

**IN THE INCOME TAX APPELLATE TRIBUNAL : 'A' BENCH, KOLKATA**

**Before : Shri P.M. Jagtap, Accountant Member and  
Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No. 2404/Kol/2013** A.Y 2011-12

**Deputy Commissioner  
of Income-tax,  
CC-XXVIII,  
Kolkata.**

[Appellant]

**Vs.**

**Chandra Prakash Banthia**  
Prop: M/s. Sardar Stores  
PAN: ADPPB7714C

[Respondent]

Appellant by : Shri Sallong Yaden, Addl.CIT, Id. Sr.DR  
Respondent by : Shri A.K. Upadhyay, Advocate, Id.AR

Date of Hearing : 13-09-2017  
Date of Pronouncement : 06-12-2017

**ORDER**

**Shri S.S.Viswanethra Ravi, JM:**

This appeal by the Revenue is against the order dt. 12-07-2013 of the CIT-A, 10, Kolkata for the A.Y 2011-12.

2. Ground no. 1 is relating to addition made on account of difference between income surrendered and returned income to an extent of Rs.90,773/-.

3. Brief facts relating to the issue are that a search & seizure operation was conducted u/s. 132 of the Act on 13-01-2011 at the business premises of the assessee. Notices u/s. 143(2) and 142(1) of the Act were issued. In response to which the assessee appeared and filed written submissions and documents in response to questionnaire issued u/s. 142(1) of the Act. During the course of examination, the AO found that the assessee declared a sum of Rs.1,00,00,000/- as undisclosed income whereas in the return of income it was found that the assessee declared a sum of Rs.99,09,227/-. For non submission of any explanation, the AO added

the sum of Rs.1,00,00,000/- under the head 'income from business' by his order dt. 21-03-2013 passed u/s. 143(3) of the Act.

4. Aggrieved, the assessee filed appeal before the CIT-A. Before him the assessee contended that the assessee filed a letter with the Assistant Director of Investigation stating that income surrendered was on best estimate basis and it is subjected to minor variations and prayed to delete the impugned addition made in this regard.

5. The CIT-A considering the above deleted the said addition.

Relevant portion of CIT-A order is reproduced herein below:-

*"In the first instance the appellant submits that the income of Rs.1,00,00,000/- surrendered by him formed part of the business income declared at Rs.99,09,227/-. The AO failed to appreciate that the appellant apart from the business of handling cash was also involved in other business activities including running a departmental store. The net outcome of the profits & losses from all the business activities was Rs.99,09,927/-. The AO, however, arbitrarily presumed that the appellant's only source of income during the year was handling of cash which yielded commission income of Rs.1,00,00,000/- and thereby assessed the same to tax. On perusal of the computation of income along with the Profit & Loss Account for the year ended 31<sup>st</sup> March 2011 it would however be amply clear that the appellant had offered income of Rs.1,00,26,000/- with reference to entries in seized documents and the statement recorded u/s. 132(4). The AO erroneously presumed that the business income of Rs.99,09,227/- comprised only of income from the business of handling cash. The appellant submits that the returned income of Rs.99,09,227/- represented net income arrived at after setting off incidental and administrative expenses incurred for earning the same. All these facts are evident from the fact of the Profit & Loss Account and the computation of income for the Financial Year 2010-11 filed along with the return of income, copy of which is attached and marked as Annexure A. The AO therefore, grossly erred in arbitrarily enhancing business income from Rs.99,09,227/- to Rs.1,00,00,000/-. The appellant thus prays that the AO be directed to kindly assess the business income as declared by him in the return of income.*

*The appellant further submits that no cogent basis was given by the AO to enhance the income from Rs.99,09,227/- to Rs.1,00,00,000/-. In Para 2.1.1 of the impugned order the AO has discussed in detail the manner adopted by him for arriving at the income of Rs.70,51,670/- from cash handling business. Neither in the course of assessment nor in the impugned order did the AO point any other instance which would even remotely indicate earning of any additional undisclosed income. Even in the course of search apart from cash of Rs.27,84,190/- no other unexplained assets or investments were found. In the circumstances set out in the foregoing it confounds the appellant as to on what basis was the income assessed at Rs.1,00,00,000/-. It is not a case that the appellant did not offer to tax the income of Rs.1,00,00,000/- surrendered under Section 132(4) of the Income-tax Act, 1961. In the submissions filed before the Asst. Dir.Of Investigation and the Assessing Officer, it was clearly stated that the income computed with reference to the seized material was lower than the income surrendered and it was only to honour the statement given in the course of search that the sum of Rs.1,00,00,000/- was being offered to tax. This fact has not been disputed by the Assessing Officer. Even the AO in his impugned order categorically mentioned that the income from cash handling was only Rs.70,51,670/- and no other source of undisclosed income was pointed out by the Assessing Officer. The said disclosure formed part of his Profit & Loss Account for the year ended 31<sup>st</sup> March 2011. The business income declared at Rs.99,09,927/- inter alia included undisclosed income of Rs.1,00,26,000/-. The business income of Rs.99,09,927/- was arrived at after adjusting the establishment & administrative expenses incurred during the year. The details of the said expenses were also produced before the Assessing Officer and relevant documents were filed. The AO did not point out any specific infirmity or falsity in the expenses incurred by the appellant during the relevant AY 2011-12. In the circumstances it is submitted that business income was rightly declared and Rs.99,09,927/- and the AO's action of enhancing the business income of Rs.1,00,00,000/- without giving any cogent logic or reasoning was bad in law and in violation of the provisions of the Income-tax Act, 1961.*

*The appellant submits that the AO arbitrarily enhanced the income from Rs.99,09,227 to Rs.1,00,00,000/- despite the fact that the commission income which the AO himself computed and assessee was Rs.70,51,670/- was much lower than the income returned by the assessee. The appellant submits that it was not a case of retraction from statement recorded under Section 132(4) of the Income-tax Act, 1961. The appellant had only offered the surrendered income of Rs.1,00,00,000/- to tax in fact the amount actually disclosed in the return was Rs.1,00,26,000/-. It is submitted that an assessee is not bound to declare the exact same amount, as disclosed in the amendment u/s. 132(4), as the income returned and there may be deviations/variations having regard to the income/loss incurred in other business activities. In such circumstance the AO cannot bring to tax the difference between the income surrendered and income finally returned solely relying on the statement u/s. 132(4) and without bringing any corroborative material or evidence to support such addition. In the facts of the present case the AO with reference to the seized material was only able to ascertain undisclosed income of Rs.70,51,670/-. The appellant however in good faith and to honour the commitment to the Department, made through his statement recorded under Section 132(4) of the Income-tax Act, 1961 had offered Rs.1,00,26,000/- to tax which formed part of the declared business income of Rs.99,09,227/-. Complete break up of income earned during the year along with expenses incurred were filed in the course of assessment. The books of accounts and other relevant supporting documents/explanations were also furnished. No infirmity or falsity was pointed out in the books of accounts and other relevant evidences. The AO did not dispute or disapprove any specific instance of any expense debited in the Profit & Loss Account. The addition of Rs.90,773/- was made solely to cover the difference between the income surrendered and the business income finally returned. It is submitted that the difference of Rs.90,773/- assessed by the AO was factually as well as legally incorrect and deserves to be deleted."*

6. Before us the Id.DR relied on the order of the AO. On the other hand, the Id.AR supported the impugned order of the CIT-A in deleting the impugned addition and reiterated his submissions made before the AO as well as before the CIT-A that a letter was filed before the Asstt. Director of Investigation was that the assessee voluntarily disclosed income of Rs.1,00,00,000/- with reference to entries found in the seized documents and it is not final as it is made on the basis of estimation. The amount shown in the return of income is correct. The Id.AR submits that the AO without making any adverse remark in respect of the books of account and showing any defects thereon added the impugned difference is bad under law. He prayed to dismiss the ground(s) raised by the revenue.

7. Heard both the parties and perused the records. We find that the addition of Rs.90,773/- is the difference between the assessee's offered amount and returned amount. The CIT-A considering the submission in respect of said letter filed by the assessee before Asstt. Director agreed that the offered amount as disclosed is subject to minor variations. The CIT-A observed that the books of accounts and other relevant supporting documents and explanations were also

furnished and offered. No infirmity or falsity was pointed out in the books of accounts and other relevant evidences. The AO did not dispute or disapprove any specific instance of any expense debited in the Profit & Loss Account. The CIT-A found that the addition made by the AO is illegal and incorrect. The CIT-A examined the P & L account and other relevant details and found no defect and granted relief to the assessee in deleting the impugned addition. Therefore, we find no infirmity in the impugned order of the CIT-A and it is justified. Ground no. 1 raised by the revenue is dismissed.

8. Ground nos.(ii) to (v) are similar in nature relating to addition of Rs.41,62,010/-made u/s. 68 of the Act.

9. During the course of assessment proceedings the AO found that cash was credited in the account of assessee during the period 5-11-2010 to 13-01-2011. The assessee explained the objection raised by the AO that the cash was received during the year from his clients and at the same time the cash was paid by him to some other clients. The AO not accepted the submissions of assessee and failure to give complete identification particulars of the said clients, thereby added the said amount u/s. 69 of the Act by applying peak credit method.

10. Before the CIT-A, it was submitted that the assessee mainly engaged in the business of handling of cash on which commission @ 0.3% was earned. Therefore, the cash as noted by the AO in the account of assessee does not belong to assessee, but it belongs to various parties, who paid service charges and commission to the assessee for handling their cash. The assessee also contended that the AO already assessed the commission income of Rs.70,51,670/- and by computing the commission earnings the AO arrived at the income of assessee as on 25-11-2010 at Rs. 46,17,480/-, wherein impugned addition made on account of peak credit balance is part and covered by income in computing the commission earnings. The assessee also contended that the said addition is on peak credit

balance and the additions on commission income and peak credit balance cannot be simultaneously made.

11. Considering the above the CIT-A deleted the said addition by observing that there was no need to make further addition on account of unexplained peak cash balance by telescoping such income. The CIT-A placed reliance on the decision of Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co Vs. CIT reported in 123 ITR 457, which was followed by the Hon'ble Bombay High Court & Punjab & Haryana High Court in the cases of CIT Vs. Jawanmal Gemaji Gandhi reported in 151 ITR 353 and CIT Vs. Prem Chand Jain reported in 189 ITR 320 respectively. Relevant portion of CIT-A order is reproduced herein below:-

"11. I also find merit and substance in the alternate submission of the assessee. By AO's own admission, the assessee conducted activity of money handling throughout the financial year 2010-11; and, the commission from cash handling during the financial year 2010-11 was worked out by the AO himself at Rs.70,51,670/-. According to AO's own admission, the activity of cash handling and consequent earning of commission occurred evenly throughout the year. Going by AO's own hypothesis therefore the assessee's commission earning from the cash handling activity during the period 01-04-2010 to 24-11-2010 i.e. for 238 days works out to be Rs.45,98,075/-. No evidence was found by the Investigation Wing of the Department or by the AO that the income so earned during the period 04-04-2010 to 24-11-2010 was utilized elsewhere by way of investment or expenditure. In the circumstances, if the AO's presumption about earning of commission throughout the year is accepted at its face value and if it is accepted for the sake of argument that the entries recorded in the seized documents pertained to movement of assessee's own funds, even then, having regard to the fact that the AO himself assessed Rs.70,51,650/- as undisclosed commission income of the assessee for the entire period of 365 days, it was imperative that the set off was allowed in respect of the income, which the assessee earned during the period 01-04-2011 to 24-11-2010. If the commission of Rs.70,51,670/- is apportioned over a period of 365 days, then the commission income earned by the appellant during the relevant year before 25-11-2010 (on which date the peak of Rs.41,62,010/- appeared) works out to Rs.45,98,075/- which was in excess of the peak balance of Rs.41,62,010/- as on 25-11-2010. In this factual background, allowing the benefit of telescoping of such income, there was no need to make further addition on account of unexplained peak cash balance. The assessee's such alternative claim is supported by the judgment of the Supreme Court in the case of Anantharam Veerasinghaiah & Co vs CIT (123 ITR 457) which was followed by the Bombay High Court in the case of CIT vs Jawanmal Gemaji Gandhi (151 ITR 353) and also by the Punjab & Haryana High Court in the case of CIT vs Prem Chand Jain (189 ITR 320). Thus, viewed from any angle, the addition of Rs. 41,62,010/- made by the AO on account of alleged peak cash balance was factually as well as legally unjustified. The addition of Rs.41,62,010/- is therefore directed to be deleted."

12. The Id.DR relied on the order of the AO. He submits that the AO treated the entire cash as commission. On the other hand, the Id.AR of the assessee reiterated his same submissions as made before the CIT-A and challenged the action of the AO in making both the additions on account of commission as well as peak credit balance

and argued that both the additions simultaneously cannot be made and prayed to delete the same.

13. Heard rival parties and perused the record. We find that the assessee declared an amount of Rs.70,51,670/- as commission income and the AO did not accept such claim as the assessee did not furnish the names and other particulars of the persons from whom such commission income was received. But, however, taking into consideration the cash representing inflow as well as outflow the AO taxed the same under the head 'income from other sources' and the assessee accepted the same. It is pertinent to note that the AO did not believe the statement of assessee in respect of inflow and outflow to show the cash received by him and at the same time the cash was paid to some clients. For not offering proper explanation and by taking into consideration the seized documents the AO was of the opinion that it was possible that the outflow of cash was received by the assessee on subsequent date and proceeded to adopt the peak credit of the cash transactions. The AO has taken the peak balance on 25-11-2010 and added the said amount u/s. 69 of the Act. The contention of the assessee was that the said inflow and outflow are out of cash transactions between himself and clients and on which the assessee earned commission @ 0.3% and accordingly, a commission of Rs. 70,51,670/- was accepted by the AO. Again the AO cannot adopt the peak credit of the transactions on inflow and outflow cash transaction involving commission income. Therefore, in our opinion the AO made double addition on account of commission earned as 'income from other sources' and on the basis of inflow and out flow cash transactions the addition of Rs.41,62,010/- as unexplained investment u/s. 69 of the Act are not maintainable. Therefore, we find no infirmity in the impugned order of the CIT-A and accordingly, it is justified. Therefore, the grounds (ii) to (v) involving the same are dismissed.

14. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 06-12-2017

Sd/-  
**P.M. Jagtap**  
**Accountant Member**

Sd/-  
**S.S. Viswanethra Ravi**  
**Judicial Member**

Dated : 06-12-2017

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Applicant/Department : The DCIT, CC-XXVIII, Kolkata  
Aaykar Bhavan Poorva, 110 Shanti Palli, E M Bye Pass,  
4<sup>th</sup> Floor, Kolkata-107.
2. Respondent/Assessee: Shri Chandra Prakash Banthia Prop: Sardar  
Stores, Shop No. 3, 37 Canning Street, Kolkata-1.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order

Sr.P.S,  
Head of Office  
ITAT Kolkata