

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.4934/Del/2019
Assessment Year: 2011-12

Ejaz Akhtar H. No. F/23, Street No. 6/4, Jogabai Extn., Zakir Nagar, Okhla, New Delhi-110025 PAN No.AFOPA3121M	Vs	ITO Ward- 28 (4) New Delhi
(APPELLAN		(RESPONDENT)

Appellant	Sh. Rajiv Saxena, Advocate Ms. Sumangla Saxena, Advocate
Respondent	Sh. Sita Ram Meena, Sr DR

Date of hearing:	15/06/2022
Date of Pronouncement:	15/06/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-33, New Delhi dated 27.03.2019 pertaining to A.Y.2011-12.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the penalty levied u/s. 271 (1)

(c) of the Act. A perusal of the order levying penalty u/s. 271 (1) (c) of the Act show that the penalty has been levied on the cash found to be deposited in the bank account with P N B, Maharani Bagh, Delhi amounting to Rs.58,52,055/-.

3. We further find that when the quantum addition was made the quarrel travelled upto to the Tribunal and this Tribunal in ITA No.6639/Del /2015 order dated 05.08.2020 has restored the issue to the files of the AO to examine the working of peak cash deposits furnished by the assessee and thereafter make the addition of the Peak amount. The relevant findings of the coordinate bench read as under :-

“8. We have heard the rival submissions and perused the relevant materials available on record. The issue in the present ground is with respect to the addition of cash deposits made by the assessee in his Bank account. It is an undisputed fact that assessee has deposited cash in his Bank account on various dates and the amount aggregated to Rs.58,52,055/-. Learned AR from the copy of the Bank statement has pointed out that invariably the cash deposit is followed by the cash withdrawal through ATM on next day or very shortly thereafter. The withdrawn cash is returned to the person who has deposited the cash or on his instructions to the person stated by him. The assessee had given the explanation about the deposit of cash and withdrawals in the statement before AO but the same was rejected by the AO.

9. We find that during the course of assessment proceedings for A.Y. 2009-10 assessee had given similar explanation and the activities performed by him and the AO in the assessment order passed u/s 143(3) had made addition of only the peak deposits of cash. Before us, Learned AR has also pointed to the fact that for A.Y. 2012-13, the case of the assessee was re-opened for the reasons that it was noted that there were cash deposits in assessee's bank account and the assessee being a non-filer. We find that in the assessment order passed for A.Y. 2012-13 u/s 147 r.w. 143(3), the income declared by the assessee has been accepted and no addition on account of undisclosed source u/s 69A of the Act has been made. In such a situation following the principle of consistency, we are of the view that the addition of the entire cash deposits in the assessee's Bank account is uncalled for and find force in the submission of the Ld AR that only the peak cash deposits be considered as income of the Assessee. Before us, assessee has filed the working of the peak credit of deposits. We however find that there is no finding of the lower authorities on that aspect. Considering the totality of the facts and in view of the facts that in earlier years the addition has been made only on the peak deposits, we direct the AO to make the addition of only the peak cash deposits during the year. We accordingly direct the AO to examine the working of peak cash deposits furnished by the assessee and thereafter make the addition of the peak amount. We thus direct so. Thus the ground of the Assessee is partly allowed.”

4. In our considered view since the quantum addition need to be decided afresh as per the directions of this Tribunal (supra). We deem it fit to restore the matter relating to the levy of penalty u/s. 271 (1) (c) of the Act to the files of the AO. The AO is directed to decide the levy afresh after deciding the quantum addition and after affording a reasonable and sufficient opportunity of being heard to the assessee.

5. In the result, the appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 15.06.2022.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- 15.06.2022

Copy forwarded to:

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

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	15.06.2022
Date on which the typed draft is placed before the dictating Member	16.06.2022
Date on which the typed draft is placed before the Other member	16.06.2022
Date on which the approved draft comes to the Sr.PS/PS	16.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	16.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	16.06.2022
Date on which the final order is uploaded on the website of ITAT	16.06.2022
Date on which the file goes to the Bench Clerk	16.06.2022
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	