

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**
(CONDUCTED THROUGH E- COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 272/Rjt/2018
निर्धारण वर्ष/Asstt. Years: 2008-2009

Sagar Navinchandra Chande, Flat No.103, "Pearl" Suncity, Sadhu Vasvani Road, Rajkot. PAN: AIOPC9208Q	Vs.	I.T.O., Ward-1(1)(5) Rajkot.
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(Applicant)		(Respondent)
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Assessee by :	Shri Mehul Ranpura, A.R
Revenue by :	Shri B.D. Gupta, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **24/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **01/06/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeals have been filed at the instance of the Assessee against the order of the Learned Commissioner of Income (Appeals)-1, Rajkot dated 14/05/2018 arising in the matter of assessment order passed under s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-09.

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

We state the grounds of appeal as under are without prejudice to one another. These are alternate grounds and one ground may be treated as independent of others.

- 1. The re-opening of Assessment is bad-in-law.*
- 2. The Assessment Order under section 143(3) of the Act, is bad in law as well as facts.*
- 3. The Order of the learned Commissioner of Income Tax (Appeals) is bad in law as well as facts.*
- 4. The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law by in confirming assessed Income at Rs.12,57,060/-against returned income of Rs.1,02,710/-.*
- 5. The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law by in confirming addition of Rs.11,54,350/- on account of alleged unexplained cash deposits in bank account.*
- 6. The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law by in confirming addition of Rs.11,54,350/- by treating amount deposited in Bank Account as unexplained.*
- 7. The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law in confirming the charging of interest u/s. 234A, 234B, and 234C of the Act, when addition itself not sustainable.*

Your Honour's appellant craves leave to add, amend, alter or withdraw any one or more grounds of appeal on/or before hearing of appeal.

3. The assessee in ground no. 1 to 3 of appeal has challenged the validity of assessment order.

4. At the outset, the learned AR for the assessee before us submitted that he was instructed by the assessee not to press this issue i.e. challenging the validity of the assessment. Accordingly, the same is hereby dismissed being not pressed.

5. The next issue raised by the assessee vide ground no. 4 of his appeal is general in nature. Hence the same is hereby dismissed being general in nature.

6. The next issue raised by the assessee vide ground no. 5 and 6 of his appeal is that the learned CIT-A erred in confirming the addition of Rs. 11,54,350/- made on account cash deposits in bank.

7. The assessee is an individual and claimed to be working as commission agent for sale and purchase of vehicles parts. The AO based on AIR report found that there was cash aggregating to Rs. 11,54,350/- deposited in the bank account of the assessee, held with Punjab National Bank Rajkot from different location. Accordingly, the question was posed to the assessee to explain the sources of cash deposit but the assessee failed to make reply. Accordingly the AO treated the same as income from undisclosed sources and added to the total income of the assessee.

8. The aggrieved assessee preferred an appeal to the CIT-A.

9. The assessee before learned CIT-A submitted that he is working as commission agent for sale of vehicle parts. On sale of vehicle parts customer used to make payment by depositing cash in his bank account which was immediately withdrawn to make payment to actual supplier of vehicle parts after retaining commission income. The entire transaction yielded commission income of Rs. 1,51,800/- which has been offered to tax in the return of income. The assessee further submitted that the books of account prepared and submitted before the AO contain all these details including cash deposited/ withdrawn and commission income earned.

9.1 The assessee also submitted as per real income theory gross amount of the cash deposit cannot be made subject to tax. Alternatively, as such, the maximum peak credit can be brought to tax which comes at Rs 1,49,727/- whereas the commission income declared is of Rs. 1,51,800/- only. Therefore, no separate addition is required to be made.

10. However the learned CIT-A confirmed the addition made by the AO by observing as under:

Having considered facts and the circumstances of the case and rival contentions I find that the contentions of the assessee are neither here nor there. Had the assessee earned only commission income there was no question of sale proceeds being credited to his account. The parties from whom stated vehicle parts have been purchased or to whom they have been sold have not been identified. Therefore, the contentions that impugned deposit are sale consideration of vehicle parts on commission basis is not supported by any evidence and the same is therefore not tenable being devoid of merit. It is also noteworthy that assessee has not made any such claim before the Assessing Officer even though specific show-cause notice was issued to the assessee. Therefore, this claim tantamounts to additional evidence/claim which was not made by the Assessing Officer. I am of the considered opinion that such claim is just after thought and not supported by any evidence and therefore the same is not tenable. As regards the contention that only the peak balance could be taxed I find that entire deposit by assessee have been withdrawn almost immediately after depositing and therefore it cannot be said that this amount were deposited back. When the nature of business of assessee or the nature of the withdrawals or deposit is not clear, the claim of assessee of peak balance as income is not tenable. In view of the above, action of Assessing Officer calls for no interference. The addition is sustained. The ground of appeal is rejected.

11. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

12. The learned AR before us submitted that there is deposit of cash and simultaneous withdrawal of cash from the bank. Therefore, in such a situation the amount of peak credit in the bank should be taken as income of the assessee.

13. On the other hand learned DR vehemently supported the order of the AO.

14. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there was cash aggregating to Rs. 11,54,350/- deposited in the bank account of the assessee which was treated as income from undisclosed sources by the lower authorities. The assessee before the learned CIT-A explained the amount of cash deposit represent amount deposited by the customer to whom vehicle parts were sold and from this activity he earned only commission income and repaid the amount to the actual supplier after retaining commission. The explanation of the assessee was rejected by the learned CIT-A on

reasoning that the detail of person to whom vehicle parts were sold and the person who supplied parts were not submitted. Further the assessee was only acting as an agent in the transaction then why customer deposited the purchase consideration to his bank account, was not explained. At the time of hearing, the learned counsel has not brought any material on record suggesting that the assessee was actually carrying out commission agency business as contended by him. Accordingly, we reject the contention of the assessee.

14.1 Be that as it may be, on perusal of the bank statement, placed on record, we note that there were regular deposits of money in cash which was withdrawn in cash. Thus the amount withdrawn from the bank was also available with the assessee for depositing the same in cash. Accordingly, the amount of cash deposited cannot be treated as income of the assessee without considering the corresponding withdrawal. In such a situation the principles of peak credit theory should be adopted for determining the income of the assessee. The concept of the peak credit proceeds on the fundamental premise that the money deposited and/or withdrawn from the assessee's bank account belongs to the assessee, or in respect of which ownership vests in the assessee. In the given facts and circumstances, there is no allegation of the revenue that the money withdrawn from the bank has either been utilized for incurring the expenses or for the purpose of the investments. Accordingly, the working of the peak credit works out at ₹1,49,727 which has not been challenged by the revenue. Thus we are of the view that in the given facts and circumstances, at the most the peak balance of ₹ 1,49,727.00 can be brought to tax under the peak credit theory. However we note that the assessee has declared an income of ₹ 1,02,710/- which is less than the amount determined under peak credit theory. Accordingly, we direct the authorities below to determine the income of the assessee at ₹1,49,727 only. In other words, there will be an addition of Rs. 47,017/- (Rs. 1,49,727 – 1,02,710/-) to the total income of the assessee which is over and above the income already disclosed by the assessee in the income tax return.

15. Last issue raised by the assessee vide ground number 7 of his appeal is consequential and does not required to be separately adjudicated. Hence, the same is dismissed being infructuous.

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

Order pronounced in the Court on 01/06/2022 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
01/06/2022
Manish