



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos. 406 & 407/CTK/2017

Assessment Years : 2012-13 & 2013-14

Income Tax Officer, Jeypore Ward, Jeypore	Vs.	Niranjan Swain, At: Gullipatna, PO: Umerkote, Dist: Nabarangpur
PAN/GIR No.AXNPS 3774 P		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, AR

Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 10/05/ 2018

Date of Pronouncement : 15 /05/ 2018

ORDER

Per N.S.Saini, AM

These are appeals filed by the revenue against the separate orders of the CIT(A)- 1, Bhubaneswar both dated 13.7.2017 for the assessment years 2012-13 & 2013-14, respectively.

2. The common ground involved in these appeals is that the CIT(A) erred in deleting the addition of Rs.50,00,000/- for the assessment year 201-2013 and Rs.44,66,000/- for the assessment year 2013-14 made by the Assessing Officer towards income from undisclosed sources.

3. The brief facts of the case are that the Assessing Officer observed that the assessee has maintained three bank accounts in his name. The



details of credits in the account for the assessment year 2012-13 are as under:

<i>Bank Name/ A/c No.</i>	<i>Cash deposit in Rs.</i>	<i>Cheque deposit in Rs.</i>	<i>Transfers in Rs.</i>	<i>Interest credited in Rs.</i>
<i>SBI, Umerkote 11258615760</i>	<i>2,00,000/-</i>	<i>2,51,951/-</i>	<i>68,500/-</i>	<i>588/-</i>
<i>ICICI Bank Ltd. 099501500002</i>	<i>1,76,88,034/-</i>	<i>17,34,000/-</i>	<i>1,51,084/-</i>	<i>31,146/-</i>
<i>ICICI Bank Ltd. 099501501002</i>	<i>98,31,000/-</i>	<i>4000/-</i>	<i>9,66,160/-</i>	<i>26,028/-</i>

4. Similarly, for the assessment year 2013-14, the details of credits are as under:

<i>Bank Name/ A/c No.</i>	<i>Cash deposit in Rs.</i>	<i>Cheque deposit in Rs.</i>	<i>Transfer in Rs. '</i>	<i>Interest credited in Rs.</i>
<i>SBI, Umerkote 11258615760</i>	<i>3,00,000/-</i>	<i>2,22,500/-</i>	<i>7,37,295/-</i>	<i>2,066/-</i>
<i>ICICI Bank Ltd. 09950150000 2</i>	<i>2,82,23,100/ -</i>	<i>69,48,695/-</i>	<i>35,800/-</i>	<i>29,995/-</i>
<i>ICICI Bank Ltd. 09950150100 2</i>	<i>95,38,000/-</i>	<i>40,500/-</i>	<i>17,38,515/ -</i>	<i>4,748/-</i>

5. The Assessing Officer asked the assessee to explain the sources and nature of such huge credits in bank accounts with evidence. In reply, the assessee stated that the deposits were out of withdrawals. The assessee filed written submission explaining the credits in the three bank accounts.



The explanation of the assessee was not acceptable to the Assessing Officer. The Assessing Officer was of the opinion that the assessee has withdrawn more than the deposits. He observed that due to large number of debit and credit entries appearing in the bank statements, the real/genuine income is camouflaged. The assessee was not able to give satisfactory explanation to each credit and debit entries. The Assessing Officer relied various case laws, wherein, it has been emphasized the point that peak credit method was the correct method of determining the income in case of unexplained cash credits. Therefore, the Assessing Officer after taking into consideration the peak credit in all the bank accounts together, has determined the unexplained cash deposit with ICICI Bank A/c No.099501500002 at Rs.50,00,000/- for the assessment year 2012-13 and Rs.44,60,000/- for the assessment year 2013-14 and added to the income of the assessee from undisclosed sources and added to the income of the assessee.

6. On appeal, before the CIT(A), the assessee submitted as under:

" All the deposits have come out of the earlier withdrawals. It is explained that the cash deposits in SBI account were made out of earlier occasions. This account was a cash credit account having over-drawal power up to Rs.80,00,000/- and the assessee had withdrawn sufficient amounts on earlier occasions to explain the subsequent cash deposits. The total cash deposits in SBI account amounted to Rs. 12,61,861/- as against total cash withdrawals of Rs.62,53,900/-. In one account with ICICI Bank bearing No.099501500002 the total cash deposits amounted to Rs.3,52,37,590/- whereas the total cash withdrawal amounted to Rs.3,94,02,000/-. Similarly, in another ICICI Bank account bearing No.099501501002, the total cash deposits amounted to Rs.1,13,21,764/- as against total cash withdrawals of



Rs.1,15,91,000/-. It is argued by the assessee that the business, the assessee is carrying on, i.e. "transport business", is a cash intensive business and frequent cash withdrawals are made which are deposited back if there is no requirement for payment. It is contended that the so-called peak credit method adopted by the AO is totally misleading and the addition based on the same should be deleted.

7. Similar submissions were made by the assessee for the assessment year 2013-14 except change in amounts.

8. After considering the submissions of the assessee, the CIT(A) deleted the addition for the assessment year 2012-13, by observing as under:

" 5. I have considered the facts of the case. The assessee has also submitted copies of all the bank accounts and consolidated cash withdrawal and deposit statement. The assessee has also produced a cash-flow statement (cash book) which shows that the cash deposits were made out of the cash withdrawals of the same or earlier dates from the same or another bank account. For instance, the total cash deposits on 7.12.2012 in all the accounts amounted to Rs.44,60,000/-. The total cash withdrawals before that date available with the assessee are found to be much more than the deposit amount. Similar is the situation in case of all the cash deposits. This is evident from the consolidated cash-flow statement and the copies of bank accounts lying on records. In the nature of business of the assessee, cash transactions are rampant and this is evident from the cash transactions in the bank accounts. Moreover, the so-called peak method adopted by the AO to quantify the unexplained deposits is neither logical nor intelligible. There is no justification for such a peculiar method adopted by the AO. In fact, the AO has not understood the peak credit concept at all. He has taken the highest deposit during the relevant previous year in a particular bank account and calculated the sum total of these deposits in all the bank accounts to arrive at the peak credit. In my opinion, this is not the way in which the peak is to be calculated. Moreover, when adequate cash withdrawals are there to explain the subsequent cash deposits, the AO should have accepted the explanation of the assessee and not proceed to make a huge addition in the assessment in the name of peak credit. Going by the actual facts of the case, I do not see any justification to make an addition in the name of peak credit especially when the deposits



are apparently explainable from out of withdrawals. In this view of the matter, the addition of Rs.44,60,000/- made by the AO on account of unexplained cash deposits is deleted."

9. Similarly, the CIT(A) deleted the addition for the assessment year 2013-14, observing as under:

"5. I have considered the facts of the case. The assessee has also submitted copies of all the bank accounts and consolidated cash withdrawal and deposit statement. The assessee has also produced a cash-flow statement (cash book) which shows that the cash deposits were made out of the cash withdrawals of the same or earlier dates from the same or another bank account. For instance, the total cash deposits on 7.12.2012 in all the accounts amounted to Rs.44,60,000/-. The total cash withdrawals before that date available with the assessee are found to be much more than the deposit amount. Similar is the situation in case of all the cash deposits. This is evident from the consolidated cash-flow statement and the copies of bank accounts lying on records. In the nature of business of the assessee, cash transactions are rampant and this is evident from the cash transactions in the bank accounts. Moreover, the so-called peak method adopted by the AO to quantify the unexplained deposits is neither logical nor intelligible. There is no justification for such a peculiar method adopted by the AO. In fact, the AO has not understood the peak credit concept at all. He has taken the highest deposit during the relevant previous year in a particular bank account and calculated the sum total of these deposits in all the bank accounts to arrive at the peak credit. In my opinion, this is not the way in which the peak is to be calculated. Moreover, when adequate cash withdrawals are there to explain the subsequent cash deposits, the AO should have accepted the explanation of the assessee and not proceeded to make a huge addition in the assessment in the name of peak credit. Going by the actual facts of the case, I do not see any justification to make an addition in the name of peak credit especially when the deposits are apparently explainable from out of withdrawals. **In this view of the matter, the addition of Rs.44,60,000/- made by the AO on account of unexplained cash deposits is deleted."**

10. Before us, Id D.R. relied on the orders of the Assessing Officer whereas Id A.R. supported the orders of the CIT(A).



11. We find that no specific error could be pointed out by the Id D.R. in the order of the CIT(A). The Id D.R could not bring any cogent and positive material on record to controvert the findings of the CIT(A) that there were adequate cash withdrawals to explain the subsequent deposits in the bank. Therefore, we find no good reason to interfere with the orders of the CIT(A). Hence, the grounds of appeal the revenue for both the assessment years are dismissed.

12. In the result, both the appeals of the revenue are dismissed.

Order pronounced on 15 /05/2018.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 15 /05/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Income Tax Officer, Jeypore Ward, Jeypore
2. The respondent: Niranjana Swain, At: Gullipatna, PO: Umerkote, Dist: Nabarangpur
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack