

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.5004/Mum/2017
(Assessment Year :2009-10)**

Mohd. Soyeb Haji Farooq Motorwala 4 th Floor, Haji Farooq Mansion,91-93, Sarang Street, Crawford Market Mumbai-400 003	Vs.	ITO-17(2)(3) Aaykar Bhawan, M.K.Road Mumbai-400 020
PAN/GIR No.AOTPM3577P		
Appellant)	..	Respondent)

Revenue by	Shri. Jothilakshmi Nayak, Sr.AR (DR)
Assessee by	Shri. Rahul K. Hakani, AR
Date of Hearing	04/12/2019
Date of Pronouncement	04/12/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-28, Mumbai, dated 21/04/2017 and it pertains to Assessment Year 2009-10

2. The assessee has raised the following grounds of appeal:-

1. The Learned Com. Of Income Tax (Appeals) has erred in confirming the addition of Rs.1,55,86,802/- being unexplained Cash Deposit u/s 68 made by the Learned Assessing Officer.

The Learned Com. Income Tax (Appeals) ought to have applied Peak theory whenever there are Cash Deposits out of cash withdrawals and as a consequence commission of 0.1% only on the Net Deposits should have been added to the Income.

3. The brief facts of the case are that the assessee is an individual, filed his return of income for AY 2009-10, declaring total income at Rs. 2,04,330/-. The case was selected for scrutiny and during the course of assessment proceedings before the Ld. AO, the assessee did not appear, despite number of opportunities were given to explain his case. Therefore, the Ld. AO on the basis of information available on record and also taken note of bank statements obtained from Canara Bank, Abdul Rehman Street Branch, noticed that the assessee has made total cash deposits of Rs. 1,60,75,362/- for the period from 01/04/2008 to 31/03/2009. Since, the assessee has not appeared before the Ld. AO to explain cash deposits found in bank account, the Ld. AO has made additions of Rs. 1,55,86,802/- (Rs.1,60,73,362 - Rs.4,38,560) being difference between cash deposits and gross receipts admitted in return of income as unexplained income of the assessee.

4. Aggrieved by the assessment order, the assessee preferred an appeal, before the Ld.CIT(A). Before the Ld.CIT(A), the assessee did not appear, but filed written submissions on 01/03/2013 and 09/12/2013 and explained that cash deposits found in Canara Bank account are received from M/s. Bombay Indore Transport towards cheque discounts with Bombay Mercantile Co-op Bank. The assessee further submitted that it has earned commission income of 0.1%, which is already included in the return of income filed for the year. Therefore, no addition could be made towards cash deposits found in Canara Bank account. The Ld.CIT(A) after considering relevant submission of the assessee and also taken note of the fact that the no evidences has been filed to explain the case of the assessee, confirmed additions made by the AO towards cash

deposits, as well as low withdrawal for household expenses. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in confirmed additions made towards cash deposits, ignoring detailed submissions filed by the assessee explaining the modus operandi of the assessee to issue cheques and take back cash from the parties. The Ld. AR further submitted that although, the assessee has not appeared before the lower authorities, but, explained his case with cash deposits found in bank account and corresponding cheque issued to Bombay Indore Transport. Similarly the assessee has also filed bank statements of Bombay Indore Transport company to match cheque issued by the assessee with bank account of the party, but the Ld.CIT(A) ignored all evidences and confirmed additions made by the Ld. AO. He, further, submitted that he had earned commission income of 0.1% and the same is offered to tax in regular return of income and hence further addition is incorrect and needs to be deleted.

6. The Ld. DR for the assessee, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that although, the assessee claims that he was involved in cheque discounting business for commission, but failed to file necessary evidences, including confirmation from the parties from whom cash received for issuing cheques. Therefore, there is no merit in the arguments of the Ld. AR for the assessee and hence, the additions made by the Ld. AO should be upheld.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. It is an admitted fact that the assessee has made periodic cash deposits into Canara Bank account and issued equal amount of cheques to Bombay Indore Transport Company. The assessee claims that he is involved in cheque discounting business and accordingly, issued cheques in the name of Bombay Indore Transport Company and the said firm deposited cheques in Bombay Mercantile Co-op Bank and drawn cash from the bank. Further, the party has returned cash to the assessee and the same has been deposited into Canara Bank account. Although, the assessee claims that he is into cheque discounting business and amount equal to cheque issued to the Bombay Indore Transport company has been received from said party, but no evidences including confirmation has been filed from the above party, either before the lower authorities or before us. Therefore, we are of the considered view that the issues needs to go back to the file of the Ld. AO to ascertain the correct facts with regard to source of cash deposits found in Canara Bank Savings Bank account, in light of the claim of the assessee that the amount has been received from Bombay Indore Transport company. Hence, we set aside the issue to the file of the Ld. AO and direct him to re-do the assessment in accordance with law.

8. In the result, appeal filed by the assessee is allowed for statistical purpose.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 04/12/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai