

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCHES : "E" NEW DELHI ]**

**BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I. T. Appeal No. 4668/Del/2014  
Assessment Year : 2010-11.**

Shri Manish Thakur,  
1479 – S. P. Mukherjee Marg,  
D e l h i – 110 006.

Vs.

Income Tax Officer,  
Ward : 29 (2),  
New Delhi.

**PAN : ABVPT 2768 C**

**(Appellant)**

**(Respondent)**

Assessee by : Shri R. S. Singhvi, C. A.;

Department by : Shri Rajesh Kumar, Sr. D. R.;

Date of Hearing : 29.05.2017.

Date of Pronouncement : 26.07.2017

**ORDER**

**PER I. C. SUDHIR, J. M. :**

The assessee has questioned first appellate order on the following grounds :-

“ 1. (i) That on the facts and circumstances of the case, the Commissioner of Income Tax (Appeal) was not justified in

computing the income of the assessee at Rs.13,55,726/- by applying profit rate of 15% by gross receipt and in sustaining addition of Rs.9,28,000/- over and above income declared and surrendered by the appellant.

(ii) That estimation of income is highly arbitrary and in total disregard to details of deposit and withdrawal in the bank account;

(iii) That even on the basis of principle of peek credit, total addition works out to Rs.3,63,923/- and as such there is no ground or basis to compute the income at Rs.13,55,726/-.

2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

3. The relevant facts are that the assessee, an Individual, had filed its return of income at Rs.2,38,191/-. The sources of income were from firm M/s. Tag Overseas and M/s. Thakur Brothers as partner and income from proprietary business. Both the firms were engaged in the business of processing material and health and fitness equipments. The assessee also claimed engaged in the proprietary business of supply of

ice cream packing products such ice cream cups, straws and other related items. The assessee submitted that the supplies are made throughout India and as a matter of business and commercial expediency, credit activities are through cash only. The Assessing Officer noted that there were frequent cash deposits in the bank accounts of the assessee maintained with Punjab National Bank and ICICI Bank. The Assessing Officer noted that cash deposits in the accounts were made from places spreading over different parts of the country and on such cash deposits, cash handling charges were deducted by the banks. The Assessing Officer called upon the assessee to explain the cash deposits to the extent of Rs.90,38,173/- in the above bank accounts. In response the assessee submitted that these were sale proceeds of his business, but the Assessing Officer did not agree with the explanation of the assessee on the basis that details of the business, items dealt in, places of purchase and sale, bills and vouchers were not filed. The Assessing Officer accordingly made addition of Rs.90,38,173/- under section 68 of the Act in the hands of the assessee. The Id. CIT (Appeals) has, however, directed to compute the income of the assessee at the rate of 15% on the gross receipts in the savings bank account i.e. 15% of Rs.90,38,173/- resulting in Rs.13,55,726/-, noting that it shall be inclusive of amount of

Rs.63,803/- returned in the return of income and Rs.3,63,923/- surrendered before the Assessing Officer. This action of the ld. CIT (Appeals) has been questioned by the assessee.

3.1 In support of the grounds, the ld. AR reiterated the submissions made before the ld. CIT (Appeals) :-

*" The assessee is an individual and return was filed declaring income of Rs.2,38,191/-. The sources of income are from firm M/s Tag Overseas and M/s Thakur Brothers as partner and <sup>1</sup> income from proprietary business. Both the firms are engaged in the business of food processing material and health and fitness equipments. The appellant is also engaged in proprietary business of supply of ice cream packing products such as ice cream cups, straws and other related items. The supplies are made throughout India and as a matter of business and commercial expediency; trading activities are mainly through cash only.*

*The appellant has duly declared income from firm and profit from proprietary business as per details given in the computation of income. There is no dispute about income from firm. However, the assessing officer considered entire cash deposited in the bank account as income of the appellant without appreciating the nature of transaction*

*through bank account. The Assessing Officer has totally disregarded the facts of the case and submission made from time to time. There is no dispute above business activities as the various transactions reflected in bank account and corresponding withdrawals are part of the business activities. Further, Assessing Officer having accepted the income from other sources to the extent of Rs. 64,500/- which is mainly related to the business activity as clarified vide letter dated 19.03.2013, it is not open to consider entire cash deposit in the bank account as unexplained and in the nature of income from undisclosed sources.*

*As per details extracted above, the total cash deposit is to the extent of Rs.77,00,289/-, whereas Assessing Officer has wrongly considered cash deposit to the extent of Rs.90,38,173/-. In support of above position, copies of bank statements are enclosed. It will be appreciated that various cash deposits are at different places throughout India as per details given in the enclosed annexure.*

*Further, these deposits are in small denominations and clearly support and corroborate the fact that these are part of business activities.*

<i>Bank Accounts</i>	<i>Opening Balance</i>	<i>Cash Deposit</i>	<i>Cash withdrawal</i>	<i>Cheque deposit</i>	<i>Cheque withdrawal</i>	<i>Closing Balance</i>
<i>ICICI Bank A/c No. 031601501702</i>	<i>1,00,085</i>	<i>45,20,727</i>	<i>43,18,540</i>	<i>7,68,675</i>	<i>9,67,428</i>	<i>1,04,204</i>
<i>ICICI Bank A/c No. 03160500986</i>	<i>37,010.17</i>	<i>22,70,580</i>	<i>20,41,930</i>	<i>26,200</i>	<i>2,89,207.45</i>	<i>802.42</i>
<i>PNB A/c No. 01617000100252682</i>	<i>0</i>	<i>9,08,982</i>	<i>11,48,500</i>	<i>3,67,697</i>	<i>1,23,704</i>	<i>4,483</i>
<i>Total</i>		<i>77,00,289</i>	<i>75,08,970</i>			

*The assessing officer has neither commented on nature of deposits, place of deposits and denomination of deposits and corresponding withdrawals and as such presumption about these deposits being in the nature of income from undisclosed sources is highly arbitrary and misplaced. Further assessing officer has totally disregarded corresponding withdrawals and closing balance in the respective accounts.*

*Merely because books of accounts are not maintained, there cannot be presumption that these credits are in the nature of undisclosed income. The action of the assessing officer is not in the conformity with facts of the case and without appreciating nature of deposits and corresponding withdrawals.*

*As clarified above all these credits are part of trading activities and only profit element or peak credit could be considered as income.*

*The assessee is having two accounts in ICICI Bank and one account in Punjab National Bank. Particulars of deposit and withdrawals are given as under.*

*We are pleased to make reference to following case laws*

*Man Mohan Sadani v. Commissioner of Income Tax [2008]*

*304 ITR 52 (Madhya Pradesh High Court)*

*The entire sale proceeds cannot be regarded as profit or treated as undisclosed income of the assessee. On the contrary, it is the net profit rate which has to be adopted in such cases.*

*Commissioner of Income Tax v. President Industries [2002]*

*258 ITR 654 (Gujarat High Court)*

*Held, dismissing the application for reference, that the amount of sales could not represent the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the goods; only the realization of the excess over the cost incurred could form part of the profit included in the consideration for the sales. Since there was no finding to the effect that investment by way of incurring the cost in acquiring the goods which were sold had been made by the assessee and that investment was also not disclosed, only the excess over the cost incurred could be treated as profit.*

*Commissioner of Income Tax v. Balchand Ajit Kumar [2003]*

*263 ITR 610 (Madhya Pradesh High Court)*

*Held, that the total sale could not be regarded as the profit of the assessee. The net profit rate as laid to be adopted and once it was adopted it could not be said that there was perversity of approach. Whether the rate was low or high would depend upon the facts of each case.*

*The assessing officer has made reference to decision of P&H High court in the case of ZAVERI DIAMONDS v. CAT (P&H) 20 TAXMANN.COM 462, which was confirmed by Hon'ble Supreme court vide 25 taxmann.com 552 (SC).*

*In fact, the above case also support our contention that deposit in itself could not be income of assessee. In the above said case, the assessing officer considered various cash deposits in the bank account as part of accommodation entries and commission income in respect of the same was considered as income to the extent of 2% of total deposit and the above said finding was confirmed by High Court and Supreme Court.*

*“ On certain dates cash deposits in the bank had exceeded Rs.20 lacs. Like on 23.2.1998 cash deposited in the bank was Rs.20 lacs whereas on 24.2.1998 there was a cash deposit of Rs.47 lacs. Cash deposit entries of Rs.53 lacs on 26.2.1998 and Rs.57 lacs on*

*27.2.1998 were also found in the bank account. Besides, several other alarming factors were observed in the assessment order by the assessing authority to conclude that the amount of purchases as declared by the assessee amounting to Rs.16,27,86,745/- was not on account of any business carried on in the name of Zaveri Diamond but was a device adopted by the assessee whereby it was receiving 2 to 3% commission on the alleged purchases. Taking 2% as the commission, the total commission income was calculated to be Rs. 32,55,735/- .”*

*We have already declared profit to the extent of Rs.63,808/- as income in respect of such sales in the computation of income. Further as discussed and advised, peak credit to the extent of Rs.3,63,923/- in respect of alleged profit was also surrendered vide letter dated 19.03.2013, but assessing officer has totally disregarded our letter dated 19.03.2013.*

*Further, principle of real income is well established and it is not open to consider or contemplate hypothetical or notional income in an arbitrary and distorted manner. There is complete lack of mind and appreciation of facts by AO and as such whole basis of addition is illegal and unwarranted.*

*FEROZPUR FINANCE CO. Vs. CIT*

*124 ITR 619 (P & H)*

*Income tax is levied on income, whether the accounts are maintained on mercantile system or on cash basis. If income does not result at all, there cannot be levy of tax. Even if an entry of hypothetical income is made in the books of account, where the income does not result at all as there is neither accrual nor receipt of income, no tax can be levied.*

*GODHRA ELECTRICITY CO. Vs. CIT (1997)*

*225 ITR 746 (S.C.)*

*Income Tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of income or its receipt; but the substance of the matter is the income. If income does not result at all, there can not be a tax, even though in book-keeping, an entry is made about a hypothetical income, which does not materialize.*

*In the light of facts of the case, analysis of deposits and corresponding withdrawals in the bank account, available closing balance and legal principle clarified above, addition is required to be confirmed at Rs.3,00,115/- (Rs.3,63,923 – 634,808). ”*

3.2 The ld. AR contended further that estimation of income by the ld. CIT (Appeals) is highly arbitrarily and in total disregard to details of

deposit and withdrawals in the bank account. In similar business earning of income is around 3 to 4% of the gross receipt. Even on the basis of principle of peak credit, total addition works out to Rs.3,63,923/- and as such, there was no basis to compute the income at Rs.13,55,726/- by the ld. CIT (Appeals). The ld. AR also referred page Nos. 1 to 73 of the paper book, which are copies of summarized details of deposit and withdrawals in bank accounts, bank statements, state wise deposit details and copy of letter dated 19.3.2013 along with copy of profit and loss account in respect of undisclosed receipts.

3.3 The ld. Sr. DR, on the other hand, placed reliance on the orders of the authorities below.

3.4 Having gone through the orders of the authorities below and material available on record, we find that there was no dispute about income from the firm. The dispute is about cash deposits of Rs.90,38,173/-, which as per the assessee is Rs.77,00,289/- claimed as from business of the assessee. There is no dispute that onus lies upon the claimant to establish the genuineness of the claim. The objection of the Assessing Officer remained that the assessee could not furnish evidence that the cash deposits in question were made from business

and the assessee could not file bills and vouchers in support thereof. In such circumstances the ld. CIT (Appeals) has preferred to estimate the profit at Rs.13,55,726/- by applying 15% on the gross receipts of the deposits Rs.90,38,173/-. The Revenue has not questioned this action of the ld. CIT (Appeals) before the Tribunal. The assessee has questioned the action of the ld. CIT (Appeals) in estimating the profit by applying profit rate of 15% of the gross receipt and sustaining the addition of Rs.9,28,000/- over and above income declared and surrendered by the assessee. The ld. AR has contended before the Tribunal that assessee was also engaged in the proprietary business of ice cream such as ice cream cups and straws and other related items. The supplies were made throughout India and as a matter of business and commercial expediency; trading activities were mainly through cash only. He contended that the estimation of income by the ld. CIT (Appeals) is highly arbitrarily and in total disregard to the details of deposit and withdrawals in the bank account. Even on the basis of principle of peak credit, total addition works out to Rs.3,63,923/- and as such there is no basis to compute the income at Rs.13,55,726/-.

3.5 So far as action of the Assessing Officer is concerned, we are of the view that entire cash deposited in the bank account cannot be

treated as income of the assessee without appreciating the nature of transactions through bank account. There is no dispute that various transactions reflected in bank account and corresponding withdrawals were part of the business activities, especially when the Assessing Officer has accepted the income from other sources to the extent of Rs.64,500/- mainly related to business activities. The Id. CIT (Appeals) has also not shown any basis for estimation of income by applying profit rate of 15% on the entire receipts in the saving bank account.

4. Considering the entirety of facts and circumstances of the present case discussed above, we are of the view that application of 7% of the gross receipts of Rs.90,38,173/-, subject to correction by the Assessing Officer, as to whether the correct figure as per the assessee is Rs.77,00,289/- will be reasonable to work out the profit of the assessee, which would be inclusive of the amount of Rs.63,803/- returned in the return of income and Rs.3,63,923/- surrendered before the Assessing Officer. The grounds are thus partly allowed.

5. In result, appeal is partly allowed.

6. The order is pronounced in the Open Court on: 26<sup>th</sup> July, 2017.

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**( I. C. SUDHIR )**  
**JUDICIAL MEMBER**

Dated : the 26<sup>th</sup> July, 2017.

\*MEHTA\*

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT (A);
5. DR;

BY ORDER

ASSISTANT REGISTRAR

	Date
Draft dictated on	26.07.2017
Draft placed before author	26.07.2017
Draft proposed & placed before the second member.	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	

I. T. Appeal No. 4668/Del/2014  
Assessment Year : 2010-11.

Kept for pronouncement on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	