits as unexplained deposit disregarding the facts that there were cash withdrawals from the bank at Rs.444000/- and opening cash as on 1.4.10 of Rs 165236 and cash sale shown u/s 44AD was available(total cash available 850000/-) before depositing 850000/- in bank account on Dt 23.10.10 and law is well settled that entire cash deposits cannot be treated as unexplained when there were withdrawals also as held by the Hon'ble ITAT, Agra in the case of ITO v. Rajeev Kumar Gupta (ITA T Agra) Appeal Number: ITA No. 273/Agra/2013 - Date of Judgment: 14.02.2014. Relief my please be granted by deleting the said addition.*
- (6) *That the Ld. CIT(A) has erred on facts and in law in confirming the entire cash deposits as unexplained deposit disregarding the facts that appellant had adopted the presumptive taxation scheme under section 44AD of the Act and Ld. Assessing Officer as well*

as CIT(A) has accepted the appellant's eligibility for presumptive basis of taxation under section 44AD of the Income Tax Act, 1961, but ignored the cash receipts of Rs. 22,42,700/- without giving any reasons whatsoever. Law is well settled that no addition for cash deposits when assessee offered income under presumptive scheme as held in the case of Bijoy Shribastab & Anr. v. ITO - Date of Judgement: 23.05.2018 (ITAT Kolkata).

- (7) *That the A.O.as well as Ld. CIT(A) has wrongly interpreted the fact regarding sale of shop means sold of shop at Rs 30 lakhs(without closing stock & assets) whereas in our case, sale of shop means cost of shop including sale of fixed assets(furniture & fixtures) and entire closing stock in the shop due to closure of business during the period under consideration shop cost was 6 lakhs (registry deed) and balance 24 lakhs was for closing stock in the shop and debtors. Assessee had sold entire shop including stock and furniture was for Rs 30 lakh, As assessee has purchased residential property situated at shyam colony ballabgarh for amount of Rs 3075000/- as evident from para 2 of assessment order Dt 5.12.18. due to misinterpretation A.O. considered Rs 30 lakhs as sale amount of our shop, assessee can claim exemption of long term capital gain and amount Rs 2582852. as evident from para 2 of assessment order)*

That the Ld CIT (A) advised the A.O. to compute capital gain from the sale of shop sold by appellant situated at palwal after allowing deduction u/s 54F/54 of the Act (as evident from para 8 under appeal).

- (8) *That the appellant craves, leave to add, alter, amend or vary and/or withdraw any or all of the aforesaid grounds of appeal or at the time of hearing of the above appeal.”*

2. Briefly stated facts of the case are that for the year under consideration, the assessee filed its return of income on 30/03/2012 declaring income of ₹ 1,57,540/-. The return of income filed was processed under section 143(1)(a) of the Income-tax Act, 1961 (in short 'the Act'). On receipt of information by the Assessing Officer that cash of ₹ 39,10,000/- was deposited in his saving bank accounts with Axis Bank, the assessment was reopened by way of issue notice under section 148 dated

26/03/2018. Subsequently, notices under section 142(1) of the Act were issued on various dates from 22/06/2018 to 17/11/2018. Finally, the assessee filed submission on 29/11/2018 stating that return filed under section 139 of the Act on 30/03/2012 might be treated as return in response to notice under section 148 of the Act. In the return of income, the assessee declared gross turnover ₹ 22,42,700/- and net profit under section 44AD at ₹ 2,25,800/-. During assessment proceeding, in order to explain cash deposits in bank accounts, the assessee submitted that assessee had sold the shop for a sum of ₹ 30 lakh, on which long-term capital gain of ₹ 25,28,852/- was shown after deducting indexed cost of acquisition from total sale proceeds of shop. Against the long-term capital gain, the assessee further claimed deduction under section 54F on account of purchase of residential house property. This long-term capital gain on sale of the shop was not declared in the original return of income filed on 30/03/2012. The assessee further submitted that though sale consideration of the shop was recorded to be Rs. 6 lakh received on 22/12/2000, but it was actually sold for ₹ 30 lakh and said amount was deposited in the bank on 23/12/2000.

2.1 This explanation of the assessee was not accepted by the Learned Assessing Officer on the ground that in the registered sale deed, only amount of ₹ 6 lakh was recorded and any amount received over and above the said amount would be in the nature of the premium, which would be taxable as income from other sources. Accordingly, he treated the amount of ₹ 24 lakh (Rs. 30.00 – 6.00) as income of the assessee under the head 'income from other sources'.

2.2 Further, the Assessing Officer also observed deposit of ₹ 8.5 lakh in the bank account on 23/10/2010, which was found not commensurate with the business activity of the assessee and thus same was held as unexplained and added to the income of the assessee.

2.3 Aggrieved with the addition of ₹ 32,50,000/- by the Assessing Officer in assessment order dated 05/12/2018 passed under section 147 read with section 143(3) of the Act, the assessee preferred appeal before the Learned CIT(A), but could not succeed. The Ld. CIT(A) rejected the contention of assessee of cash received on sale of stock. According to the Ld. CIT(A), sale of stock was not possible without corresponding payment for purchase and other expenses . Aggrieved with the order of the Ld. CIT(A), the assessee has preferred appeal before the Income Tax Appellate Tribunal (in short 'the Tribunal') raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facility and filed paper-book, synopsis etc. documents electronically.

4. The learned Counsel of the assessee relying on the submissions made before the Learned CIT(A) submitted that lower authorities have misunderstood the contention of the assessee. According to him, the assessee has sold the shop along with furniture and stock of goods as he shifted his business of wholesale cloth merchant. He submitted that the assessee was in the process of winding up of business of cloth merchant at Palwal (Haryana) and therefore, no purchases were made during the period. The learned Counsel submitted that the assessee

deposited all-cash amount of ₹ 39,10,000/- in bank account having details as under:

<i>opening cash on hand (as per previous year balance-sheet)</i>	<i>Rs. 1,65,236</i>
<i>Add: sale of shop (without a certain stock)</i>	<i>Rs. 6,00,000/-</i>
<i>Add: sale of closing stock</i>	<i>Rs. 22,42,700/-</i>
<i>Add: amount received from petty debtors</i>	<i>Rs. 9,60,690/-</i>
<i>Total</i>	<i>Rs. 39,68,626/-</i>
<i>Less: deposited in bank</i>	<i>Rs 39,10,000</i>
<i>Cash in Hand</i>	<i>Rs. 58,626/-</i>

5. The learned Counsel submitted that stock was sold through local vendors as stock clearance sale and sale turnover of ₹ 22,42,700 /- has been declared under section 44AD in the return of income filed. According to the learned Counsel, the deposits in bank account are as per sales ledger cash received during the year. He further submitted that the assessee has purchased another shop subsequent to sale of the shop under reference and invested the remaining amount in purchase of residential property, for which the assessee has not claimed any benefit of exemption under section 54F of the Act.

6. The learned DR, on the other hand, relied on the order of the lower authorities and submitted that no credible evidences have been submitted by the assessee in support of its claim of sale of stock and furniture etc. According to him, it was only a story cooked up to explain cash deposits.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue

in dispute is in respect of explanation of source of the cash deposits. According to the assessee, he stated receipt of ₹ 30 lakh in cash on sale of shop, furniture and closing stock of textile, whereas according to the Assessing Officer, the assessee stated receipt of Rs. 30 lakh on sale of the shop only and in the registered deed, sale of the shop is recorded only at Rs. 6 lakhs and therefore balance ₹ 24 lakh received falls under the head 'income from other sources' being premium received on sale of shop. The learned CIT(A) has rejected the contention of the assessee observing as under:

"7. The facts of the case along with submission on record have been gone through. The appellant has shown turnover of Rs.22,42,700/-, declared u/s 44AD of the Act in his ITR upon which profit of Rs.2,25,800/- (10.07%) has been declared. The appellant has not maintained the books of account. During the assessment proceedings, it was explained that source of cash deposits in the bank account were out of sale of shop for Rs. 30 lacs situated at Jawahar Nagar, Palwal, whereas as per the registration deed dated 23.12.2010, the same was sold for consideration of Rs. 6 lacs in cash. There is nothing on record to substantiate that the appellant sold his shop for sale consideration of Rs. 30 lacs in cash. Such submission made during assessment proceedings has been found contradictory to the registered sale deed. Further, the appellant himself has changed his explanation during appellate proceedings by stating that shop was sold for Rs. 6 lacs. In the circumstances, the source of cash deposits to the extent of Rs. 6 lacs have been found explained. The appellant has made cash deposit of Rs. 30 lacs in his bank account on 23.12.2010. Further, after going through the bank account, it is found that there is cash deposit of Rs.8,50,000/- on 23.10.2010. The appellant has tried to explain the same and remaining cash deposit of Rs.24 lacs on 23.12.2010 from the sales made during the year under consideration and from realization of debtors from the past years. There is nothing on record to substantiate that the appellant was having debtors to the extent of Rs. 9,60,690/- from whom such cash was realized. The appellant has shown turnover of Rs.22,42,700/- from the trading u/s 44AD of the Act. In the circumstances, it is beyond preponderance of human probability that the appellant could accumulate cash in hand to such extent from the realization of debtors and sale of stock to the extent to make cash deposits of Rs.8,50,000/- on 23.10.2010 and Rs. 24 lacs on 23.12.2010. It is relevant to mention here that the appellant

had to make payments in order to make purchases in order to carry out the trading of goods. Therefore, it cannot be presumed that the whole sale proceeds out of stock were available with the appellant to make the cash deposits in the bank account. Such lumpsum cash deposit of Rs. 24 lacs and Rs.8.5 lacs on 23.10.2010 and 23.12.2010 has not been found commensurate with the trading activities carried out by the appellant. The whole submission has been found based upon presumption and without any verifiable particulars. It is not realistic to accept that the appellant was carrying out trading just by accumulating the cash sales proceeds without making corresponding payment for purchases and other expenses. In the circumstances, it is found that the explanation furnished by the appellant in respect of cash deposits to the extent of Rs.24 lacs and Rs.8,50,000/- has been found as unsatisfactory. The onus was on the appellant to explain the nature and source of the same which he failed to do so. In the circumstances, keeping in view the above facts and discussion, the addition made by the AO is confirmed u/s 69A of the Act and the ground of appeal is dismissed.”

7.1 We find that the Ld. CIT(A) rejected the contention of the assessee mainly due to lack of evidence in support of the claim of the assessee. Before us, the learned counsel submitted that the assessee is willing to submit necessary documentary evidence in support of its claim of sale of closing stock of the textile and realisation of the debtors.

7.2 In view of the above facts and circumstances and in the interest of substantial justice, we set aside the order of the Ld. CIT(A) and restore the matter back to the file of the Assessing officer for deciding afresh with the direction to the assessee to file all the necessary documentary evidences in support of his claim. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16th July, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 16th July, 2021.

RK/-(DTS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

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