

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 5704/Del/2013
(Assessment Year: 2009-10)**

DCIT Central Circle-11, New Delhi.	vs	Rajvir Singh USB-107, Mandawali Fazalpur, Delhi. PAN No. ASAPS5417R
APPELLANT		RESPONDENT

Respondent/Revenue by	Ms. Meeta Singh, CIT DR
Appellant/Assessee by	None

Date of Hearing	14.06.2018
Date of Pronouncement	15.06.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 30.08.2013 passed by the Ld. CIT(Appeals)-XXXI, New Delhi for AY 2009-10.

2. The Grounds of appeal are as under:

1. *"The order of Ld.CIT(A) is not correct in law and facts.*
2. *On the facts and in the circumstances of the case, the Commissioner of Income Tax(Appeal) has erred in law and on facts in deleting protective addition of Rs. 37,02,97,998/- made by the AO on account of unexplained cash credit for providing accommodation entries.*
3. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."*

3. An action under section 133A of the Income Tax Act, 1961 was carried out in the case of assessee on 23.08.2008. Notice under Section 143(2) was issued on 24.09.2010. Thereafter, a questionnaire calling for information was

issued under Section 142(1) along with notice under section 143(2) on 10.08.2010. On 15.09.2011, a notice under Section 142(1) was issued requiring the assessee to submit copy of return of income filed for the Assessment Year 2009-10 along with computation chart and annexure to the return of income. No reply was submitted. Inspector from the office of the Assessing Officer was deputed to make enquiries and where about of the assessee at the address given. On 1.12.2011, the assessee attended the assessment proceedings. A notice u/s 143(2) was served upon him. On 05.12.2011, a written reply was filed by the assessee along with copy of return of income filed on 31.03.2010 declaring an income of Rs. 1,58,962/-. The Assessment Order was passed on 30.12.2011 making following additions/disallowances:

- i) Addition of Rs. 46,28,725/- on account of Commission Income.
- ii) Addition of Rs. 37,02,97,998/- on account of unexplained credits (protective basis).

4. Being aggrieved by the Assessment Order, the Assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the Assessing Officer has rightly made the addition of Rs. 37,02,97,998/-. Though the caption of the addition is mentioning the addition of unexplained credits in bank accounts and other documents on protective basis, the same addition is on substantive basis. Therefore, the CIT(A) erred in deleting this addition without going through the observations made by the Assessing officer in the Assessment Order.

6. None appeared on behalf of the Assessee. There is no adjournment application filed by the Assessee. The notice has been served duly upon the assessee by the Ld. DR. Therefore, we are taking up this appeal for hearing.

7. We have heard the Ld. DR and perused the records. The Assessing Officer held in Assessment Order in para 8 as follows:

“8. Addition of unexplained credits in bank accounts and other documents on Protective Basis

In his statements the assessee has admitted to have been providing accommodation entries to various persons/entities. Examination of the bank accounts of the entities/companies in control of the assessee reveals that substantial funds were credited to these bank accounts in the shape of cash through various bank clearings. Though the assessee has stated that these funds were credited to his bank accounts on account of cash received by him from various persons and on account of clearing from some other entities and belongs to the beneficiarie, but no details have been provided in this regard. In the absence of any specific details, it cannot be out-rightly accepted that the statement of the assessee is bonafide and beyond doubt. Therefore, it will not be unfair to consider the credits in various bank accounts in the control of the assessee as unexplained receipts of the assessee. Since the assessee has not submitted any details of evidence of funds credited to his accounts belonging to any other entity/person, the assessee has not discharged his liability to prove the genuineness of transactions within the provisions of section 68 of the Income Tax Act, 1961. Therefore, to protect the interest of Revenue for any such eventuality, the amount of unexplained credits, in the bank account and other documents impounded from the premises of the assessee, are assessed as undisclosed income, under Section 68, made by the assessee in the financial year 2008-09, relevant to the assessment year 2009-10 on protective basis. I am satisfied that the assessee failed to furnish true particulars of its income in the return of income filed, for the assessment year 2009-10 and concealed particulars of income, within the meaning of sub-clause (c) of sub-section (1) of section 271 of the Income Tax Act, 1961.

Addition made Rs.37,02,97,998”

The CIT(A) has merely on the submission that since Assessing officer himself admits that the assessee is in the business of providing accommodation entries the amount received by companies under his control cannot be that of the assessee. But, the CIT(A) conveniently ignored the finding of the Assessing Officer that the Assessee has not discharged his liability to prove the

genuineness of transactions within the provisions of Section 68 of the Income Tax Act, 1961. The Assessee at no point of time discharged its onus. The Assessee has not at all given any names from whom he has received the cash while depositing the same into the bank from time to time. Thus, the CIT(A) was not right in deleting this addition. Thus, this aspects should have been looked into by the CIT(A) and we set aside the order of the CIT(A) to that extent. We are remanding back this issue to the file of the CIT(A). Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In result, appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 15.06.2018

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 15.06.2018

*Kavita Arora

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14.06.2018
Date on which the typed draft is placed before the dictating Member	14.06.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	15.6.18
Date on which the fair order comes back to the Sr. PS/PS	15.06.18
Date on which the final order is uploaded on the website of ITAT	15.06.18
Date on which the file goes to the Bench Clerk	15.6.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	