

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA No.1782/Hyd/2017		
Assessment Year: 2009-10		
Ramesh Kusuma, Jangaon. PAN: AOUPK 1094 C	Vs.	Income Tax Officer, Ward-2, Warangal.
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Smt. Aparna V, DR	
Date of hearing:	08/05/2019	
Date of pronouncement:	29/05/2019	

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This is assessee's appeal for the assessment year 2009-10. This appeal is filed against the order of the CIT(A)-3, Hyderabad dated 18/08/2017. In this appeal, the assessee has raised the following grounds of appeal:

- “1. The Ld. CIT(A) is erroneous both on facts and in law.
2. The Ld. CIT(A) erred in confirming the addition made of Rs. 12,38,395/- made by the Assessing Officer.
3. The Ld. CIT(A) ought to have considered the submission that the books of appellant is properly maintained and also no proper opportunity given by the Assessing Officer.
4. The Ld. CIT(A) ought to have considered the submissions and deleted the addition made.”

2.. Brief facts of the case are that the assessee, an individual, filed his return of income for the Asst. Year 2009-10 on 30/09/2009 by declaring net taxable income of Rs.3,38,840/-. During the assessment proceedings u/s 143(3) of the Act, it was observed that the assessee, proprietor of M/s. Sai Raja Wines, had made cash deposits into his ICICI Bank account. Assessee was asked to explain the sources for the said cash deposits. He appeared through his Authorised Representative and produced books of account and it was noticed that the assessee had taken loans from various persons and these are the sources for cash deposits. Therefore, the assessee was asked to produce all the persons. However, the assessee could not produce the creditors and voluntarily disclosed an amount of Rs. 12,38,395/- and therefore, the A.O. added it to the returned income of the assessee and brought it to tax. Subsequently, the assessee filed an appeal before the CIT(A) stating that the assessee could not produce all the parties as required by the A.O. since the time granted was very short and in order to buy peace at the Department, the assessee had agreed for the disallowance from out of the credits appearing in the books of account or the peak cash credit. It was submitted that the Assessing Officer had misconstrued that the assessee has agreed for the disallowance of the deposits of Rs. 12,38,395/- and accordingly completed the assessment. Accordingly, the assessee challenged the addition of Rs. 12,38,395/- and submitted before the CIT(A) that the addition should be limited to the extent of

peak cash credit. CIT(A) however dismissed the assessee's appeal by observing that the assessee did not say anything other than stating that the bank balances are not appearing in the balance sheet. Therefore, the assessee is in appeal before us.

3. Learned Counsel for the Assessee submitted that the assessee's contention has not been dealt with by the CIT(A) by way of a speaking order and that the Assessing Officer also had not given a property opportunity to the assessee. Thus, he prayed for another opportunity to explain the sources for the cash deposits. He further submitted that the deposits into the bank account are out of the business carried on by the assessee and prayed that the assessee may be given one more opportunity to prove its case before the lower authorities.

4. On the other hand, Ld. DR opposed the remand to the file of the A.O.

5. Having regard to the rival contentions and also the material on record, we find that the assessee had agreed for the addition and it now submitted by the Learned Counsel for the Assessee that the assessee agreed to for the addition of peak cash credit, whereas the A.O. has made the addition of the entire deposits. We find that the assessee had raised the specific ground before the CIT(A) that the deposits are out of business receipts, but the CIT(A), instead of giving an opportunity to

explain the sources for the cash deposits, has confirmed the addition. Therefore, we deem it fit and proper to remand the issue to the file of the CIT(A) with a direction to dispose of the appeal on merits after giving a fair opportunity of being heard to the assessee.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open Court on 29th May, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 29th May, 2019

OKK

Copy to:-

- 1) Ramesh Kusuma, H.No.2-10-92/5, Sri Harsha Colony, Jangoan, Warangal-506167.
- 2) Income Tax Officer, Ward-2, Warangal.
- 3) The CIT(A)-3, Hyderabad
- 4) The Pr. CIT-3, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File