



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI ' SMC' BENCH, RANCHI**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA Nos.131 & 132/Ran/2017
Assessment Years : 2009-2010 & 2011-12

Sri Prashant Kumar Singh, 34, Balajee Nagar, Chhota Govindpur, Jamshedpur	Vs.	ITO, Ward 2(1), Jamshedpur
PAN/GIR NoAKXPS 8880 M		
(Appellant)	..	(Respondent)

Assessee by : Shri Devesh Poddar, Adv
Revenue by : Shri A.K.Mohanty, JCIT

Date of Hearing : 26/11/ 2018
Date of Pronouncement : 27/11/ 2018

ORDER

These are appeals filed by the assessee against the separate orders of the CIT(A), Jamshedpur, both dated 21.2.2017 for the assessment years 2009-2010 & 2011-12.

2. In the assessment year 2009-2010, in Ground No.1 & 2 of appeal, the grievance of the assessee is that the CIT(A) was not was not justified in estimating the income at 8% of the receipts/turnover of the assessee.

3. The brief facts of the case are that the Assessing Officer observed that during the year under consideration, the assessee

deposited ₹2,00,668/- into the bank account No.9905 and ₹18,67,000/- in two bank account No.6762 with ICICI Bank, Bistupur, Jamshedpur on various dates. The assessee failed to explain the source of deposits. Therefore, the Assessing Officer treated the total cash deposit in the bank accounts as undisclosed income and added ₹20,67,668/- to the income of the assessee treating it as income from undisclosed sources.

4. On appeal, the CIT(A) held that he has gone through the order of the Assessing Officer, the remand report and submission of the assessee. He observed that the Assessing Officer has considered the nature of business as trading deposits for the assessment year 2010-2011 despite having passed the order u/s.144 of the Act of the Act and estimated the income on such deposit whereas the Assessing Officer has taken altogether different view in the assessment year under consideration. Based on the Assessing Officer's observation for the assessment year 2010-2011, he directed the Assessing Officer to treat the deposit as trade deposit and further directed to estimate the income therefrom at 8% of the total receipts, which comes to ₹1,65,413/- and thereby allowed relief of ₹19,02,255/-.

5. Ld A.R. of the assessee submitted copy of return filed under section 44AD of the Act and submitted that the assessee had shown turnover of ₹20,84,630/-, which was more than the amount deposited in bank of ₹20,67,668/- and, therefore, no separate addition by estimating the profit was called for. For this, he relied on the decision of Hon'ble P&H High Court in the case of CIT vs. Surinder Pal Anand, 242 CTR 61(P&H).

6. Ld D.R. on the other hand, relied on the order of the CIT(A).

7. I have considered the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer found that the assessee has made cash deposit of ₹20,67,668/- in two bank accounts maintained with ICICI Bank. The Assessing Officer observed that since the assessee failed to explain the source of deposits, he added the same to the income of the assessee under the head "income from undisclosed sources".

8. On appeal, the CIT(A) held that the deposits were trade deposits of the assessee and directed the Assessing Officer to estimate the income therefrom by applying the rate of 8% which worked out to ₹1,65,413/-.

9. Before me, the contention of Id A.R. is that the assessee has filed return of income for the year u/s.44AD of the Act by showing the turnover of ₹20,84,630/-- which was more than the cash deposit of ₹20,67,668/- in two bank accounts of the assessee with ICICI Bank and, therefore, no separate addition was required to be made to the income of the assessee by estimating the income by applying rate of 8%. For this, the assessee relied on the judgment of Hon'ble P&H High Court in the case of Surinder Pal Anand(supra), wherein, it was held as under:

"The assessee filed his return of income showing certain business income under section 44 AD. The AO did not accept the return and made an addition in respect of the cash deposited in the bank account during the year. On appeal, the Commissioner (Appeals) held that the assessee was not required to maintain regular books of account as the return had been filed under section 44AD and the turnover was below ₹40 lakhs. It was also recorded that since the cash deposits in the bank statement were lower than the business receipts shown by the assessee and in the bank statement there were withdrawals as well as the deposits, the addition was unjustified. The Tribunal upheld the order of the Commissioner (Appeals).

On revenue's appeal, the Hon'ble High Court held as under:

Sub-section (1) of section 44AD clearly provides that where an assessee is engaged in the business of civil construction or supply of labour for civil construction, income shall be estimated at 8 per cent of the gross amount paid or payable to the assessee in the previous year on account of such business or a sum higher than the aforesaid sum as may be declared by the assessee in his return of income notwithstanding anything to the contrary contained in sections 28 to 43C. This income is to be deemed to be the profits and gains of said business chargeable of tax under

the head 'Profits and gains of business or profession'. However, the said provisions are applicable where the gross amount paid or payable does not exceed Rs. 40 lakhs.

Once under the special provision, exemption from maintenance of books of account has been provided and presumptive tax at the rate of 8 per cent of the gross receipt itself is the basis for determining the taxable income, the assessee is not under any obligation to explain individual entry of cash deposit in the bank, unless such entry has no nexus with the gross receipts. In the instant case, the stand of the assessee before the Commissioner (Appeals) and the Tribunal that the amount in question was on account of business receipts had been accepted. The revenue could not show with reference to any material on record that the cash deposits were unexplained or undisclosed income of the assessee.

Therefore, no question of law arose from the Tribunal's order and the revenue's appeal was to be dismissed."

10. In the instant case also, the CIT(A) on the basis of the assessment order passed for assessment year 2010-2011 has held that the deposits in the bank account to be the trade deposits of the assessee for which, the revenue is not in appeal before me. On the accepted facts, the decision of the Hon'ble P&H High Court in the case of Surinder Pal Anand (supra) squarely applies to the facts of the case of the assessee. Respectfully following the same, I set aside the order of the CIT(A) and delete the addition of ₹1,65,413/- and allow the appeal of the assessee.

11. In the assessment year 2011-12, the grievance of the assessee in Ground No.1 to 3 is that the CIT(A) was not justified in estimating the profit

@ 5% by taking the deposits in the bank account as total receipts not reflected in the profit and loss account,.

12. The brief facts of the case are that the Assessing Officer observed that the assessee has made cash deposits of ₹14,50,704/- and ₹42,34,975/- into saving account No.9905 & 6762 with ICICI Bank, Bistupur, Jamshedpur, ₹43,35,920/- in A/c No.7714 with Central Bank of India, Sonari, Jamshedpur and ₹2,14,79,400/- in a/c No.1429 with Punjab National Bank, Asiana Trade Centre Branch, Adityapur. He further observed that on perusal of the record, it is noted that the assessee was doing trading business and payments were received through cash and same were deposited into Bank. Apart from that the payments were made through RTGS and other mode. Therefore, the Assessing Officer treated the deposits in the bank account of ₹3,15,00,999/- as trade receipts and estimated the income by applying rate of 15% and arrived at the income of ₹47,25,149/-, which was added to the income of the assessee.

13. On appeal, the CIT(A) directed the Assessing Officer to estimate the income at 5% ,which worked out to ₹ 15,75,050/- and allowed relief of ₹31,50,100/- to the assessee.

14. Before me, the only contention of Id A.R. is that the estimation of income at 5% is on higher side and same should be reduced.

15. Ld D.R. supported the order of the CIT(A).

16. I have considered the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer found that the assessee has made cash deposit of ₹3,15,00,999/- in four bank accounts. Since the assessee failed to explain the source of deposit, he held the same to be trade deposits of the assessee and estimated the income therefrom by applying rate of 15%, which worked out to ₹47,25,149/-.

17. On appeal, the CIT(A) reduced the same to 5% of the total cash deposits, which worked out to ₹15,75,050/- thereby allowing relief of ₹31,50,100/- to the assessee.

18. Before me, the only argument of Id A.R. is that the estimation of income from cash deposits made in the bank account by applying the rate of 5% is excessive and same should be reduced. The contention of the assessee is that the assessee has shown net profit of 3% in the return of income filed and, therefore, the income from the deposits made in bank account should be computed by applying rate of 3%. In the above facts and circumstances of the case, I am of the considered view that since the assessee failed to explain the source of deposit before the Assessing Officer as well as CIT(A), therefore, income came to be estimated by accepting deposits made in bank accounts as

trade deposits of the assessee. Therefore, in the given facts and circumstances of the case, I am of the considered view that it would meet the ends of justice if the income is estimated at 4% of the deposits made in the bank accounts. I modify the order of the CIT(A) accordingly and partly allow the appeal of the assessee.

19. Ground No.3 of appeal for assessment year 2009-10 and Ground No.4 of appeal for assessment year 2011-12 is common, which reads as under:

" For that interest charged u/s 234A and 234B should be charged on the returned income and not on the assessed income following the decision of Hon'ble Jharkhand High Court.'

20. After hearing the rival submissions and perusing the orders of lower authorities below, I find that the Hon'ble Jharkhand High Court in the case of *Ajay Prakash Verma* (supra) held as under: -

"23. Learned counsel for the appellant submitted that it has been ordered by the A.O. that interest be charged as per rule. Interest can be levied under sections 234A & 234B of the Act. It is submitted that in view of the judgment of Full Bench of Ranchi Bench of Patna High Court delivered in the case of Smt. Tej Kumari Vs. CIT reported in (2001) 114 Taxman 404 (PAT) (FB), the interest cannot be levied over the assessed income and it can be levied only on the income declared in the return. The revenue preferred S.L.P. before the Hon'ble Supreme Court against the said judgment of the Full Bench of Patna High Court which was dismissed by the Hon'ble Supreme Court on merits vide order dated 01/08/2000 by saying that there is no merit in the appeal.

24. Learned counsel for the revenue could not dispute this legal position. Therefore, so far as question of law involved in



this appeal that whether the interest could have been levied against the assessed income of the assessee under section 234A & 234B is concerned, in view of the Full Bench judgment of Ranchi Bench of Patna High Court delivered in the case of Smt. Tej Kumari, the revenue can levy the interest only on the total income declared in the returns and not on the income assessed and determined by the A.O. to that extent. The orders passed by the authorities below are accordingly modified and interest shall be chargeable in the light of the Full Bench judgment referred above."

21. Therefore, respectfully following the decision of Hon'ble Jurisdictional High Court in the case of Ajay Prakash Verma (supra), I direct the Assessing Officer to charge the interest on the income declared in the return and not on assessed income and allow the ground of appeal of the assessee for both the assessment years under appeal.

22. In the result, appeal of the assessee for assessment year 2009-10 is allowed and appeal for assessment year 2011-12 is partly allowed.

Order pronounced on 27 /11/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Ranchi; Dated 27/11/2018
B.K.Parida, SPS

:

Copy of the Order forwarded to :

1. The Appellant : Sri Prashant Kumar Singh,
34, Balajee Nagar, Chhota Govindpur,
Jamshedpur
2. The Respondent. ITO, Ward 2(1),
Jamshedpur
3. The CIT(A)- Jamshedpur
4. Pr.CIT- Jamshedpur
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Ranchi on
tour**