

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1507/Del/2016
Assessment Year: 2011-12

ITO,
Ward-46(4),
New Delhi.

Vs Rajender Sharma,
1898, Gali Lehshwa,
Kucha Pati Ram,
New Delhi.

(Appellant)

(Respondent)

Assessee by : Shri Ved Jain, Advocate,
Ms Umang Luthra, Advocate &
Shri Rishabh Jain, CA
Revenue by : Ms Ashima Neb, Sr. DR
Date of Hearing : 18.04.2019
Date of Pronouncement : 29.04.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 29th January, 2016 of the CIT(A)-17, New Delhi, relating to assessment year 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of plying passenger cars owned by others on commission basis. He filed his return of income on 3rd October, 2012 declaring the total income of Rs.1,59,528/-.

During the course of assessment proceedings, the Assessing Officer noted that the assessee has not disclosed the following bank accounts where substantial cash has been deposited, the details of which are as under:-

- a) A/c No.629205500356 in the name of IP Trading Company – Total cash deposited: Rs40,83,000/-; and
- b) A/c No.113201500415 in the name of Sh. Rajender Sharma – Total cash deposited: Rs38,30,820/-

3. Since the assessee did not produce the necessary evidence/documents to substantiate the cash deposits in the above two bank accounts maintained with ICICI Bank, the Assessing Officer invoking the provisions of section 68 made addition of Rs.79,13,820/- and determined the total income at Rs.80,73,348/-.

4. Before the CIT(A), it was argued that the addition u/s 68 cannot be made on the basis of the entries appearing in the bank statements. Even if the addition is made, then also, the entire amount appearing in the credit side of the bank statement cannot be made as income of the assessee and only peak credit at best can be made. Various decisions were also brought to the notice of the Id.CIT(A).

5. Based on the arguments advanced by the assessee, the Id.CIT(A) directed the Assessing Officer to add the peak credit which comes to Rs.4,44,300/- in the instant case. He further directed the Assessing Officer to estimate the profit @ 5% on the undisclosed amount of Rs.79,13,820/- which comes to Rs.3,95,691/-. Thus, in effect,

the Id.CIT(A) restricted the addition to Rs.8,39,991/- as against Rs.79,13,820/- added by the Assessing Officer.

6. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

1. “That the Ld.CIT (A) has erred in facts and in law in treating the unexplained cash credits of Rs.79,13,820/- as business receipts.
2. That the Ld.CIT(A) has erred in facts and in law in applying 5% ratio as commission on Rs.79,13,820/- without going into the facts as there is no evidence about the nature of these receipts, brought on record by the assessee.
3. That the Ld.CIT(A) has erred in facts and in law in deciding the impugned issue without invoking provisions of Section 250(4) of the I.T. Act as there was nothing on record filed by the assessee which could prove the nature of cash receipts as business receipts.
4. That the order of the Ld.CIT (A) was perverse, he accepted untrue facts placed before him by the assessee and ignored all the evidence brought on record by the AO.
5. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

7. The Id. DR strongly challenged the order of the CIT(A). She submitted that the assessee did not furnish the full details before the Assessing Officer for which the Assessing Officer passed the order u/s 144 of the IT Act. The Id.CIT(A), in absence of any evidence filed by the assessee before him, directed the Assessing Officer to add the peak credit and 5% of the undisclosed amount as against the amount of Rs.79,13,820/- added by the Assessing Officer which is not proper. The Id. DR also relied on the decision of the Hon'ble Delhi High Court reported in *102 taxmann.com* 392.

8. The ld. counsel for the assessee, on the other hand, strongly supported the order of the CIT(A). He submitted that the ld.CIT(A), after considering the facts of the case, has restricted the addition to Rs.8,39,991/- as against Rs.79,13,820/- added by the Assessing Officer. He submitted that only real income should be taxed and the entire credit amount appearing in the bank statement cannot be added without considering the corresponding debits appearing in the bank accounts on various dates. He submitted that a perusal of the two bank accounts not disclosed to the Department would show that there were deposits and withdrawals on a regular basis on various dates and, therefore, considering only the credit side of the bank statement without considering the debit side is not just and proper. Since the ld.CIT(A), in the instant case, has considered the peak credit and has further directed the Assessing Officer to estimate the profit at 5% of the undisclosed receipts, therefore, no further interference is called for especially when the assessee has not challenged for the setting off of the credit from the estimated profit so directed by the CIT(A). He also relied on the following decisions:-

- i) CIT vs. Vijay Agricultural Industries, (2007) 294 ITR 610 (All);
- ii) ITO vs. Rakesh Mehra 2012 (9) TMI 330 (Delhi ITAT);
- iii) ITO vs. Jaily Goraya, 2017 (7) TMI 912 (Delhi ITAT);
- iv) ACIT vs. Rajneesh Nagar, 2017 (1) TMI 1250 (ITAT Delhi); and
- v) Sejal Jayesh Vora vs. ITO, 2017 99) TMI 308 (ITAT Mumbai).

9. So far as the decision relied on by Id. DR is concerned, he submitted that the same is distinguishable on facts and not applicable to the facts of this case. In that case, the issue was issue of bogus share capital which was kept rotating during the year and the plea of the assessee for peak credit was rejected.

10. We have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and the CIT(A). We have also considered the various decisions relied on by both the sides. It is an admitted fact that the assessee has not disclosed two bank accounts – one in his individual name and the other in the name of the proprietorship concern. We find, the Assessing Officer, invoking the provisions of section 68 of the IT Act, made addition of Rs.79,13,820/- which is the total of the cash deposits made in the two bank accounts. We find the Id.CIT(A) restricted the addition to Rs.8,39,991/- being the amount of peak credit in the two bank accounts which comes to Rs.4,44,300/- and 5% of the total cash deposits in the two bank accounts which comes to Rs.3,95,691/- as profit of the assessee on such cash deposits. We do not find any infirmity in the finding of the CIT(A) on this issue. A perusal of the above two bank accounts not disclosed to the Department shows that there are systematic deposits and withdrawals in the bank accounts. The assessee, in the instant case, is engaged in the business of plying passenger cars by hiring of vehicles from others. Therefore, when there are systematic deposits and withdrawals in the two bank accounts, the Id.CIT(A) in the instant case has rightly held that the peak credit of both the accounts should be added which, in the instant case, comes to Rs.4,44,300/-. The

Id. CIT(A) has further directed the Assessing Officer to add 5% of the total cash deposits of Rs.79, 13,820/- which comes to Rs.3,95,691/- as income of the assessee. The order of the CIT(A) in the instant case, in our opinion, is a reasoned one under the facts and circumstances of the case. It has been held in various decisions that when the assessee is unable to explain the deposits in a particular bank account, the entire deposits cannot be added to the total income of the assessee and only the peak credit has to be added when there are both cash deposits and cash withdrawals. The various decisions relied on by the Id. counsel for the assessee in the paper book supports his case. The decision relied on by the Id. DR is not applicable to the facts of the present case since, in that case, it was the receipt of bogus share application money which was diverted to certain other persons for which peak credit was not allowed. In this view of the matter, we uphold the order of the CIT(A) and the grounds raised by the Revenue are dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 29.04.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 29th April, 2019

dk

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi