

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.6639/Del/2015

Assessment Year: 2011-12

Ejaz Akhtar F-34, 2 nd Floor, 6/4, Joga Bai Extn., Okhla New Delhi – 110 025 PAN No. AFOPA 3121 M (APPELLANT)	Vs.	ITO, Ward – 22(2), New Delhi (RESPONDENT)
--	-----	---

Appellant by	Shri Rajiv Saxena, Advocate
Respondent by	Shri Rakesh Gupta, Sr. DR

Date of hearing:	29/07/2020
Date of Pronouncement:	05/08/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 11.09.2015 of the Commissioner of Income Tax (A)-10, [CIT(A)] New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual stated to be engaged in the business of trading in steel tubes and pipes in the name of “Nav Bharat Steel Tubes”. Assessee filed his return of income for A.Y. 2011-12 on 28.09.2011 declaring total income of Rs.3,27,553/-. The case was selected for scrutiny and thereafter, the assessment was framed u/s 143(3) vide order dated 31.12.2013 and the total taxable income was determined at Rs.61,79,610/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 11.09.2015 in Appeal No.287/13-14 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds of appeal:

1. *“That the Ld. CIT(A) erred on facts and in law in confirming the addition made by A.O. of Rs. 58,52,055/-.*
2. *That the impugned order passed by Ld. CIT(A) is wholly arbitrary and bad in law and deserves to be quashed.*
3. *That Ld. CIT(A) has erred on facts and in law in upholding the order of AO aggregating the total credits in the Bank account, and ignoring the plea of the assessee to apply the peak credit principle as evident from the Bank statement that whatever cash was deposited in the Bank account was withdrawn by ATM or by self cheques and paid back to the persons/ their agents who deposited the same.*
4. *That Ld. CIT(A) has erred in fact by holding that the assessee is frequently changing his stand. The assessee has throughout the assessment proceedings as well as appellant proceedings has taken only one stand that some known people and some unknown people with reference of known people used to deposit cash in his bank account which were withdrawn from bank and returned to them and in the process he earned commission. In the alternative, he also offered to be taxed on the basis of peak credit principle before the AO as well as before the CIT (A).*
5. *That Ld. CIT(A) has erred in simply upholding the order of AO*

without dealing with the second ground of the assessee relating to application of peak credit principle. Ld. CIT(A) has not given any reason for rejecting the peak credit principle which is so evident from the Bank Statement itself that all the credits can be explained by surrounding debit entries.

6. *That Ld. CIT(A) has erred in upholding the order of AO without appreciating the fact that by aggregating the credits which are explained by debit entries, the assessee is made to suffer tax on double additions instead of only the actual income of the assessee which cannot be permissible.*
7. *That Ld. CIT(A) has erred in upholding the order of AO of addition of Rs. 58,52,055/- by aggregating all credit entries instead of directing for peak theory principle as in the present facts and circumstances there are almost simultaneous cash deposits and cash withdrawals specially under the circumstances when AO has come to a conclusion that explanation offered by assessee lacks credibility and not genuine and inspite of the assessee insisting for peak credit application before AO as well as before CIT(A).*
8. *That the impugned order of Ld. CIT(A) is without application of mind as Ld. CIT(A) has the failed to appreciate that the present case is a fit case for application of peak credit principle.*

Relief Sought:

In view of the facts mentioned above, the Appellant most humbly prays that this Hon'ble Tribunal may be pleased to:-

- a. *Allow the appeal of the Appellant and set aside the impugned order of the CIT(A) and issue directions to determine the addition based on the peak credit theory.*
- b. *Pass such other/further order/directions, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."*

4. Before us, at the outset, Learned AR submitted that though the assessee has raised various grounds in the grounds of appeal but the sole controversy is with respect to confirming the addition made by AO of Rs.58,52,055/-.

5. AO has noted in the assessment order that the case of the Assessee was selected for scrutiny through CASS to examine the source of cash deposits in the saving bank account as per AIR information. AO issued notice u/s 133(6) dated 22.11.2013 to Punjab National Bank, Maharani Bagh, Delhi requesting it to furnish the Bank statement in respect of the account maintained by the assessee. On the basis of the Bank statement supplied by the Bank, it was noticed that assessee had made cash deposits in the Bank account aggregating to Rs.58,52,055/-. The assessee was therefore asked to explain the source of cash deposit with the evidences. AO after examining the evidences and after considering the statement of the Assessee recorded u/s 131 of the Act noted that assessee had made cash deposits aggregating to Rs.58,52,055/-. AO noted that with respect to the explanation of the assessee about the source of cash deposits there was inconsistency in the assessee's explanation as per his statement recorded u/s 131 of the Act and the affidavits of the persons who had deposited in cash in the assessee's bank account that was filed by the Assessee. AO after considering the facts concluded that no proper explanation about the cash deposits has been submitted by the assessee. AO therefore treated the aforesaid cash deposits aggregating to Rs 58,52,055/- as undisclosed income of the assessee and made its addition u/s 69A of the Act. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

6. Before us, Learned AR submitted cash deposits reflected in his bank account was deposited at various places in Bihar by persons belonging to his village/ in-laws village. The Assessee on the instructions of the persons who deposited cash used to deliver the cash to the person's named by them in Delhi. The reason for cash deposits in his bank account was stated to be the difficulty and risk involved by those persons while carrying cash from their places while coming to Delhi. He further stated that the persons who had deposited the cash were known to the assessee and that for the services rendered by the assessee, he used to charge commission @ 2%. He pointed to the bank statement which is placed in paper book and submitted that after depositing the cash, the cash was withdrawn from ATM on the next day or very near to the date of deposits. He submitted that Assessee had also carried out similar activities in AY 2009-10 and in the assessment framed u/s 143(3) (order dtd 23.12.2011) the addition of only peak deposits were made by the AO and in support of his contentions he pointed to the copy of the assessment order which is placed at page 10 & 11 of the paper book. He further submitted that for A.Y. 2012-13, the assessment of the Assessee was reopened u/s 148 for the reason that Rs.10,00,000/- was deposited in cash in the Bank account of the assessee and that assessee was non-filer. He submitted that AO after examining the business of the assessee accepted the returned income and no addition of the entire cash deposits were made. He pointed to the copy of the assessment order passed u/s 147 r.w. 143(3) which is

placed at page 16 of the paper book. He therefore, submitted that once the business of the assessee has remained similar in earlier and subsequent year, then the AO was not justified in making the addition of the entire cash deposits in the bank. He submitted that Revenue cannot be allowed to flip flop on an issue and be allowed to take a contrary view and for this proposition, he placed reliance on the decision of the Hon'ble Apex Court in the case of CIT vs. Excel Industries Ltd [2013] 358 ITR 295 (SC). He therefore, submitted that following the principle of consistency only the addition of peak deposits be made. He pointed to the working of the peak deposits which is placed in the paper book.

7. Learned DR on the other hand pointed to the findings of CIT(A) and submitted that considering the totality of the facts the AO was fully justified in making the addition of entire cash deposits.

8. We have heard the rival submissions and perused the relevant materials available on record. The issue in the present ground is with respect to the addition of cash deposits made by the assessee in his Bank account. It is an undisputed fact that assessee has deposited cash in his Bank account on various dates and the amount aggregated to Rs.58,52,055/-. Learned AR from the copy of the Bank statement has pointed out that invariably the cash deposit is followed by the cash withdrawal through ATM on next day or very shortly thereafter. The

withdrawn cash is returned to the person who has deposited the cash or on his instructions to the person stated by him. The assessee had given the explanation about the deposit of cash and withdrawals in the statement before AO but the same was rejected by the AO.

9. We find that during the course of assessment proceedings for A.Y. 2009-10 assessee had given similar explanation and the activities performed by him and the AO in the assessment order passed u/s 143(3) had made addition of only the peak deposits of cash. Before us, Learned AR has also pointed to the fact that for A.Y. 2012-13, the case of the assessee was re-opened for the reasons that it was noted that there were cash deposits in assessee's bank account and the assessee being a non-filer. We find that in the assessment order passed for A.Y. 2012-13 u/s 147 r.w. 143(3), the income declared by the assessee has been accepted and no addition on account of undisclosed source u/s 69A of the Act has been made. In such a situation following the principle of consistency, we are of the view that the addition of the entire cash deposits in the assessee's Bank account is uncalled for and find force in the submission of the Ld AR that only the peak cash deposits be considered as income of the Assessee. Before us, assessee has filed the working of the peak credit of deposits. We however find that there is no finding of the lower authorities on that aspect. Considering the totality of the facts and in view of the facts that in earlier years the addition has

been made only on the peak deposits, we direct the AO to make the addition of only the peak cash deposits during the year. We accordingly direct the AO to examine the working of peak cash deposits furnished by the assessee and thereafter make the addition of the peak amount. We thus direct so. **Thus the ground of the Assessee is partly allowed.**

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

Order pronounced in the open court on 05.08.2020

Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Priti Yadav Sr. PS*
Date:- 05.08.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI