



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.77/CTK/2019**

Assessment Year: 2014-15

Abhaya Prasad Nayak,S/4, Rajib Nagar, Aiginia, Bhubaneswar.	Vs.	ITO, Ward 2(4), Bhubaneswar.
PAN/GIR No.AEBPN 2896 L		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri N.R.Biswal, AR  
Revenue by : Shri Subhendu Dutta, DR

**Date of Hearing : 13/06/ 2019**  
**Date of Pronouncement : 31/07/ 2019**

**ORDER**

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-1, Bhubaneswar dated 17.12.2018 for the assessment year 2014-15.

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

"1For that, on the facts and circumstance of the case, the Ld. CIT(A) has erred in law, by confirming addition of Rs. 9,35,000/- made by the A.O. ,as unexplained Investment u/s 69 where the said amount is credited to the bank account out of own withdrawal from the same bank from the earlier period . Therefore addition of Rs. 9,35,000/- confirmed by the Ld. CIT(A) is arbitrary, unjustified, illegal on the facts & circumstances of the case. The same should be deleted in full.

2. For that, on the facts and circumstance of the case, the Ld. CIT(A) has erred in law, by confirming addition of Rs. 9,35,000/- made by the A.O. as unexplained Investment u/s 69 on the sole ground that assessee had shown expenditure in his return and further expenditure is not allowed. However the Ld. AO. has not considered that in case of no accounts case income is estimated u/s 44AD and books of account is not required to be

maintained. Further closing sundry debtor is not relevant for deposit during the year, where the said amount is credited to the bank account out of own withdrawal from the same bank from the earlier period. Therefore addition of Rs. 9,35,000/- confirmed by the Ld. CIT(A) is arbitrary, unjustified, illegal on the facts & circumstances of the case. The same should be deleted in full.

3. For that, on the facts and circumstance of the case, the Ld. CIT(A) has erred in law, by confirming addition of Rs. 9,35,000/- made by the A.O. as unexplained Investment u/s 69 where the Ld. A.O. does not found any investment which is not recorded in the books of Account maintained as required by Sec. 69 of the Income tax Act'1961. Further The Ld. A.O. is fundamentally not correct against the said addition when it is credited in the books of Account. Therefore addition of Rs. 9,35,000/- confirmed by the Ld. CIT(A) is arbitrary, unjustified, illegal on the facts & circumstances of the case. The same should be deleted in full.

4. For that, on the facts and circumstance of the case. If the above grounds are not accepted then we request to consider Rs. 9.35.000- as business receipt & estimate the profit @ 8% of Rs.9, 5 - as neither the Ld. A.O. nor the CIT(A) has brought any material on record to substantiate that investment is made somewhere other than the business. The assessee does not require to give any explanation on investment as there is no investment made by the assessee, hence, the CIT(A) is not correct. Therefore, addition of Rs.9,35,000/- as unexplained investment should be deleted in full.

5. For that on the facts and circumstances of the case, the CIT(A) has erred in law by confirming addition of Rs.36,000/- made by the AO under chapter VIA. This ground is omitted by the assessee to raise before the CIT(A) since this is not reflected in the computation made by the AO. Therefore, non considering deduction of Rs.36,000/- under Chapter VIA is arbitrary, unjustified, illegal on the facts and circumstances of the case. The same should be deleted in full."

3. Briefly stated the relevant facts are like this. The assessee is an individual and derives income from civil contract works. During the course of assessment proceedings, the Assessing Officer, on verification of bank account No.913010025890507 maintained at Axis Bank, Bhubaneswar, noticed that total amount of Rs.42,35,997/- was credited during the financial year 2013-14 relevant to assessment year 2014-15. On further verification, it was noticed that cash deposits of Rs.9,35,000/- were made during the said assessment year. The

assessee submitted that the amounts credited in the bank account are his business income and some of the amounts are received from sundry debtors and in alternate, it was submitted to estimate the profit @ 8% of total receipts other than cash deposit as per the provisions u/s.44AD of the Act. The contention of the assessee was not acceptable to the AO. The AO treated the cash deposits of Rs.5,00,000/- on 26.12.2013 and Rs.4,35,000/- on 4.1.2014 as unexplained investment and added the same to the total income of the assessee u/s.69 of the Act.

4. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

5. At the time of hearing, Ld A.R. submitted that the amount of Rs.9,35,000/- is deposited to the bank account out of own withdrawal from the same bank in the earlier period. The Ld A.R. submitted that the assessee has deposited Rs.5,00,000/- on 26.12.2013 and Rs.4,35,000/- on 4.1.2014. In support of this, Ld A.R. furnished the bank statement at pages 13 to 21 of paper book for the period from 3.6.2013 to 31.3.2014. He also furnished a chart containing the total withdrawn and deposit as under:

As regards to deposit of Rs.5,00,000/-, the assessee has furnished the below details

The total withdrawal from 20.12.2013 to 26.12.2013 are as follows:

Sl.No.	Date of withdrawal	Amount (Rs.)
1.	20.12.2013	84,000/-
2.	21.12.2013	1,21,700/-
3.	23.12.2013	51,300/-
4.	26.12.2013	400/-
	Total:	2,57,400/-

Amount withdrawn during 01.12.2013 to 19.12.2013 is Rs.  
6,800/-  
Therefore total withdrawn for the month of Dec'13 is  
Rs.2,64,200/-.

The total withdrawn for preceding 3 months i.e (Sept'13 to Nov'13) to the date of deposit (excluding above) are as follows :

SI. No.	Date of withdrawal	Amount in Rs.
1	05.09.2013	1,06,000/-
2	06.09.2013	2,12,000/-
3	09.09.2013	45,000/-
4	10.09.2013	3500/-
5	12.09.2013	6000/-
6	13.09.2013	1000/-
7	14.09.2013	400/-
8	07.10.2013	1,10,000/-
9	08.10.2013	89,500/-
10	09.10.2013	42,500/-
11	10.10.2013	51,000/-
12	11.10.2013	1,00,000/-
13	15.10.2013	10100/-
14	17.10.2013	11000/-
15	26.10.2013	1500/-
16	28.10.2013	1100/-
17	06.11.2013	46,500/-
18	07.11.2013	98,500/-
19	08.11.2013	20,000/-
20	11.11.2013	80,200/-
21	12.11.2013	50,000/-
22	13.11.2013	44,500/-
23	14.11.2013	22,000/-
24	15.11.2013	7000/-
25	18.11.2013	15800/-
<b>Total</b>		<b>11,75,100/-</b>

The month wise break up of the above deposits is as follows:

SI. No.	Month of Deposit	Amount in (Rs.)
1	September 2013	3,73,900/-
2	October 2013	4,16,700/-
3	November 2013	3,84,500/-
4	December 2013	2,64,200/-

The assessee has deposited Rs.5,00,000/- on dtd,26.12.2013 out of the above withdrawals of Rs. 14,39,300/-.

As regards to deposit of Rs.4,35,000/- on 4.1.2014 out of own withdrawals from the same bank account during the period from 27.12.2013 to 3.1.2014, the details are as follows:

Sl.No.	Date of withdrawal	Amount (Rs.)
1.	27.12.2013	2,17,200/-
2.	28.12.2013	47,000/-
3.	30.12.2013	40,500/-
4.	31.12.2013	2,02,500/-
	Total:	5,07,200/-

He submitted that out of above withdrawals, the assessee has deposited Rs.4,35,000/- on 4.1.2014. Therefore, the deposit amount of Rs.4,35,000/- on 4.1.2014 belongs to the assessee which were withdrawn from the bank account from 27.12.2013 to 31.12.2013.

6. He submitted that the assessee has not shown any sundry debtor. In support, he referred to the income tax return placed at page 23 of the paper book. Hence, he submitted that the view expressed by the AO that the sundry debtor is Nil is not correct.

7. He also submitted that the assessee has declared income of Rs.2,98,790/- u/s.44AD on gross receipt of Rs.35,72,537/- and, accordingly declared income @ 8.36%. He, therefore, requested that the addition of Rs.9,35,000/- should be deleted.

8. On the other hand, Id D.R. supported the orders of lower authorities. He submitted that the cash withdrawn by the assessee on various dates has been

utilized for the expenditure incurred by the assessee. Hence, the contention of the assessee that the deposits made by the assessee out of his withdrawals is not correct. Accordingly, he urged to confirm the order of the CIT(A).

9. On careful consideration of the rival submissions and perusing the relevant materials on record, I observe that the details furnished before the Tribunal have been furnished before the Assessing Officer as well as to the CIT(A). On a bare perusal of the bank statement as well as the chart furnished by the assessee, I also observe that the assessee has deposited Rs.5,00,000/- on 26.12.2013 out of the withdrawals from the same bank account of Rs.14,39,300/- as is reflected in the bank statement on various dates. I also find that the deposit of Rs.4,35,000/- on 4.1.2014 is out of withdrawals of Rs.5,07,200/- on various dates from 27.12.2013 to 31.12.2013. I find that addition has been made by the Assessing Officer, as is evident from his order, on the ground that he has come to the conclusion that cash deposits were from the outside business receipts. Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Tribunal in the form of bank statement and also earlier furnished before the Revenue clearly clarifies that the assessee has withdrawn money from his bank account and, therefore, assessee had sufficient availability of cash which is also not disputed by the Revenue. Entire transaction of withdrawals and deposits are duly reflected in the bank account of

the assessee and are verifiable from relevant records. It is also not in dispute that the basis of 'peak credit' theory is based on assumption that if somebody is depositing the money in cash, and withdrawing the same in cash, then in the absence of details it could be said that cash withdrawals are available for redepositing. From the above, I find the explanation of the assessee satisfactory. The assessee has declared income @ 8.36% on the gross receipts of Rs.35,72,537/-. At the same time, I cannot ignore the fact that the assessee has debited all expenses to its profit and loss account including expenditure incurred on the receipts/contract proceeds of Rs.9,35,000/-. Therefore, I find it appropriate to direct the Assessing Officer to estimate the net profit on Rs.9,35,000/- @ 10% . I order accordingly.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced on 31 /07/2019.

Sd/-

**(Chandra Mohan Garg)**  
**JUDICIALMEMBER**

Cuttack; Dated 31/07/2019  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Abhaya Prasad Nayak,S/4, Rajib Nagar, Aiginia, Bhubaneswar
2. The Respondent. ITO, Ward 2(4), Bhubaneswar.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr. Pvt. Secretary,  
ITAT, Cuttack