

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. K.NARASIMHA CHARY, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.1789 & 1790/Del/2016
Assessment Year: 2006-07 & 2007-08

Chetan Gupta 118, Ansal Bhawan 16, Kustarba Gandhi Marg, New Delhi PAN No. AATPG9580E	Vs	DCIT Central Circle -7 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.2390 & 2391/Del/2016
Assessment Year: 2006-07 & 2007-08

ACIT Central Circle -7 New Delhi	Vs	Chetan Gupta 118, Ansal Bhawan 16, Kustarba Gandhi Marg, New Delhi PAN No. AATPG9580E
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ashwani Kumar, CA Sh. Rahul Chaurasia, CA Sh. Bhavnesh Jindal, CA
Respondent by	Sh. Satpal Gulati, CIT DR

Date of hearing:	28/07/2021
Date of Pronouncement:	28/07/2021

ORDER**PER N. K. BILLAIYA, AM:**

ITA No.1789/Del/2016 and 2390/Del/2016 are cross appeals by the assessee and the revenue preferred against the order of the CIT(A)-23, New Delhi dated 23.02.2016 pertaining to A.Y.2006-07 and ITA No.1790/Del/2016 and 2391/Del/2016 are cross appeals by the assessee and the revenue preferred against the very same order of the CIT(A).

2. Since all these appeals relate to the consolidated order of the CIT(A) for A.Y.2006-07 and 2007-08, these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. We first take up the cross appeals for A.Y.2006-07.

4. Briefly stated the facts of the case are that return in response to notice u/s 148 was filed on 01.11.2012 declaring income at Rs.13,36,644/-. Assessment u/s 143(3)/147 was framed vide order dated 07.03.2014 computing total income at Rs. 108,09,83,210/-. The Learned Commissioner of Income Tax (Appeals) vide order dated 23.12.2016, worked out peak at Rs.2,95,51,279/- and further added an amount on account of opening balance at Rs. 24,11,467/- The Learned Commissioner of

Income Tax (Appeals) worked out the peak by slightly different method as compared to the working of peak done by the appellant and as upheld by the Hon'ble Tribunal. Both the revenue and the assessee are in cross appeals before the Hon'ble Bench as a result of order of The Learned Commissioner of Income Tax (Appeals). Similar issue arose in appellant's own case for A/Y 2005-06 and the Hon'ble Bench vide order dated 07.06.2018 in ITA No.1788/Del/2016 and ITA No. 2389/Del/Z016 decided the appeal in favour of the assessee.

5. The DR fairly conceded that the impugned issues are decided in favour of the assessee and against the revenue.

6. We have carefully perused the decision of this Tribunal in ITA No.1788/Del/2016 and 2389/Del/2016 order dated 07.06.2018. The relevant findings of the coordinate Bench read as under :-

13.1 The assessee has filed statement of peak in the Paper Book from pages 15 to 75 of the Paper Book. The peak as on 10.04.2004 is calculated at Rs. 1,82,59,248/-. It is not in dispute that working of the peak for this year is same as have been computed by the assessee in preceding AY 2001-02 to 2004-05.

14. The Ld. CIT (DR), however, contended that in this year the AO recomputed the peak and filed the remand report in which it is stated that the debit entries on account of expenses may be excluded. However, there is nothing in the order of the Tribunal for earlier years to exclude the debits of the peak. It is not in dispute that peak is worked out in all preceding assessment years and in

assessment year under appeal on the basis of entries found in the pen drive recovered from the possession of the assessee. The print out from the pen drive have been brought on record, therefore, all the entries contained in the seized pen drive shall have to be taken into consideration for working out the peak. The process and methodology adopted by the assessee in earlier years have been accepted by the ITAT in two orders for assessment years 2001-02 to 2004-05. Therefore, the authorities below are bound to follow the orders of the Tribunal and should not have reworked out the peak in their own way. Since the peak credit statement is prepared by the assessee on the basis of the entries found in the pen drive and accepted by the Tribunal in earlier years, therefore, same method shall have to be followed in assessment year under appeal. Therefore, there was no justification for the AO to substitute the peak for assessment year under appeal from Rs.1,82,59,248/- to Rs. 5,10,51,972/-. The assessee's counsel has also rightly contended that the Tribunal has given benefit of opening balance of the earlier years and that assessee had paid tax on the peak credit for AY 2003-04 of Rs.46,16,387/-. Therefore, such amount shall have to be reduced from the peak calculated by the assessee and benefit of the same shall have to be granted to the assessee. Therefore, as per the decisions of the Tribunal in the case of the assessee reproduced above, the net addition shall have to be made against the assessee in a sum of Rs.1,36,42,861. The issue of the peak is, therefore, fully covered by the earlier years orders of the Tribunal. In those orders also the Tribunal has dismissed the ground of appeal of the assessee as regards reopening of the assessment u/s 148 of the Act. Therefore, these grounds of appeal of the assessee are dismissed.

15. Considering the above discussion and following the reasons for decisions of ITAT in the case of the same assessee for assessment

years 2001-02 to 2004-05, we set aside the orders of the authorities below and direct the AO to make an addition of Rs.1,36,42,861/- on account of peak credit.

7. Respectfully following the findings of the coordinate Bench (supra) appeal of the assessee is allowed and that of the revenue is dismissed.

8. We now address to the cross appeals for A.Y. 2007-08. Briefly stated the facts of the case are as under :-

“Return for A/Y 2007-08 was filed on 30.10.2007 declaring income at Rs. 2,34,750/-. In response to notice u/s 148, it was submitted vide letter dated 22.11.2012 that the return originally filed may kindly be treated as the return in response to notice u/s 148. Assessment for A/Y 2007-08 was framed by the Learned Assessing Officer computing total income at Rs. 40,71,59,483/-. The Learned Commissioner of Income Tax (Appeals) decided the issue vide order dated 23.02.2016 and worked out the peak after excluding the debits at Rs 4,53,00.394/-. The assessee worked out the peak at Rs. 40,01,569/- as on 12.04.2006.”

9. It can be seen that the underlying facts are identical to the facts discussed in A.Y.2006-07 (supra) wherein we have followed the decision of this Tribunal in ITA

No.1788/Del/2016 relevant findings of the coordinate Bench have been extracted elsewhere.

10. For the detailed reasons given therein appeal of the assessee is allowed and that of the revenue is dismissed.

11. In the result, all the appeals of the assessee are allowed and that of the revenue is dismissed.

12. Decision announced in the open court in the presence of both the representatives on 28.07.2021.

Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-28.07.2021

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.07.2021
Date on which the typed draft is placed before the dictating Member	28.07.2021
Date on which the typed draft is placed before the Other member	28.07.2021
Date on which the approved draft comes to the Sr.PS/PS	28.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	28.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	28.07.2021
Date on which the final order is uploaded on the website of ITAT	28.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	