

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA NO. 1732/MUM/2017 : A.Y : 2011-12

Shri Jignesh Sureshchandra Desai Vs. ITO – 32(2)(1), Mumbai
B-501, Mahavir Darshan, LT Road, (Erstwhile ITO-25(1)(1)]
Dahisar (E), Mumbai 400 068 (Respondent)
PAN : AACPD9842P (Appellant)

**Appellant by : Shri Bhupendra Shah
Respondent by : Ms. N. Hemalatha**

**Date of Hearing : 26/07/2017
Date of Pronouncement : 22/09/2017**

ORDER

The captioned appeal by the assessee is directed against the order of the CIT(A)-44, Mumbai dated 24.01.2017, pertaining to the Assessment Year 2011-12, which in turn has arisen from the order passed by the Assessing Officer dated 31.12.2013 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, although assessee has raised multiple Grounds of appeal, but the solitary grievance is against the action of the CIT(A) in

sustaining the addition of Rs.4,90,333/- as unexplained cash credit u/s 68 of the Act.

3. In brief, the relevant facts are that the assessee is an individual who is deriving income from house property, brokerage income and income under the head 'other sources'. In the course of assessment proceedings for the instant assessment year, the Assessing Officer referred to an AIR information showing cash deposits totalling to Rs.15,73,800/- made by the assessee in the savings bank account maintained with New India Co-operative Bank Ltd. On being asked to explain, assessee pointed out that he is maintaining two savings bank accounts; one with New India Co-operative Bank Ltd. and another with DCB Bank. The assessee submitted that the cash deposits were out of available cash in hand and also the withdrawals made from the bank accounts. The Assessing Officer, however, made a peak calculation of the deposits and added a sum of Rs.4,90,333/- to the returned income as unexplained cash credit u/s 68 of the Act. Before the CIT(A), assessee made detailed submissions, both on facts and in law, and contended that the addition was not maintainable. Such submissions of the assessee have indeed been reproduced by the CIT(A) in para 4.2 of his order. The CIT(A), however, upheld the addition of Rs.4,90,333/- made by the Assessing Officer, as according to him, the nature and source of the cash deposits have not been satisfactorily explained by the assessee. Against such an action of the CIT(A), assessee is in further appeal before the Tribunal.

4. Before me, the learned representative for the assessee vehemently pointed out that both the lower authorities have not appreciated the facts in the proper perspective inasmuch as assessee was maintaining a regular cash book and during the entire year had enough cash balance to justify the deposits in the bank account. The learned representative pointed out that the said aspect has not been considered and the explanation furnished by the assessee has been unjustly rejected by the lower authorities.

5. On the other hand, the Id. DR appearing for the Revenue contended that merely because there was adequate cash balance in the cash book would not justify the deposits and, therefore, the addition has been rightly made by the lower authorities on the basis of the peak credit of deposits.

6. I have carefully considered the rival submissions. Having perused the orders of the authorities below, it clearly emerges that the explanation of the assessee has been completely brushed aside without establishing any infirmity. Notably, assessee has been consistently asserting that the cash deposits in the bank account are out of cash in hand available, which was justified with reference to the daily cash book maintained. The CIT(A) has made a bland assertion that the cash deposits are not fully explained by perusal of the entries in the cash book, but there is no reason pointed out for not accepting the entries made in the cash book. Therefore, considering the entirety of the facts and circumstances of the case, I find that the addition has been made

on mere surmises and conjectures, which is hereby directed to be deleted.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 22nd September, 2017.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 22nd September, 2017

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai