

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.3792/Del./2014
Assessment Year 2009-2010

Shri Jitender Gupta, New Delhi.PAN AEGPG6477D C/o. R.B. Arora & Co. C.As 38/6, West Patel Nagar, New Delhi.	vs.	The ITO, Ward – 26 (4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta & Shri Somil Aggarwal, Advocates.
For Revenue :	Shri Naina Soin Kapil, Sr. DR

Date of Hearing :	01.08.2019
Date of Pronouncement :	05.08.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-26, New Delhi, Dated 22.04.2014 for the A.Y. 2009-2010 on the following grounds:

1. *“That the Commissioner of Income-Tax (Appeals) had erred, both in law, as-well-as in facts of the case in up-holding addition of Rs.35,76,900/- ignoring, explanation of the Appellant and mis-appreciating the facts in an arbitrary manner. The reasons recorded by the CIT(Appeals) are not borne by records.*
2. *That the Commissioner of Income-Tax (Appeals) had erred both in law as-well-as in facts of the case in confirming addition of Rs.5,42,000/- as unexplained cash deposits in bank account of the Appellant.*
3. *That the Commissioner of Income-Tax (Appeals) had erred both in law as-well-as in facts of the case in up-holding addition of Rs.5,12,000/- on account of deposits, by cash and cheque, in bank account of brother of the Appellant namely Mr. Rakesh Gupta.*
4. *That the Ld. Commissioner of Income-Tax (Appeals) erred both in law as well as in facts of the case in up-holding addition of Rs.4,90,000/-, the amount of*

deposits in bank account of the miner daughter of Appellant namely Kanika Gupta.

5. That the Commissioner of Income-Tax (Appeals) had erred both in law as- well-ass in facts of the case in making addition of Rs.86,598/- on account of alleged net profit being less than 8% of gross turnover.

6. That the authorities below had erred both in law as well as in fact of case in disallowing deduction under section 80C of the Income-Tax Act, 1961 for payment of life insurance premium.”

1.1. Earlier this appeal of assessee were dismissed for default. However, by allowing M.A. of the assessee, appeal was restored.

2. Briefly the facts of the case are that assessee filed return of income declaring income of Rs.1,91,940/-. The source of income attributed to retails trader maintaining no accounts books..On receipt of AIR information that the assessee had deposited cash to Rs.52,17,300/- in account with Axis Bank Ltd., a questionnaire under section 143(2)

was issued. In the absence of explanation regarding the nature and source of deposits, A.O. made the addition under section 68 of the IT Act of Rs.52,17,300/-.

3. The assessee challenged the addition before the Ld. CIT(A) and it was contended that assessee is in the business of trading of waste paper. This business was originally evolved and carried by his father and after his death, it was succeeded by the assessee. This business is purely done on a street basis. The assessee receives waste paper from rag pickers who collect waste paper from various places in bicycle and sell on cash basis only. As this process is purely based on cash basis, the assessee also makes sell in cash to some other persons. The Assessee deposits the cash in Bank on regular basis. Since assessee was not in good health, therefore, he could not attend the proceedings and only C.A. appeared before A.O. The assessee due to ill-health could not produce the documentary evidences, therefore, assessee made a request for admission of additional evidences under Rule 46A of the I.T. Rules. The Ld. CIT(A) called for the remand report from

the A.O. who has filed the remand report and did not object to the admissibility of the additional evidences. The Ld. CIT(A) considering the explanation of assessee and remand report of the A.O. found that assessee made deposits in cash in various accounts for which assessee has given explanation that amounts have been received on account of sale of waste papers and cash received from Mr. Manish Kumar, cash received from partnership firm Mr. Susheel Jain. There was another joint account with wife of assessee in which similar explanation have been given, but, explanation of assessee was not accepted. The other explanation of assessee that there was joint account with brother of assessee and amount was available on sale of property was not accepted in absence of any evidence. The joint account with daughter of assessee was also not accepted and in case of wife and daughter income was also clubbed under section 64(1) of the I.T. Act. The Ld. CIT(A) rejected the explanation of assessee and on the turnover applied 8% profit and computed the business income of assessee. Since assessee had disclosed profit of

Rs.1,91,940/-, therefore, balance of Rs.86,598/- was added. The Ld. CIT(A) ultimately confirmed the addition on account of unexplained cash credit to the extent of Rs.52,07,498/-. The claim of assessee under section 80C was also disallowed for want of evidence.

4. We have heard the Learned Representatives of both the parties and perused the material on record. Learned Counsel for the Assessee contended that due to ill-health of the assessee, the assessee could not produce the documentary evidences. He has submitted that A.O. without discussing anything in the assessment order and nature of the deposits in bank account, made the addition on estimate basis. He has submitted that assessee has several joint accounts which belong to the family members, therefore, such additions could not be made in the hands of the assessee. He has submitted that assessee is dealing in waste papers only and as such he could not have earned the huge income as computed by the A.O. He has submitted that assessee is willing to produce the documentary

evidences and explanation before A.O, therefore, matter may be remanded to the file of A.O.

5. On the other hand Ld. D.R. though relied upon the Orders of the authorities below, but, fairly stated that since it was an ex-parte assessment order, therefore, matter could be remanded to the A.O. for fresh consideration considering the facts of the case.

6. After considering the rival submissions, we are of the view that matter requires reconsideration at the level of the A.O. Assessee is in business of trading of waste paper. The entire business is depending upon cash purchase and cash sales. The A.O. should have consider the nature of business of assessee and should have consider that there were joint accounts with family members of the assessee and matter should have been enquired into whether the cash deposited in the joint accounts belongs to the other family members as well. Since no detailed enquiry have been done at the assessment stage and addition is made merely in the absence of assessee and that assessee

explained that due to his ill-health, the evidences could not be produced before A.O, therefore, in our view, one chance could be given to assessee to explain the matter in issue before A.O. supported by documentary evidences. In view of the above discussion, we set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to re-decide the grounds of appeal so raised by the assessee above, by giving reasonable, sufficient opportunity of being heard to the assessee.

7. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th August, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.