

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA No.5514/Del/2016
Assessment Year : 2009-10**

Sandeep Sharma, D-5/212, 2 nd Floor, Awadh Complex, Laxmi Nagar, Delhi. PAN : AQTPS 5071 Q	Vs.	ITO, Ward 70(4), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri Adhir Samal, &
Ms. Apoorva Bhardwas, CA
Respondent by : Shri S. K. Jain, Sr.DR
Date of hearing : 02-02-2017
Date of pronouncement : 16-02-2017

ORDER

PER S.V. MEHROTRA, A.M :

This is an appeal filed by the assessee against the order dated 26.08.2016 passed by the Commissioner of Income Tax (Appeals)-28, New Delhi, u/s 147 of the Income Tax Act, 1961 (in short "the Act") relating to assessment year 2009-10.

2. Brief facts of the case are that assessee had e-filed return of income declaring net taxable income of Rs.2,58,650/-. Notice u/s 148 was issued during the assessment proceedings. The Assessing Officer noticed that many credit entries were appearing in the bank statement of the assessee.

He directed the assessee as to why the cumulative credit of Rs.2,99,60,030/- including the opening balance of Rs.30,05,970/- be not added to the income and also required the assessee to explain the sources of the deposit with Punjab National Bank, Laxmi Nagar. After considering the assessee's submissions, the total income was determined at Rs.15,55,480/- by Assessing Officer vide his order dated 25.03.2013, after making addition on the basis of peak credit of Rs.10,68,655/- and commission of Rs.2,28,174/- as per computation given in the assessment order. Ld. CIT(A), while partly allowing the assessee's appeal, restricted the addition only to peak credit. Being aggrieved, the assessee is in appeal before the Tribunal and has taken the following grounds of appeal :-

"1. That the ld. Commissioner of Income Tax (Appeals) has erred in law and on facts, in upholding the addition made by the ld. Assessing Officer of Rs.10,68,655/- in respect of peak credit and as such the addition of Rs.10,68,655/- may please be deleted.

2. That the appellant craves leave to add, alter, delete & modify any of the ground of appeal at the time of hearing."

3. At the time of hearing, ld. counsel for the assessee filed a copy of Tribunal's order in assessee's own case for assessment year 2008-09 in ITA No.142/Del/2012, order dated 22.07.2015, wherein, the Revenue had taken following grounds of appeal :-

“On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in:-

- 1. Reducing the addition of Rs.4,29,98,561/- to Rs. 4,39,985/- rightly made by the A.O. on account of unexplained cash credits in assessee's bank account.*
- 2. Directing the A.O. to compute the income of the assessee as commission income without any substantiating evidence against the A.O's finding that the amount under dispute is unexplained income of the assessee.”*

4. Ld. counsel for the assessee submitted that the Tribunal, after considering all the aspects in detail, directed the Assessing Officer for *de-novo* assessment. He submitted that since the facts are similar in the current year, therefore, the matter may be restored back to the file of the Assessing Officer. Ld. DR did not object to the prayer of the assessee.

5. I have considered the submissions of both the parties and perused the record of the case. It is not disputed that facts in the current year are similar to assessment year 2008-09. I find that Tribunal in assessee's own case has observed as under :-

“7. We have heard the rival submissions and perused the material on record. We find that the Assessing Officer made the addition of Rs.4,29,98,561/- u/s 68 of the Act, on the ground that the assessee was not able to furnish the explanation regarding the nature and source of cash and other deposits and held the amount as unexplained. We find that the ld. CIT (A) has simply accepted the admission of the assessee that he was providing accommodation entry for commission @ 0.25% to 0.50% or more in cash and that being his profit or income should only be taxed and not the entire amount deposited in his bank account. Ex-consequent, ld. CIT (A) estimated the income of the assessee @ Rs.1/- per Rs.100/- and calculated the income as Rs.4,39,985/- along with other income of assessee which is reflected in his return. The Revenue is aggrieved by the said impugned order of the ld. CIT (A). In this case, we find that the AO issued first notice dated 06.08.2009. Pursuant to it, ld. AR of the assessee, Shri Pawan Kedia appeared on 24.12.2009 and thereafter, we find that several notices/ questionnaire were

issued to the assessee/AR, who did not bother to respond. Only after show cause notice u/s 271(1)(b) was issued on 01.07.2010, the assessee came up with partial details. We find that assessee's statement was recorded on 29.10.2010 & 22.11.2010, and thereafter, when the assessee was asked to come on 26.11.2010 for further examination, he did not turn up. Thereafter, we find that the AO completed the assessment on 16.12.2010, u/s 144 of the Act by stating the non-cooperation conduct of assessee. Later, we find that the assessee contended before the Id. CIT (A) that he had sent a letter dated 16.12.2010, wherein he has explained and admitted his business of providing accommodation entries, which could not have been acted upon by the AO because he passed the order on 16.12.2010, so the assessee wanted the said letter to be admitted as evidence as per Rule 46A of the Income-tax Rules, 1962. In the aforesaid back-ground, we find that the following facts emerge from the proceedings before the AO :

- (a) The assessee had a proprietary concern and was the Director of two companies. The assessee does not know who the other Directors in the said companies are, namely, M/s. Prolon Marketing Pvt. Ltd. and M/s. Ja Gang Plastics (India) Pvt. Ltd.;*
- (b) He does not know who deposited the amounts in his account in Punjab & National Bank; and*
- (c) He does not divulge anything about providing accommodation entries etc before the AO till the assessment order is passed.*

So, we find that the AO felt helpless because assessee did not disclose anything before him, so he resorted to section 144 assessment, without resorting to any investigation as to where the money deposited in assessee's bank account is being transferred and where the money trail ends. Whereas, we find that CIT(A) after going through the written submissions of the assessee, without seeking a remand report from AO, comes to the conclusion that modus-operandi of the assessee was that first, cash was deposited in the proprietary concern account of assessee in Punjab National Bank ; and in the second stage, it was transferred by the assessee through banking channel to two companies wherein he is the Director ; and in the third stage, the other two Directors, namely, Shri Mukesh Gauam and Shri Chandra Prakash Bhardwaj used to issue cheques to the entry seekers, thus the cash deposited in bank is back in the hands of the depositors. However, we find this modus operandi does not come out of the written submission or emerge from the records before us. We are unable to understand how the CIT (A) accepted the modus simply accepting the version of the assessee without at least calling for the bank statement of the two companies wherein he is the Director to verify whether the contention of the assessee saying that he is only an accommodation entry provider is correct or not; or by calling for remand report and find out to whom accommodation entries were given etc. In the said scenario, we set aside the order of the CIT (A) and remand the matter back to the file of the AO for de novo assessment. Needless to say, adequate opportunity may be granted to the assessee to put forth his case before the AO. The AO shall not be influenced by any of the observations which we have made above and has to pass

the assessment order in accordance to law, untrammelled by any observations by us.”

6. Therefore, it would be proper and in the interest of justice that for the current year also the matter be restored back to the file of Assessing Officer for *de-novo* averment as directed in assessment year 2008-09. I direct accordingly.

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

Order pronounced in the open court on this 16th day of February, 2017.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated : 16-02-2017.

Sujeet

Copy of order to: -

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

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi