

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

**ITA No.1424 /Del/2017
Assessment Year 2010-11**

Ajay Jain 195/2, Prem Gali, Punja Sarif, Kashmiri Gate New Delhi	Vs.	ITO Ward-35(5) New Delhi
PAN-AAEPJ6165D		
(Appellant)		(Respondent)

Assessee by :	Sh. V.K. Jain, CA
Respondent by :	Sh. T. Vasanthan, Sr. DR

सुनवाई का तारख/Date of Hearing : 04/10/2017
घोषणा का तारख/Date of Pronouncement: 05/10/2017

ORDER

PER B.P. JAIN, A.M.

This appeal of the assessee arises from the order of learned CIT(A)-12 New Delhi vide order dated 27.1.2017 for the assessment year 2010-11. The assessee has raised the following grounds of appeal:-

- 1) *That the order of CIT (A) U/s 250 of Income-tax Act is bad in law and facts of the cases.*
- 2) *That the order of CIT (A) U/s 250 of Income Tax Act is not justified to assess Income Rs. 10,24,401/- against the declared income of Rs. 5,06,380/-*
- 3) *That the order of CIT (A) U/s 250 of Income Tax Act is not justified in assessing the Income from undisclosed source amounting to Rs. 6,84,334/- applying the Peak Method against the declared Income u/s 44AF of I.T. Act, 1961*
- 4) *That the order of CIT (A) U/s 250 of Income Tax Act is not justified to appreciate that the Assessing officer has not been given any show cause notice that why the Income from Cash deposits into various banks being assessed on peak method instead of Sec.44AF of the I.T. Act,*

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5) That the order of CIT (A) U/s 250 of Income Tax Act is not justified to appreciate the A.O. in calculating the peak on all the banks whereas the followings Banks have been considered in Original Return and source of Income was from Salary, Short Term Capital Gain and Other Sources.

É Oriental Bank of Commerce A/c No. 02552010052930

É HDFC Bank A/c No. 04811530001376

6) That CIT (A) order U/s 250 of Income Tax Act is not justified to appreciate the method of calculating the peak and peak should be calculated taking the following Bank Accounts together:

É ICICI Bank A/c No. 025501510927-Preet Vihar

É ICICI Bank A/c No. 033001002607-Preet Vihar

É ICICI Bank A/c No. 072301500045-Preet Vihar

7) That the order of CIT (A) U/s 250 of Income Tax Act is not justified to appreciate the order of assessing officer in initiating the Penalty u/s 271 (1)(c) of the I.T. Act, 1961.

8) That the appellant crave leave to add, amend, alter or delete all or any of the grounds before the hearing.

2. The brief facts of the case are that the assessee is having five bank accounts for which no explanation was submitted and the AO has taken peak of all the five bank accounts and added to the income of the assessee. The learned CIT(A) confirmed the action of the AO.

3. I have heard the rival contentions and perused the facts of the case.

4. The finding of the AO in this regard in para 9.1 are as under:-

“Examination of the various bank accounts reveals that the assessee has been frequently deposited the cash and withdrawing the cash from these bank account. In such a scenario, it will be most appropriate to add the peak balance available in each bank after deducting the opening balance as on 01.04.2009. The position of peak balances in each bank account is given below:-

Sl No	Name of the Bank/Account No.	Date	Peak Balance	Opening Balance as on 01.04.2009	Balance
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1.	ICICI[072301500045]	15.09.2009	3,07,302.00	61,700.00	2,45,602.00
2.	ICICI[025501510927]	28.04.2009	25,968.00	2,786.10	23,182.00
3.	ICICI[033001002607]	11.06.2009	4,22,514.00	1,90,956.00	2,31,558.00
4.	Oriental Bank of Commerce [02552010052930]	08.02.2010	28,862.00	870.00	27,992.00
5.	HDFC[04811530001376 J]	Cash Deposited	1,56,000.00	Nil	1,56,000.00
		Total			6,84,334.00

In HDFC Bank account, total cash deposited has been added since other deposits by cheque are on account of loans taken for which confirmations have been filed by the assessee.

The onus is on the assessee to submit the source and evidence as requisitioned, which could have enabled me to verify that the cash deposited was out of the sale proceeds. In the case of CIT v. Motor General Finance Ltd. [2002] 254 ITR449 (Delhi), it has been held that where the assessee fails to produce documents, adverse inference can be drawn to the effect that if the documents produced they would have gone against the assessee in terms of section 114 of the Evidence Act, 1872. For the sake of clarification, it is mentioned that this case had gone to the Hon'ble Supreme Court, wherein the Apex Court in 267 ITR 381 (SC) sent back the matter to the High Court as certain facts had not been considered. However, the Apex Court did not comment upon the presumption raised under section 114 of the Evidence Act. In Cooper Engineering Ltd. v. CIT [1982] 135 ITR 597 (Bom), it was held that where details were not furnished by the assessee, the claim could be disallowed on the ground that assessee had not established the expenditure. In view of the discussions in earlier paragraphs, addition of Rs.6,84,334.00 is made on account of income from undisclosed sources. Since the assessee has furnished inaccurate particulars of his income resulting escapement, of income, penalty proceedings u/s 271 (1) (c) are to be initiated separately.

5. It is a matter of fact and is not under the dispute that the assessee has not given the details of the cash deposits and that of the retail business and therefore there is no basis to claim the assessee has not been given any show cause notice in spite of many opportunities having been given. As regards the submission of the learned AR before me that two bank accounts having the salary income etc., should not be taken into consideration while calculating the peak has no basis since the assessee has withdrawn the cash and only unexplained item in these two accounts and all other three accounts have been taken into consideration and the

peak has been calculated in a very reasoned manner and confirmed by the learned CIT(A). Thus, I do not find any infirmity in the order of the learned CIT(A). Thus all the grounds of the assessee are dismissed.

6. In the result, appeal of the assessee in ITA No. 1424/Del/2017 is dismissed.

Order pronounced in the open court on 05.10.2017.

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER

Dated: 05/10/2017
SH

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation	
2.	Date on which the draft is placed before the Dictating Member	
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	