

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 6142/MUM/2011  
Assessment Year: 2008-09**

Shri Kalpesh Jain, M/s Rajasthan Corporation, 62/63, Vithalwadi, 2 <sup>nd</sup> Floor, Kalbadevi Mumbai - 400002  PAN: AFHPJ5722Q	<b>Vs.</b>	The Income Tax Officer-14(1)(2), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri N.M Porwal (AR)

Revenue by : Shri Rajesh Kumar Yadav (DR)

Date of Hearing: 23/02/2018  
Date of Pronouncement: 17/05/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 06/07/2011 passed by the Ld. Commissioner of Income Tax (Appeals)-25, Mumbai, for the assessment year 2008-09, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee Proprietor of M/s Rajasthan Corporation engaged in the business of trading in cloth, filed its return of income for the assessment year under consideration declaring the total income of Rs. 99,811/-. The return was processed u/s 143 (1) of the Act. Subsequently, the case was selected for scrutiny and accordingly statutory notices u/s 143 (2) and 142 (1) were issued. In response to the said notices,

the authorized representative (AR) of the assessee appeared before the AO and filed the details such as computation of total income, profit and loss account, balance sheet, advance tax challans, TDS certificate etc. and explained the case. Since, the AIR report was received disclosing that the assessee has deposited cash amount of Rs. 19,84,400/- with the Cosmos Co-operative Bank, the AR was asked to file complete details in respect of the cash deposit with the said banks. The AR submitted that out of total deposit of Rs. 19,84,400/-, Rs/ 19,60,000/- was deposited at Hyderabad by Late Jawaharlal Jain (assessee's close friend) in connection of his business and the balance of Rs. 24,400/- was deposited by the assessee from his own sources. The AO asked to file relevant proof in support of the assessee's claim that the cash was deposited at Hyderabad and the same was withdrawn in Mumbai by Late Jawaharlal Jain for the purpose of his business. Accordingly, AR filed an affidavit of Shri Kishan Jain, son of Late Shri Jawaharlal Jain declaring that during the financial year 2007-08, his father had deposited cash of Rs. 19,60,000/- on various dates in SB account of Mr. Kalpesh B Jain with Cosmos Co-operative Bank, Zaveri Bazar Branch, Mumbai.

3. The AO further asked the AR to file copies of IT returns along with copies of bank statements, sale and purchases bills for the period, to establish that amount to Rs. 19,84,400/- was deposited and withdrawn from time to time. The AR filed copy of ITR for the A.Y. 2008-09 in which the total income had declared at Rs. 1,74,090/- and copy of computation of total income. The AO further issued show cause as to why the said cash deposit should not be treated as undisclosed income of the assessee and added to the total income u/s 69A of the Act. The AO after hearing the AR rejected the explanation and treated the entire amount as undisclosed income and added the same to the total income of the assessee u/s 69A of the IT Act holding that the assessee has failed to prove the genuineness of the transaction. Accordingly, the AO determined the total income of the assessee at Rs. 20,84,210/-.

4. In the first appeal, the Ld. CIT (A) confirmed the addition made by the AO and dismissed the appeal holding as under:

*“Under these circumstances, I have no hesitation to hold that the aggregate cash of Rs. 19,84,400/- deposited in SB account of the assessee represents his undisclosed and concealed income. Accordingly, the addition made by the AO is upheld in toto and all grounds of appeal relating to the issue are rejected. However, as stated herein above whole amount is unaccounted and undisclosed, the AO is free to examine credit entries by cheques and tax the same as per law if the same are unexplained. Similarly he should examine entries of preceding year and subsequent year and if found unexplained, should take action as per law.”*

5. Aggrieved by the order of Ld. CIT (Appeals), the assessee has preferred this appeal before the Tribunal on the following effective ground:-

*“On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming addition of Rs. 1984400/- made under section 69A of the Act. Provisions of the Act ought to have been properly construed and regard being had to facts of the case no such addition of Rs. 1984400/- should have been confirmed. Reasons assigned by him are wrong and insufficient to justify addition of Rs. 1984400 under section 69A of the Act.”*

6. Before us, the Ld. counsel for the assessee reiterated the contention of the assessee made before the authorities below. The Ld. counsel further submitted that since the assessee has established the genuineness of the transaction by submitting the affidavit sworn by the son of Late Jawaharlal Jain, who had made deposits in the account of the assessee on various dates. The Ld. CIT (A) ought to have deleted the addition. The Ld. counsel further submitted that since sh. Jawaharlal Jain has died, the assessee is not in a position to produce any other evidence to substantiate the assessee's contention. In view of the

facts and the circumstances of the case, the Ld. counsel further submitted that in alternative the addition may be restricted to the peak credit.

7. On the other hand, the Ld. Departmental Representative (DR) relying on the order of the authorities below submitted that since the assessee has failed to explain the credits by cogent and convincing evidence, the Ld. CIT (A) has rightly affirmed the findings of the AO and confirmed the addition. Hence, there is no infirmity in the findings of the Ld. CIT(A) to interfere with the same.

8. We have heard the rival submissions and also perused the material on record. The only grievance of the appellant/assessee is that the Ld. CIY(A) has wrongly confirmed the addition made by the AO. As per the statement of SB account No. 0210501012032 of Sh. Kalpesh B Jain (assessee) maintained with Co-operative Bank Ltd., Javeri Bazar Branch, Mumbai, an amount of Rs. 19,60,000/- has been deposited in the said account on different dates from 09.04.2007 to 24.04.2007. Simultaneously, an amount of Rs. 19,59,000/- has been withdrawn on different dates during the aforesaid period. The only evidence produced by the assessee to substantiate its claim is the affidavit filed by Sh. Krishan J Jain, son of Late Sh. Jawaharlal Jain. Therefore, in our considered opinion the evidence on record is not sufficient to accept the version of the assessee that the amount was deposited and withdrawn by late Sh. Jawaharlal Jain.

9. On the other hand, since Sh. Jawaharlal Jain is no more the assessee is not in a position to produce any other evidence in support of his contention. Taking into consideration the entire facts and the circumstances of the case and evidence on record we are of the considered view that the benefit of peak credit can be given to the assessee in this case. We therefore modify the impugned order and restrict the addition to peak credit. We accordingly direct

the AO to work out the peak credit on the basis of the statement of account furnished by the assessee and make addition.

In the result, appeal filed by the assessee for assessment year 2008-2009 is partly allowed for statistical purposes.

Order pronounced in the open court on 17<sup>th</sup> May, 2018.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 17/05/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai