

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.4037/Del./2019
Assessment Year 2010-2011

Shri Labh Singh, Panipat. PAN JMJPS5792H C/o. M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi – 110049	vs.	The Income Tax Officer, Ward – 2, Panipat.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta, And Shri Somil Agarwal, Advocates.
For Revenue :	Sh. R.K. Gupta, Sr. DR

Date of Hearing :	14.10.2021
Date of Pronouncement :	14.10.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 15.04.2019 of the Ld. CIT(A), Karnal, relating to the A.Y. 2010-2011.

2. Facts of the case, in brief, are that the assessee is an individual. In this case information was received that the assessee deposited cash of Rs.12,21,000/- in his Saving

bank Account maintained with State Bank of India, Branch Krishanpura, Panipat. Since the assessee has not filed the income tax return for the relevant assessment year, the A.O. reopened the assessment of the assessee after recording reasons and issued notice under section 148 of the I.T. Act, 1961. However, there was no compliance to the said notice. The A.O. thereafter issued notice under section 142(1) of the Act. Again there was no compliance. The A.O, therefore, issued a final notice to the assessee proposing the impugned addition of Rs.12,21,000/- to the total income of the assessee. However, there was no compliance from the side of the assessee, therefore, the A.O. in the order passed under section 144 of the I.T. Act, 1961, determined the total income of the assessee at Rs.12,22,419/-.

2.1. In appeal, the Ld. CIT(A) dismissed the appeal of the assessee by observing as under :

4.4. Findings :

The facts of the case reveal that an addition of Rs.12,21,000/- was made u/s 144/147 of the IT Act, 1961 on account of unexplained cash deposits. The

additional evidence filed under Rule 46A of the IT Rules has been admitted as he had reasonable cause for not submitting the requisite documents during assessment proceedings.

The Assessing Officer (A.O.) has in his remand report (mentioned supra) stated that the deposits relate to sale of agricultural produce and sugarcane, partly in his name and partly in his father's name. It has been stated that the deposits have been made out of dairy receipts & withdrawal from Artis accounts.

The A.O. has clearly pointed out that the copy of account statement of the commission agent shows that the latter has paid only Rs.1,06,092/- and that too to the father of the assessee. The gaps in the explanation of the assessee have been clearly brought out by the A.O. There is, therefore, no correlation between the evidences/ explanation offered by the assessee and the deposits in the account. There is no proof or evidence of sale of dairy products and agricultural products in relation to the said deposits. Therefore, I confirm the

said addition in the light of the above observations. This ground of appeal is dismissed.”

3. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in framing the impugned re-assessment order u/s. 144/147 and that too without assumption of jurisdiction as per law and without complying the mandatory conditions of section 147 to 151 of Income Tax Act, 1961.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. A.O. in framing the impugned re-assessment order u/s. 144/147, is bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in making aggregate addition of Rs.12,21,000/- on account of cash deposits by treating it as alleged income from other sources u/s. 69A and that too by recording incorrect facts and findings and in violation of principles of natural justice.*
4. *That in any case and in the view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making aggregate addition of Rs.12,21,000/- on account of cash deposits u/s. 69A, is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. A.O. in charging interest u/s. 234A and 234B of the Income Tax Act, 1961.*

6. *That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.”*

4. During the course of hearing, the Learned Counsel for the Assessee did not press grounds of appeal numbers 1 and 2, for which, the Ld. D.R. has no objection. Accordingly, grounds of appeal numbers 1 and 2 are dismissed as not pressed.

5. Grounds of appeal number.6 is general in nature is dismissed.

6. So far as Grounds of appeal numbers.3 and 4 are concerned, the Learned Counsel for the Assessee relying on the decision of the Coordinate Bench of the Tribunal in the case of Chetan Gupta reported in 149 ITD 344 and decision of Hon'ble Allahabad High Court in the case of Sarah Trading Co. 376 ITR 534 (All.) submitted that only peak credit should be added to the total income of the assessee. He accordingly submitted that the matter may be restored to the file of A.O. with a direction to make addition of the peak credit.

7. The Ld. D.R. on the other hand relied on the order of the A.O. and the Ld. CIT(A).

8. I have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that due to non-appearance of the assessee before the A.O. despite number of opportunities granted, the A.O. made addition of Rs.12,22,419/- being the cash deposited in the bank account as unexplained cash credit. I find the Ld. CIT(A) upheld the action of the A.O, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that there was continuous deposits and withdrawals in the bank account and, therefore, only the peak credit should be added to the total income of the assessee. I find some force in the above arguments of the Ld. CIT(A). I find the Coordinate Bench of the Tribunal in the case of Chetan Gupta vs., DCIT reported in 144 ITD 344 has allowed the theory of peak credit for making the addition. I find the Hon'ble Allahabad High Court in the case of Saraf Trading Co., (supra) observed as under :

“30. We may also notice that against the Tribunal’s earlier order dated February 13, 2004, the Department filed an appeal under section 260A before this court. We are informed that these appeals preferred by the Department have also been dismissed by this court. These appeals, i.e., I.T.A. No.179 of 2004 and other connected appeals have been dismissed by a Division Bench, vide judgment dated December 13, 2013. Therein the court in paragraphs 14 and 15 has said :

"14. Regarding the peak theory, it may be mentioned that the peak theory was defined in the Sampath Iyengar's Law of Income-tax, volume 3, ninth edition, page 3547. Accordingly, 'Peak credit' theory - One of the commonest defects of an assessee, where a single credit or number of credits appear in the books in the account of any particular person side by side with a number of debits is that they should all be arranged in serial order, that a credit following a debit entry should

be treated as referable to the latter to the extent possible and that, not the aggregate but only the 'peak' of the credit should be treated as explained. To give a simple example, suppose there are credits in the assessee's book in the account. A of Rs.5,000 each on October 1, 1990, and again on November 5, 1990, but there is a debit by way of repayment shown on October 27, 1990, the explanation will be that the credit appearing on November 5, 1981, has or could have come out of the withdrawal/repayment on October 27, 1981. This plea is generally accepted as it is logical and acceptable (whether the creditor is a genuine party or not), provided there is nothing in the material on record to show that a particular withdrawal/repayment could not have been available on the date of the subsequent credit.

15. *A refinement or extension of the plea occurs where the credits appear not in the same account but in the accounts of different persons.*

Even then, if the genuineness of all the person is disbelieved and all the credits appearing in the different account are held to be the assessee's own moneys, the assessee will be entitled to set off and a determination of the peak credit after arranging all the credits in the chronological order."

In view of the discussion made and the proposition of law referred, the questions aforesaid are answered against Revenue."

8.1. Since the assessee in the instant case has filed the details of bank statement which shows systematic deposits and withdrawals in the bank account, therefore, I am of the considered opinion that only the peak credit should be added to the total income of the assessee, subject to verification by the A.O. I, therefore, deem it proper to restore the issue to the file of A.O. with a direction to find-out the peak credit in the bank account and make the addition of the same instead of the entire cash deposits in the bank account, after giving due opportunity of being

heard to the assessee. Grounds of appeal numbers.3 and 4 are accordingly allowed for statistical purposes.

9. Grounds of appeal number.5 challenging the levy of interest under sections 234A and 234B being mandatory and consequential in nature is dismissed.

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

Order pronounced in the open Court on 14.10.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 14th October, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.