

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 2666/Del/2018 : Asstt. Year : 2010-11**

Surender Singh Dahiya, House No. 60, Ground Floor, Gandhi Awas, Sector-12, Sonipat, Haryana	Vs	Income Tax Officer, Ward-4, Sonipat
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AIMP4620K</b>		

**Assessee by : Sh. H. S. Hooda, Adv. &**

**Sh. Pawan Attri, Adv.**

**Revenue by : Sh. Surendra Meena, Sr. DR**

<b>Date of Hearing : 03.10.2018</b>
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<b>Date of Pronouncement : 05.10.2018</b>
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**ORDER**

This is an appeal by the assessee against the order dated 05.02.2018 of  
1d. CIT(A), Rohtak.

2. Following grounds have been raised in this appeal:

*"1. On the facts and in the circumstances of the case and in law the Learned Commissioner of Income-tax (Appeals) Rohtak erred in holding that the assessee has failed in furnishing the documentary proof regarding various incoming and outgoing entries without appreciating that all the incoming and outgoing entries are related to the business of the assessee.*

*2. "On the facts and in the circumstances of the case and in law the Learned Commissioner of Income-tax (Appeals) Rohtak erred in creating a new peak of cash deposit in bank at Rs. 191199 and added in the return of income without considering the gross total income declared in the return of income at Rs,175490/-. The*

*addition made by the A.O. is arbitrary and liable to be deleted.*

*3. On the facts and in the circumstances of the case and in law the Learned Commissioner of Income-tax (Appeals) Rohtak did not considered the ground of appeals at Sr. 1 to 4 wherein challenging the reopening of case u/s 147 of the I.T. Act and reasons recorded by the AO were baseless and without jurisdiction.”*

3. Facts of the case in brief are that the AO issued the notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on the basis of AIR/CIB informations. In response, the assessee furnished copy of acknowledgment of Income Tax Return filed on 21.03.2011. However, the AO framed the assessment at an income of Rs.3,92,288/- by making the addition of Rs.2,32,693/- on account of Peak of cash deposits in the bank account and Rs.865/- on account of bank interest.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition made by the AO by observing that no documentary proof was furnished by the assessee regarding various incoming and outgoing entries in the bank account and those were related to the assessee's business income.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the AO passed *ex-parte* order and had not considered the opening balance in the bank account while working out the peak credit. It was further submitted that all the deposits in the bank account were related to the business of the assessee. Therefore, there was no justification for making the addition. It

was further submitted that all the documents were furnished before the ld. CIT(A) who had not considered the same in right perspective and wrongly mentioned that no document had been furnished regarding incoming and outgoing entries in the bank account. It was also stated that the ld. CIT(A) had also not allowed the benefit of opening balance amounting to Rs.2,23,243/- in the bank account.

6. In his rival submissions, the ld. Sr. DR supported the impugned order passed by the ld. CIT(A) and submitted that since the assessee could not give a plausible explanation before the ld. CIT(A), the addition made by the AO was rightly confirmed by the ld. CIT(A).

7. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO passed the assessment order *ex-parte* u/s 144 of the Act and the ld. CIT(A) had also not considered the application dated 18.04.2017 moved by the assessee under Rule 46A of the Income Tax Rules, 1962 as well as the submissions of the assessee that the opening balance of Rs.2,23,243/- was not considered by the AO while working out the peak deposits in the bank account. I, therefore, considering the totality of the facts deem it appropriate to remand this case back to the file of the AO for fresh adjudication in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

8. In the result, appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 05/10/2018)

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 05/10/2018**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**