

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.767/Del/2020

निर्धारणवर्ष/Assessment Year: 2010-11

Sandeep, S/o Rajbeer, VPO-Risalu, Panipat, Haryana.	बनाम Vs.	ITO Ward 4, Panipat, Haryana.
PAN No. COEPM8419K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri J.B. Sharma, Adv.
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.06.2022
उद्घोषणाकीतारीख/Pronouncement on	29.06.2022

आदेश /O R D E R

This appeal has been filed by the assessee against the order of the Ld. CIT(Appeals), Karnal dated 23.08.2019 for AY 2010-11.

2. The Ld. Counsel of the assessee submitted that the assessee does not want to press ground no. 1, 2 & 3 and only wants to press ground no. 4. Therefore, ground no. 1 to 3 are dismissed as not pressed remaining ground no. 4 reads as follows: -

4. *"That on the facts and circumstances of the case, both the authorities have erred in not considering the facts that the amount/cash deposited into bank is/are also from the amount*

withdrawn from the same bank on different dates. The Ld. Authorities below have failed to consider the peak of the amount and made/confirmed addition of the total amount deposited into bank.”

3. The Ld. Counsel of the assessee submitted that the assessee is a villager having income from retail sales of vegetables in open fud/footpath in Subji Mandi, Panipat and purchases vegetables from different farmers/agents and sales them to the customers on cash basis. It was also contended that since the appellant having income less than the taxable limit under Income Tax Act, 1961, therefore, did not file any return of income for AY 2010-11. It was also stated that there was a total cash deposit of Rs.27,87,900/- in the saving bank account on different dates which was from his sale proceeds of a business turnover and from withdrawals from the same bank account on different dates. It was also submitted by the Ld. Counsel that the AO finalized the ex parte assessment order u/s 144/147 of the Act making addition of total cash amount of Rs.27,87,900/- into bank account. The Ld. Counsel submitted that in the facts and circumstances of the case the AO as well as the Ld.CIT(A) have erred in not considering the fact that the amount/cash deposited into bank are also from the amount withdrawn from the same bank on different dates and, thus, the authorities below have failed to consider the peak of the amount and made/confirm the addition of the total amount deposited into the bank account.

4. On this submission, the Ld. Sr. DR submitted that the computation submitted by the assessee showing peak is wrong and as per cash flow statement filed by the assessee himself the peak amount comes to Rs.3,45,200/- on 30.04.2009 which should be taken into consideration.

5. On careful consideration of the submission, I am of the considered view that the Ld. DR has not controverted that the assessee is a vegetable vendor who purchases vegetables from different farmers/agents and sale to the customers. From the copy of the bank account, I am agree with the submissions of assessee that the total cash deposited to the bank account of the assessee was from two sources viz. amount of sale proceed of his business and withdrawal from the same bank account on different dates. The entire deposited amount cannot be treated in the hands of the assessee as income u/s 69A of the Act or any other provision in this peculiar facts and circumstances. The Ld. Sr. DR rightly pointed out that the peak calculation submitted by the assessee that peak amount is Rs.2,69,300/- is not correct and I am in agreement with the submission of Ld. Sr. DR that as per cash flow statement submitted by the assessee and other relevant document the peak amount is Rs.3,45,200/-. Therefore, the ground no. 4 of assessee is partly allowed and addition is restricted to Rs.3,45,200/- and remaining part of addition is deleted. The AO is directed to recalculate the tax liability as per the order given hereinabove.

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

Order pronounced in the open court on 29/06/2022

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 29.06.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi