

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 6882/DEL/2019**  
**[Assessment Year: 2016-17]**

Manish Kumar Mittal, 262/263, Nawada Bazar, Najafgarh, New Delhi-110043	<u>Vs</u>	Income-tax Officer, Ward-43(2), New Delhi
PAN-AGDPM6625		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>None</b>	
<b>Department represented by</b>	<b>Shri Om Parkash, Sr. DR</b>	
<b>Date of hearing</b>	<b>19.02.2024</b>	
<b>Date of pronouncement</b>	<b>20.02.2024</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-15 New Delhi, dated 18.06.2019, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

*“1. That the CIT(Appeals) Learned Erred in confirming the Addition made by Ld. Assessing Officer in making addition of Rs. 571,276/- as unexplained money in spite of the fact that the same had already been explained as cash-in-hand out of the business profits of Rs. 614,567/- declared u/s 44AD of the Act in the return of income filed.*

2. *That the CIT(Appeals) Learned Erred in confirming the Addition made by Ld. Assessing Officer in assuming the cash-in-hand of assessee's business as unexplained in spite of proper disclosures in the return of income and in the absence of any supportive evidence to the contrary, the addition made is totally bad in law and merely based up on his surmises and conjectures. that under facts and circumstances of the case, the Ld. Assessing Officer erred in assessing genuine Cash balance in hand of business the as unexplained, merely based upon conjectures. surmises and*

3. *That the appellant craves leave to add, alter or withdraw any ground/s of appeal at the time or before the hearing of the appeal.”*

2. The only effective ground of appeal is against sustaining the addition of Rs. 5,71,276/- as unexplained money.

3. At the time of hearing no one attended the proceedings on behalf of the assessee. It is seen from the record that on earlier two occasions also no one attended the proceedings on behalf of the assessee. On earlier occasions the assessee had sought adjournment on one ground or the other. Therefore, looking to the conduct of the assessee the appeal is taken up for hearing in the absence of the assessee and is being decided on the basis of the material available on record.

4. In respect of the grounds of appeal, learned DR supported the orders of authorities below and submitted that there is no infirmity into the orders of the lower authorities as the assessee failed to support its claim of cash on hand.

5. I have heard learned DR and perused the material available on record. The assessee before the lower authorities had stated that the source of cash deposit was

out of cash in hand. I find that learned CIT(A) has sustained the addition by observing as under:

*“4. DECISION : The main contention of the appellant is that it is not new in the part of assessee to filed belated return u / s \* 139(4) as has been done in current year. It is claimed by the AR that the assessee had been filing belated return in past also. The AR has further submitted that the assessee had a turnover of Rs. 76,48,900/- and the return has been filed u / s 44AD (presumptive taxation).*

*The contention of the Appellant has been considered and the order of AO has also been perused. The case of the appellant belongs to assessment year 2016-17 only. The limit for eligibility u / s 44AD was Rs. 60 ,00,000/- only. Therefore, the case of the appellant does not fall within the provisions of section 44AD. The limit of Rs. 1 Cr. was increased by the Finance Act, 2016 (w.e.f 01.04.2017). Therefore, the assessee was required to maintain books of accounts and prove the availability of cash in hand. Secondly, the appellant cannot be allowed to seek the shelter of provisions of section 139(4), as a law abiding person is by and large, supposed to file Return of Income within the provisions of section 139(1). Moreover, the assessee has claimed cash in hand of Rs. 5,71,276/- as on 31.03.2016, which he was not able to prove before the AO, despite affording multiple opportunities by the AO as mentioned on page 1 of his order. During the course of appellate proceedings also, the appellant has not been able to prove the existence of this cash in hand as on 31.03.2016. Considering the facts and circumstances of the case, I do not find any reason to interfere with the findings of the AO and accordingly the addition of Rs. 5,71,276/- made by the AO is hereby confirmed.”*

5.1 From the order of the learned CIT(A) it is clear that the assessee’s claim regarding cash in hand was rejected but without giving any reason for the same. If the assessee’s contention is that it had turnover exceeding the limit u/s 44AD, the learned CIT(A) ought to have taken action in accordance with law. However, he merely sustained the addition made by the AO. Therefore, the claim of the assessee

regarding business transaction in cash is not adverted by the lower authorities by giving a clear finding. Therefore, looking to the totality of the facts assessee having cash in hand cannot be rejected. Therefore, the impugned addition is hereby deleted. Grounds raised by the assessee are allowed.

6. The appeal of the assessee is allowed.

Order pronounced in open court on 20<sup>th</sup> February, 2024.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**\*MP\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**