

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.714/Asr/2019
Assessment Years: 2011-12**

Sarabjeet Singh S/o Sh. Bhajan Lal R/o Vill& P.O. Basiala, Tehsil Garhshankar Distt. Hoshiarpur. [PAN:-CUUPS7616E] (Appellant)	Vs.	ITO, Ward-4, Hoshiarpur (Respondent)
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Appellant by	Sh. Rakesh Joshi, Adv.
Respondent by	Sh.Ghansham Sharma, Sr. DR.

Date of Hearing	15.09.2022
Date of Pronouncement	20.09.2022

ORDER

Per:-Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Jalandhar, [in brevity the Id. CIT(A)] bearing appeal no. CIT(A)-1/Jal/10291/2018-19, date of order 25.09.2019, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2011-12. The impugned order was originated from the order of the Id. Income Tax

Officer, Ward-4, Hoshiarpur (in brevity the AO) order passed u/s 154 of the Act, date of order 14.12.2018.

2. The brief fact of the case that the assessee is a trader & filed his return u/s 139(1) by taking the benefit of presumptive scheme u/s 44AD of the Act. During the F.Y. 2010-11 related A.Y. 2011-12 the turnover was 15,50,000/- & declared total income of Rs.1,40,880/-. The notice u/s 148 was issued for depositing the cash in assessee's bank account amount of Rs.12,66,500/-. Accordingly, the notice u/s 133(6) was issued for verification of transaction. The assessee's claim was that the amount was deposited in the bank account, out of his gross receipt from the business. After depositing the cash, the assessee issued cheque to the party for purchasing of material. The ld. AO without considering the assessee's submission had adjusted the withdrawn from bank with deposit of cash, had determined the cash deposit in bank account amount to Rs. 12,44,880/-. The ld. AO had wrongly determined total income of Rs.25,12,800/- in the assessment order passed u/s 143(3)/147. The assessee filed a rectification petition u/s 154 and the demand was rectified and the addition was made Rs.12,44,880/- with total income of the assessee. The assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld.AO.

3. Being aggrieved assessee filed an appeal before us.

4. The Id. Counsel for the assessee filed a written submission on 11.07.2022 which is kept in record. As per the Id. Counsel the assessee deposited cash in the bank account out of his gross receipt from the business. The Id. Counsel also submitted the bank account which is enclosed with paper book. As per the perusal of the bank account, it is clear that the cash was deposited in different dates in different amounts and the respective payment was made through banking channel, APB- page 1 to 5.

4.1 The assessee further relied on the order of the **Hon'ble High Court of Punjab & Haryana in the case of CIT vs. Surinder Pal Anand[2010] 192 Taxman 264 (Punjab & Haryana)**, held that;

“Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax @ 8% of the gross receipt itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had nonexus with the gross receipts.”

5. The Id. Sr. DR vehemently argued and relied on the order of the revenue authorities. As per the order of Id. CIT(A) the Id. Sr. DR has mentioned that the assessee was not registered under the State in Direct Tax and no bills and vouchers

was produced and the payment was not linked with the party. But no contrary judgment was produced before the bench.

6. We heard the rival submission relied on the documents available in the record. Respectfully considered the judgment of the Hon'ble High Court of P & H, the assessee had availed the presumptive scheme u/s 44AD during filing his return. The assessee has no liability to maintaining the books of account as per the provision of the Act. In the case of Hon'ble High Court of Allahabad in the case of **Commissioner of Income-tax-I, Kanpur v. Nitin Soni** [2012] 21 taxmann.com 447 (All.) holding that ;

“The very purpose and idea of enactment of provision like section 44AE is to provide hassle free proceedings. Such provisions are made just to complete the assessment without further probing provided the conditions laid down in such enactments are fulfilled. The presumptive income, which may be less or more, taxable. Such an assessee is not required to maintain any account books. This being so, even if, its actual income in a given case, is more than income calculated as per sub section (2) of section 44AE, cannot be taxed.”

Respectfully considered the judgments of Hon'ble Apex Court, the assessee had properly submitted through his counsel that the said amount was paid from his business receipt. The benefit should be allowed the assessee for availing section

44AD for non-maintaining the books of account. Considering the ratio decidendi of the judgments we are setting aside the orders of revenue authorities. Accordingly, the addition made by the AO amount of Rs.12,44,880/- is quashed.

7. In the result, the appeal of the assessee bearing appeal no.ITA No-714/Asr/2019 is allowed.

Order pronounced in the open court on 20.09.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order