

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.941/Del/2018
(ASSESSMENT YEAR 2013-14)**

Sobh Ram, S/o Dalip Singh, H.No.54, Village & Tehsil Israna, Panipat. PAN-ARKPR 1660E	Vs.	Income Tax Officer, Ward No.4, Panipat.
(Appellant)		(Respondent)

Appellant By	Sh. K.C. Aneja, ITP
Respondent by	Sh. Umesh Takyar, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals), Karnal [Ld. CIT(A)", for short], dated 24.11.2017 for Assessment Year 2013-14. Grounds taken in this appeal of Assessee are as under:

"1. That on the facts & in the circumstances of the case additions of Rs. 5776500/- alleged peek cash credits in the bank accounts have wrongly been added and the learned CIT(A) erred in confirming Rs.3017154/- taking alleged peek amounts.

2. *That peek cash credits in the bank accounts are fully not of the character of income profit earned on these alleged sales of Rs.3017154/- into be taken.*

3. *That even past savings circulating in business activities have not been considered and adjusted.*

4. *That credit for Agriculture Income for Rs.550000/- shown in the return have also not been given for alleged cash deposits in the bank and same may be reduced from total peek credits.*

5. *The appellant craves for leave to add or amend any grounds of appeal before hearings are made.”*

(B) In this case, return of income was filed by the assessee showing income of Rs.2,150/-, in addition to agricultural income of Rs.5,50,000/-. The assessment order dated 30.03.2016 was passed by the Assessing Officer (“AO”, for short), wherein an addition of Rs.57,76,500/- was made on account of unexplained deposits in the assessee’s bank accounts. The assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated 24.11.2017, the Ld. CIT(A) deleted an amount of Rs.27,59,346/- and confirmed the amount of Rs.30,17,154/- out of the aforesaid total addition of Rs.57,76,500/-. The relevant portion of the aforesaid order dated 24.11.2017 of the Ld. CIT(A) is reproduced as under:

“3.2 I have examined the facts of the case and find that the appellant has sought to elaborate on the deposits and withdrawals in his bank account in view of land transactions through various explanations viz. land transactions, property dealings etc. However, he has not been able to establish the source of deposits. Having said that, there have been constant deposits and withdrawals, which take a cyclical pattern. In the interest of justice, I sustain the addition to the extent of adding the peak credit amount of Rs.30,17,154 (SBI Rs.10,30,861/- plus HDFC Rs.19,86,292/-) as submitted by the appellant. The appellant gets a relief of Rs. 27,59,346/- (Rs.57,76,500/- less Rs.30,17,154/-).”

(B.1) The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 24.11.2017. Along with the appeal filed by the assessee in Form No.36, a “Statement of Facts” was also filed from the side of the assessee, which is reproduced as under:

“Sobh Ram S/o Shree Dalip Singh assessee an individual is an agriculturist having self cultivated 14 acres land in village & tehsil Israna Distt. Panipat and in Madhya Pradesh.

The assessee is holding form B license to property dealings vide license no. 1/2010 issued by the office of licensing authority District collector, Panipat. Small plots are purchased and further cut into small plot of 50 sq. Yard to 100/150 sq. Yard in village area for financially poor class people, Return declaring business of property dealings income at Rs. 2150 plus agricultural income at Rs. 550000/- was filed on 08.11.2014 property dealings sale proceeds and Agricultural sale proceeds from time to time were deposited in A/c no. 30669314991 with State Bank of India and account no. 17301530000706 with HDFC Bank Israna. Copies of Bank statement for the financial year 2012-13 relevant to the assessment year 2013-14 were submitted and explanation furnished. The A.O. has made additions of Rs. 3063000/- alleged unexplained cash deposits in A/c no. 30669314991 State Bank of India Israna and

Rs.2713500/- alleged unexplained cash deposits with A/c no. 17301530000706 with HDFC Bank Ltd Israna. Thus total additions made for Rs. 5776500/- Learned CIT(A) reduced the addition by Rs. 2759346/- and confirmed addition of Rs. 3017154/- being peek amount of both the banks. It was urged before the learned CIT(A) to take profit on alleged peek amount Rs. 3017154. The learned CIT(A) has not even given credit for Agriculture Income and previous accumulated capital in cultivation thus addition is disputed.”

(B.2) In the course of appellate proceedings in Income Tax Appellate Tribunal, the following documents were filed from the assessee's side.

1. Copy of written submissions made before the Ld. CIT(A) filed on 10.01.2018.
2. Copy of Form 'B' property dealing License.
3. Copy of SBI A/c no. 30669314991
Day to day dealings for the period 1.04.2012 to 31.03.2013 showing cash deposit & case withdrawals.
4. Copy of HDFC A/c no. 1730150000706
Day to day dealings for the period 1.04.2012 to 31.03.2013 showing cash deposit & case withdrawals.
5. Written Submission made further to submission Dt. 10.01.2017 requesting to charge profit on peek amounts of the Bank Deposit with supporting cases of various benches & P&H High Court.
6. Copy of assessment order of the assessee Dt. 26.12.2018 Relating to 2011-12 Asstt. accepting cash deposits in the Bank.
7. Copy Ld CIT(A) order Dt. 30.11.2018 relating to 2009-10 Asstt. of the assessee in 1T/128/E/PPT/2016-17 accepting cash deposits in the bank & taking profit margin.
8. Case Laws
 1. CIT vs. Dhani Ram 326 ITR 399 (P&H)
 2. CIT Vs. President Industries 258 ITR 654 (Gujrat)
 3. Income Tax Officer, Ward -4, Ambala Vs. Parmod Mittal
ITA No.794/Chd/2013 Assessment Year 2009-10

(C) At the time of hearing before us, the Ld. Authorized Representative of the assessee ("AR", for short) placed reliance on the aforesaid documents filed from the assessee side, which has already been mentioned in foregoing paragraph No (B.2). In particular, he submitted that credit should be given for agricultural income of Rs.5,50,000/- which was disclosed by the assessee in return of income and which was not disputed either by the Assessing Officer or by the Ld. CIT(A). He further submitted that the assessee's plea, urged before the Ld. CIT(A), to take profit on alleged peak amounts, was not considered by the Ld. CIT(A); and he further submitted that this plea should get due consideration in ITAT.

(D) On the other hand, the Ld. Senior Departmental Representative ("DR" for short), relied upon the orders of the Ld. CIT(A) and the Assessing Officer.

(E) We have heard both sides and have considered the materials on record. We have also considered the judicial pronouncements referred to in the records. We find that the ld.

CIT(A) has given specific finding that there had been constant deposits and withdrawals (from the bank accounts), which took a cyclical pattern. However, the Ld. CIT(A) did not give any consideration to the plea urged by the assessee that profit on the peak amount should be treated as income instead of treating the entire peak amount as income. If the cyclical pattern of the deposits and withdrawals of the bank account were in the nature of business activity, then the Ld. CIT(A) should have considered the aforesaid plea urged by the assessee. However, this plea has not been examined or considered at all by the Ld. CIT(A). We also find that the Ld. CIT(A) has not given any finding on the assessee's plea that the agricultural income of aforesaid agricultural income of Rs.5,50,000/- should be given credit.

(E.1) We are of the view that these issues deserved to be considered more comprehensively by the Ld. CIT(A), which she failed to do; and instead she proceeded to pass a cryptic appellate order without proper analysis and without due consideration of the relevant facts.

(E.2) In view of the foregoing, we set aside the impugned appellate order of the Ld. CIT(A) with the direction to pass a fresh

appellate order in accordance with law, after providing reasonable opportunity to the assessee. Before passing the fresh order, the Ld. CIT(A) should consider the assessee's claim for credit on account of agricultural income and give specific finding after due consideration of facts and circumstances of the case. Further, before passing the fresh appellate order, the Ld. CIT(A) should examine whether the cyclical pattern of deposits and withdrawal in bank account were in the nature of the business activity; and if so, a reasonable amount of profit from such business activity should be brought to tax. By way of abundant caution, we wish to clarify that we are not giving any specific direction to the Ld. CIT(A) to treat the assessee's bank transactions as business activity; or to bring any specific part of peak credit to tax. The Ld. CIT(A) will take a view on these matters in the light of facts, and circumstances of the case, after giving reasonable opportunity to the assessee. This appeal is hereby disposed off, in the specific facts and circumstances of this particular case, in accordance with the aforesaid directions and remarks. For statistical purposes, the appeal is partly allowed.

(F) In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 10th January, 2022.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated:10.01.2022

PK

Copy forwarded to:

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

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

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