IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI

Before Sh. Aakash Deep Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1874/Del/2018 : Asstt. Year : 2011-12

M/s. Sneh Developers Pvt. Ltd., 57, First Floor, Khizrabad, New Friends Colony, New Delhi	Vs	DCIT, Circle-24(1), New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AADCS1796D		

Assessee by : Sh. S. Krishnan, Adv.
Revenue by : Sh. K. A. Manu, Sr. DR

Date of Hearing: 11.05.2022		**Date of Pronouncement: 30.06.2022**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Assessee against the order of the ld. CIT(A)-28, New Delhi dated 26.12.2017.

2. The Assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in passing a completely non-speaking order, returning findings without reference or discussion of material, and mechanically repeating the AO's version.

2. On the facts and the circumstances of the case and in law, the CIT(A) erred in arbitrarily estimating 15% of the Assessee's receipts as income for the year, without any basis or reasoning.

3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that any undisclosed income had been earned by the Assessee, despite it being pointed out to him that all of the receipts had suffered deduction of tax at source.

4. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming rejection of books of account without any reference to the said books of account, or pointing out any specific defect therein.

5. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming addition u/s.68 in a sum of Rs.10,00,000/-.

6. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not even giving credit for tax deducted at source while estimating the income."

3. As per the AO, the assessee has not filed return of income and hence notice u/s 148 of the Income Tax Act, 1961 has been issued owing to cash transactions exceeding Rs.10,00,000/-. The AO held that the assessee has not given any details with regard to the cash deposits of Rs.10,00,000/-. Hence, the amount has been added u/s 68 of the Act. Further, the assessee had credits of Rs.2.94 Cr. as per Form 26AS and since the source of income is not established. The AO made addition of the amount reflected in the Form 26AS.

4. On appeal, the ld. CIT(A) vide his order dated 26.12.2017 confirmed the action of the AO in adding Rs.10,00,000/- u/s 68 as the assessee has failed to furnish any submission explaining the source of cash deposits (para 6.2). Further, the ld. CIT(A) keeping in view the facts that the assessee has not filed return of income, issue of notice u/s 148, failure of the assessee to

maintain books of accounts as per Section 44AA and Section 44AB, non-cooperation during the assessment proceedings as well as the remand proceedings, adverse remarks given in the audit report and keeping in view the arguments of presumptive taxation held that it was fair and reasonable to estimate the profits @ 15%.

5. Aggrieved the assessee filed appeal before us.

6. We have gone through the paper book filed consisting of 48 pages, containing Auditor's Report, balance sheet, P&L account. At page no. 22, we find that the assessee is facing criminal cases u/s 138 of N.I. Act on 8 accounts and civil suit on 2 accounts, report of the AO indicating that the assessee has failed to utilize opportunities given and also at page no. 35 brought out in congruencies noted by the Auditors in the notes to account. At page no. 40, we find the arguments of assessee filed before the ld. CIT(A) to consider a net profit @ 10% in contracts and 2% on liquor business. The case relied upon by the assessee in CIT Vs. Shishu Pal Singh Yadav of Hon'ble Allahabad High Court has also been examined. The case of DCIT-CC-3, Hyderabad Vs. S.N. Construction 11 TMI 717 (ITAT Hyd.) has also been perused. Hence, keeping in view, the entirety of the facts and circumstances, we hold that justice would be well served by directing the revenue to estimate the profits @ 8%.

7. With regard to the cash deposits of Rs.10,00,000/-, the ld. AR has vehemently argued that since the amounts have been estimated, no other addition can be sustained. However, we find that the arguments of the ld. AR cannot be supported as the cash

deposits are not corroborated with any receipts of the business and any cash withdrawals proving the same. Hence, we unequivocally hold that the cash deposits cannot be treated as the integral part of the receipts reflected in Form 26AS. Ergo, the order of the ld. CIT(A) is affirmed on the issue of addition u/s 68 of the Act pertaining to cash credits.

8. In the result, the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on 30/06/2022.

Sd/-

(Aakash Deep Jain)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 30/06/2022

Subodh Kumar, Sr. PS
Copy forwarded to:

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

ASSISTANT REGISTRAR