

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.922/Ind/2018
Assessment Year: 2013-14**

Shri Abdul Aziz Khan Lohia Ward Betul Ganj Betul (M.P.) (Appellant)	बनाम/ Vs.	ACIT Itarsi (Revenue)
P.A. No.ALCPK1519M		

Appellant by	Shri Ashish Goyal, A.R.
Respondent by	Shri Ashish Porwal, D.R.
Date of Hearing:	06.01.2020
Date of Pronouncement:	22.01.2020

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A)-1, Bhopal dated 26.10.2018 pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

On the facts and the circumstances of the case:-

- 1. The Ld. CIT(A) was not justified in sustaining the assessment order, which is bad in law, void-ab-initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled. (Tax effect:10,10,100)*
- 2. The Ld. CIT(A) was not justified in confirming the addition of Rs.33,67,000/- made u/s 69A (Tax effect: 10,10,100)*

The appellant craves leave to add, amend or modify any of the grounds of appeal.

2. The only effective ground in this appeal is against confirming the addition of Rs.33,67,000/- made u/s 69A of the Income Tax Act, 1961 (hereinafter called as 'the Act'). The facts giving rise to the present appeal are that case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Act was framed vide order dated 14.3.2016. The A.O. while framing the assessment made addition of Rs.33,67,000/- u/s 69 of the Act in respect of the amount deposited in the Axis Bank savings account on the ground that this savings bank account was not disclosed in the books of accounts. Aggrieved against this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions confirmed the addition. Now the assessee is in further appeal before this Tribunal.

3. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. The submissions of the assessee are as under:

Ground No. 2

Cash Deposits in Axis Bank Account Rs. 33,67,000/-

Facts:

1. Appellant is a proprietorship concern engaged in business of trading of timber, during scrutiny it was noticed by Id AO that cash deposit of Rs. 33,67,000/- in aggregate was made in the Axis Bank account. This account was not disclosed by assessee. *PB 38-43*
2. It was submitted that the cash deposit is out of the newly opened furniture business for the son of the appellant.
3. Also due to inadvertence, the Axis Bank account was left out from accounting in books and thus not part of audited books of accounts.
4. On realising the mistake that the Axis Bank account remained unaccounted, the final accounts were revised. The Tax on the basis of revised computation was also duly paid.(PB35-37)
5. The revised accounts before and after revisions are tabulated below:

Particulars	Original Financial Statement	Revised Financial Statement	Difference
Sales	91,72,02,40	95,17,10,80	34,50,840
Purchase	88,13,53,29	91,58,31,06	34,47,777
GP	37,98,217	39,77,022	1,78,805
Net Profit	11,03,209	12,82,014	1,78,805
Gross Total Income	59,60,775	62,67,071	3,06,296
Taxes Paid	16,66,781	17,61,425	1,50,677

The Id AO disbelieving on the submissions added Rs. 33,67,000/- as deemed income u/s 69A.

The Id. CIT(A), confirmed the assessment order alleging that

- There are cash withdrawals from ATM on multiple dates
- The transaction in bank accounts, do not appear to be pertaining to business of furniture.
- The Axis bank statement from beginning till closure was not submitted and only for financial year under consideration was provided.

SUBMISSIONS:-

- There are cash deposits and cash withdrawals in the bank account. Cash deposits relates to business receipts and cash withdrawals relates to withdrawals from business. It is impossible to earn income without doing expenses.. The total sales cannot be regarded as the profit of the assessee. *Illustrative purchase & sale bills of furniture are produced.* Reliance is placed on the case law of **Balchand Ajitkumar (2004) 135 Taxmann 180 (M.P) PB 61-62** *Wherein it was held that total sales cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is pervasivity of approach.*
Man mohan Sadani (2010)188 taxmann 277 (MP)PB 63-64 *Wherein it was held that -we are in respectful agreement with the opinion of the hon'ble Gujarat High court in case of CIT Vs. President Industries (2002)258 ITR 654 that the sales only represented the price received by the seller if the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales.... we are in respectful agreement that total sales cannot be regarded as the profit of the assessee.*
- In the year under consideration, the profit on undisclosed receipt of Rs. 34,50,840/- is Rs. 1,78,805/- (Approx which is 5% taken by assessee).
- The Axis Bank account was opened during the year on 26.06.2012 only by depositing the cash money of Rs. 6,000/- **(PB 44)**
- The appellant has already paid taxes on the alleged unaccounted deemed income.
- The Id CIT(A) relied on the following case law which are distinguished below :-

Sr No	Case Law	Remarks
1.	CIT vs. DK Garg 84 Taxmann 257	The facts are that the assessee being CA in

	(Del)	the case was involved in providing cheques by accepting deposits in cash. Thus an accommodation entry provider who do not explain the source of deposits in his accounts or outgo from his accounts. The peak credit is not applicable. IN the present case the assessee is engaged in the business of the trading of Timber and Furniture, thus the business of accommodation entry is different from trading where the sale cannot take place without purchases, thus the facts are not similar.
2.	Prakash Chand Dhadda (2017) 83 Taxmann 214(Rajasthan)	It was held in the case law cited that Peak credit theory can be applied in case of credit and debits unaccounted to avoid overlapping. In the referred case currency notes were recovered having writing in it. The present case was not a case of unaccounted debits and credits simplicitor. Whereas in the case under consideration the cash deposits in bank accounts were added as deemed income.
3.	M.H. Raney vs. ITO (2013) 34 taxmann (Mum-Trib)	It was held in the referred case that peak credit theory is based on recycling of funds implying systematic activity. The cash deposits in bank account were explained as cash donations collected from various donors in small quantity and used for charitable purpose. Whereas in the case under consideration the assessee has a business and all receipts are sale proceeds thus profit rate shall be applied.
4.	Bhaiyalal Shyambihari vs. CIT (2005) 276 ITR 38 (Allah)	It was held that assessee has to own all cash credit entries in the books of account and only thereafter the question of peak credit can be raised. As in the referred case, the amounts of cash credits were standing in the names of different persons which all along the applicant had been claiming to be genuine deposits, withdrawal/payment of the amounts to different set of persons during the previous years would not at all entitle the applicant to claim benefit of peak credit. Whereas in the present case the cash deposits and withdrawals relates to

		business of the assessee and thus profit rate shall be estimated.
5.	Madathil Zainuddin vs CIT (2014)225 Taxmann 118	In the referred case, the trading activity was not considered as genuine as there were wide variation between deposits which would normally not be so if assessee carrying on trading activity. In the present case there is no doubt on the business activity undertaken by the assessee.
6.	Manoj Kumar Jain Vs. ITO (2012) 13 ITR 227 (Del)	In the referred case the profit rate was estimated holding that - " <i>assessee could not produce any evidence that commission at the rate of 2 to 3 per cent was earned on transport business. At the same time, the Assessing Officer has applied the net profit at the rate of 8 per cent on total turnover of Rs. 3,58,29,278. However, keeping in view the fact that the assessee was engaged in transport business as well as manufacturing of fabrics on job work basis, the net profit from both activities can be estimated at the rate of 8 per cent.</i> " In the present case also the assessee is pleading that profit rate may be estimated.

It is therefore prayed that the addition may kindly be deleted and reasonable profit rate may be estimated.

4. Ld. D.R. opposed these submissions and supported the orders of the authorities below. Ld. D.R. submitted that the assessee could not explain the source of these

deposits. In rejoinder, Ld. A.R. submitted that there are deposits and withdrawals in the savings bank account, even it is assumed that the initial deposits were not explained but subsequently, the same amount was withdrawn and deposited in the bank account, therefore, the withdrawals were available in the hand of the assessee. Hence, he requested that peak credit may be taken.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the facts that in the bank statement there are deposits and withdrawals. In the submissions as made by the Ld. Counsel for the assessee has distinguished the case laws as cited by the Ld. CIT(A) in the impugned order. We therefore, considering the totality of the facts and material placed before us, set aside the order of the Ld. CIT(A) and direct the A.O. to verify the working of the peak credit as

submitted by the assessee and restrict the addition to the extent of such peak credit. The ground raised is partly allowed.

6. In the result, the appeal filed by the assessee is partly allowed.

Order was pronounced in the open court on 22 .01.2020.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 22/01/2020
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore