

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6281/Del/2015
Assessment Year: 2009-10

ITO, Ward 61(1),
Room No. 2009,
20TH FLOOR, Block E-2,
Dr. Shyama Prasad
Mukherjee Civic Centre,
JLN Marg, New Delhi

vs. Smt. Seema Khanna,
5-C, Block-11, Pocket-B,
Ashok Nagar, Phase-III, New Delhi

(APPELLANT)

**(PAN: AFFPB4980E)
(RESPONDENT)**

Department by : None
Assessee by : Shri Tarun Kapoor, FCA

**Date of Hearing : 18-08-2016
Date of Order : 31-08-2016**

ORDER

PER H.S. SIDHU, J.M.

The Department has filed the Appeal against the impugned order dated 08.9.2015 of Ld. CIT(A)-20, New Delhi pertaining to assessment year 2009-10. The grounds raised in the revenue's appeal reads as under:-

"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the following additions:

- 1. In the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in accepting the contention made by the assessee that total cash deposited in bank may be treated as business receipt and applied provision of section 44AD, and total business profit may be taken @8% of the total receipts/ deposits as against the addition made u/s. 68 on account of cash deposit of Rs. 36,14,384/-, without appreciating the fact that assessee failed to substantiate her claim regarding cash deposits of RS. 36,14,384/-.*

The appellant craves, leave to add or amend or modify the grounds of appeal at any time.

It is prayed that the order of the CIT(A) is contrary to the facts on record and the settled position of law; and the order of the AO deserves to be restored.

2. The brief facts of the case are that the assessee had filed his e-return declaring income of Rs. 1,44,880/-. The assessee declared salary income and income from other sources. The case was taken under scrutiny after initiating proceedings u/s. 147 as information has been received from ITO, Ward 25(2). The assessee has deposited cash amount of Rs. 36,14,384/- in the State Bank A/c during FY 2008-09. Accordingly, notice u/s. 133(6) was issued to Manager, Punjab National Bank, Kirti Nagar and Bank statement of the period 1.4.2008 to 31.3.2009 was obtained. While examine the statement it was found the cash was deposited at different stations i.e. Vidisha, Jind, Kolkata, Rewa, Jabalpur, Shivpuri, Bhopal, Nawadah, Faridabad, Aligarh, Malda, Sonipat etc. and on examining the cash deposit pattern it is observed that cash deposit was made less than Rs. 50,000/- to avoid to provide PAN No. to Bank. In compliance to notice u/s. 148 the assessee has stated that he has already filed the return of income and her PAN No. AKNPK2924N. Later on in compliance of notices u/s. 143(2) & 142(1) the assessee stated that she was also doing business during the FY 2008-09 and incurred a loss of Rs. 7132/-. The assessee further stated that she had done business of tyre trading during the year and all purchases and sales were made in cash. To verify the facts that statement of the assessee was recorded on oath on 26.2.2014. After

examining the return, Bank statement, statement recorded on oath and purchase and sale bills filed by the assessee it was observed that the assessee has not declared the business income in her e-filed return. Later on during the course of assessment proceedings the assessee declared that she was doing business also. But in her return of income she declared only salary income and in her statement also she stated that she was taken salary of Rs. 1,44,500/- from M/s Kapoor Goyal & Co. which is a CA firm and Counsel of the assessee is also from the same CA firm. After examining the above details, it was observed that a lady who is doing full time job at above mentioned CA firm how can operate a business covering all India stations. AO observed that it is not possible to manage the business activity routed through different places in India. Further on examining the purchase and sale bills it was found that the parties name are not mentioned on any bill. She further stated that she was doing trading of tyre but her bank statement reveals that the money deposited at different stations in India. The notices u/s. 133(6) were issued to the persons to whom she had purchased the material and reply was received from all the persons and no one has made the vouchers in the name of assessee. They only simply gave the answer that they are doing business. In support of bill nobody give any confirmation in the name of assessee. Therefore, AO observed that no business done by the assessee and the cash deposit made by the assessee in their bank was treated as an undisclosed income and added u/s. 68 of the Income Tax Act of the assessee. The AO has completed the assessment at Rs. 37,59,560/- by

making the addition of Rs. 36,14,384/- vide his order dated 18.3.2014 passed u/s. 143(3) of the I.T. Act, 1961.

3. Aggrieved with the aforesaid assessment order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 08.9.2015 has deleted the addition in dispute and partly allowed the appeal of the assessee.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. In this case, Notice of hearing to the parties were sent, in spite of the same, Department Representative not appeared to prosecute the matter in dispute, nor filed any application for adjournment by the Department. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, I am of the view that no useful purpose would be served to issue notice again and again to the Revenue, therefore, I am deciding the present appeal exparte qua Revenue, after hearing the Ld. Counsel of the Assessee and perusing the records.

6. Ld. Counsel of the Assessee has relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, the same may be upheld and accordingly, the appeal of the Revenue may be dismissed.

7. I have heard the Ld. Counsel of the assessee and perused the records, especially the impugned order passed by the Ld. CIT(A). I find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the issue vide pages 4 to 9 of the impugned order. The said relevant paras are reproduced as under:-

"5.3 I have carefully considered the assessment order and submissions thereof. On the facts and circumstances of the case, following points have emerged;

1. That the appellant is an Employee with Kapoor Goyal & Co drawing salary and also doing part time business of trading of Auto Tyres.

2. That during the year under consideration, the appellant has not shown any income from the business.

3. That during the course of assessment proceedings, the A.O has found an undisclosed bank accounts in the name of the appellant maintained at Punjab National Bank New Kirti Nagar, New Delhi.

4. That a total of Rs.36, 14,384 was found deposited during the relevant period.

5. that the appellant, during the course of assessment proceedings had claimed that she was doing business of trading in auto tyres. And produced sale/purchase bills.

6. It has also been found that in the bank accounts that there were frequent cash withdrawals against the cash deposits.

5.4 During the course of appellate proceedings, bills and vouchers showing sale/purchases were also produced. Such bills/vouchers were also produced

before the A.O also during assessment proceedings. There is a reasonable inference that the appellant was doing sale/purchase of auto tyres during the relevant period. The cash deposits and withdrawals are found to be in the range of Rs.4,000/- to Rs.50,000/-.

{5.5} Taking into the facts and circumstances of the case following 3 alternatives have emerged;

1. Scenario No.1: Treat the entire cash found deposited in the undisclosed bank account as unexplained u/s 69 of the Act and tax accordingly. (undisclosed income; Rs. 36,14,384/-)

2. Scenario No.2: Take the cash receipts as business receipts and accordingly estimate gross Profit rate as under;

i. At the rate of 8% of the gross receipt as per section 44AD then the income comes to Rs.2,89,150/-

ii. If The Hon'ble High Court of Gujarat in the case of CIT vs President Industries as relied upon in the Hon'ble ITAT Delhi bench judgment in the case of I.T.A. No. 2410/Del/2013 Assessment year: 2009-10 Shri Kayyum Ahamed is followed then 12% of Gross Profit rate is to be added. It means, in relevant case the addition on account of undisclosed income would be estimated at Rs.4,33,726/-.

2. Scenario no.3: Relying on the following judgments,

1. *IT(SS)A No. 178 to 182/Ahd/2009*

[Asstt.Year: 2003-2004, 2004-2005, 2005-2006, 2006-2007 and 2007-2008]

MI. Tirupati Construction Company

2. *IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD, "B" BENCH*

IT ANo.1155/Ahd/2011

[Asstt.Year: 2007-2008]

Smt. Manjulaben Champaklal

3. *IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI*

ITA no. 893, 894, 895, 896 & 1487/Mum.l2011

(AYs : 2003-04, 2005-06, 2006-07, 2008-09 & 2007-08)

3. *Mr. Alpesh B Gada*

In the Income Tax Appellate Tribunal

Delhi Bench : A: New Delhi

ITA No. 1159/Del/2011

Assessment year 2005-06

If we treat the cash receipts as business receipts and take the peak cash of the bank accounts i.e PNB-014S000100595294, Rs2,25,951/-{26/05/2008) as the unexplained income and tax it accordingly. Estimated undisclosed income would be Rs.2,28,951/-

{5.5.1} Scenario No.1 would be unreasonable as it would mean that entire receipts is taken as the income.

{5.5.2} Scenario NO.3 is also not found to be reasonable in the present case as cash Withdrawal were found almost simultaneously and very frequently.

{5.5.3} That leaves Scenario No.2 as the most reasonable scenario in determining the profit in the present case. In this regard it is worthwhile to take a cue from the judgment in the case of THE INCOME TAX APPELLATE TRIBUNAL (DELHI BENCH 'D " NEW DELHI) I.T.A. No. 2410/Del/2013 Assessment year: 2009-10 Shri Kayyum Ahamed,

Date of pronouncement: 22.05.2015

During the year under consideration, the assessee claimed that due to fault in the data in computer, the balance sheet and P & L account prepared and submitted to income tax Department contained wrong figures. We find that the A.O. on the basis of the figures contained in Form 26AS had cornered the assessee and, therefore the assessee had Prepared revised P & L, account declaring reconciled turn over and also claimed revised expenses. The A. O. without considering the increase in expenses, made the addition of entire turnover whereas the fact remains that if there was concealed turnover, there must have been some concealed expenses also which must have been incurred' and the A. O. should have considered the claim of expenses also. Though the assessee did not furnish vouchers and bills for the expense yet the AO

should have taken guidance from the provisions of Section 44AD which provides determination of net profits on the basis of 8% of gross receipt in the case of small traders. From the figures of turnover of assessee, we find that assessee also falls in the category of small traders and his undisclosed income should have been calculated on the basis of certain percentage on undisclosed turnover. The Hon'ble High Court of Gujarat in the case of CIT vs President Industries as relied upon by Ld. AR. placed at paper book page 45 has held that the amount of undisclosed sales by itself cannot represent the income of the assessee and the sales only represent price received by seller of goods but for achieving of such sales, it had already incurred the cost. The above case law relied upon by Ld. AR. squarely covers the facts and circumstances of the case, therefore, following the Hon'ble Gujarat High Court we hold that entire turnover cannot be added to the income of assessee and profits embedded in the turnover can only be taxed. The assessee did not produce vouchers / bills to support the increase in expenditure in his revised P & L account. Therefore, instead of 8% of turnover to be included as profits on undisclosed turnover, we hold that an amount equivalent to 12% of turnover be included in the income of the assessee. In view of the above, the A O. is directed to delete the addition on account of unrecorded turnover and instead, make an addition equivalent to 12% of undisclosed turnover.

In the present case, although the appellant has not disclosed the income from the business in her return of income filed for A Y 2009-10 and it is only after the AO has unearthed the undisclosed bank accounts and

confronted with the facts, that the appellant had disclosed it before the AO. But later in the assessment proceedings bills and vouchers-were produced before the AO, although the bills/vouchers do not contain any names etc. Therefore, I am of considered view that relying on the Hon'ble Gujarat High Court judgment in the case of CIT vs. President Industries, it is reasonable that the appellant is taxed at the rate of 8% of gross receipt under section 44AD of the Act. I have also taken into account the fact that the appellant is a part time businesswoman and this is the first year of her business venture and bills/vouchers were produced. Accordingly, taxable income from business is estimated at Rs.2,89,150/."

{6}. In the result, the appeal is partly allowed.

7.1 After going through the findings of the Ld.CIT(A), as aforesaid, I find that in the present case, the assessee has not disclosed the income from the business in her return of income filed for AY 2009-10 and it is only after the AO has unearthed the undisclosed bank accounts and confronted with the facts, that the assessee had disclosed it before the AO. But later in the assessment proceedings bills and vouchers were produced before the AO, although the bills/vouchers do not contain any names etc. Therefore, Ld. CIT(A) has rightly relied on the Hon'ble Gujarat High Court judgment in the case of CIT vs. President Industries, and held that it was reasonable that the assessee is taxed at the rate of 8% of gross receipt under section 44AD of the Act. I further find that Ld. CIT(A) has taken into account the fact that the assessee is a part time businesswoman and this is the first year of her business venture and bills/vouchers were produced. Accordingly, taxable income from business was rightly estimated at Rs.2,89,150/ by the

Ld. CIT(A) which does not need any interference on my part, hence, I uphold the same and dismiss the ground raised by the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 31/8/2016.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 31/8/2016

SR BHATNAGAR

Copy forwarded to: -

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

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By Order,

ASSISTANT REGISTRAR