

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.6231/DEL/2019
[Assessment Year: 2010-11]**

Rajesh Jain, E-1/19, 02 nd Floor, Sector-7, Rohini, New Delhi-110085	Vs	Income Tax Officer, Ward-42(3), New Delhi-110001
PAN-AMGPJ8914N		
Assessee		Revenue

Assessee by	Ms. Mansi Jain, CA & Sh. Pranshu Singhal, CA
Revenue by	Ms. Princy Singla, Sr. DR

Date of Hearing	08.02.2023
Date of Pronouncement	14.02.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-34, New Delhi, dated 19.06.2019 for the Assessment Year 2010-11.

2. The grounds of appeal reads as under:-

1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.

3. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the

reasons on the basis of which the reassessment is initiated has no live link between the material and the belief formed.

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the AO is bad in law and is liable to be quashed in the absence of proper service of statutory notice us 148 of the Act.

5. (i) On the facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the order of the A.O. despite the same having been made on the basis of reasons recorded without there being any independent application of mind.

(ii) That the reassessment order passed by the A.O. is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and has been recorded only on borrowed satisfaction.

6. On the fact and circumstances of the case, ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that mere depositing cash in the bank accounts does not tantamount to escapement of income.

7. On the fact and circumstances of the case, Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reopening u/s 147 of the Act is bad in law having been made without obtaining valid approval from the prescribed authority as required u/s 151 of the Income Tax Act, 1961.

8. (i) On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming an addition to the extent of Rs. 8,14,238/- on account of peak credit in bank accounts rejecting the explanations and evidences filed by the assessee.

(ii) That the above said addition has been confirmed rejecting arbitrarily the working given by the assessee.

9. (i).On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming an addition of Rs. 5,00,000/- made by A.O., estimating the business income of the assessee.

(ii) That the addition was made most arbitrarily, without there being any basis for the same.

(iii) That the peak credit out of bank accounts having been made, such addition on account of estimated business income amounts of double taxation.

10. (i) *On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming an addition of Rs. 3,00,000/- made by A.O., on account of household withdrawals.*

(ii) *That the addition was made most arbitrarily on estimates, without there being any basis for the same.”*

3. At the outset in this case, the Ld. Counsel for the assessee submitted that the assessee will not be pressing grounds of appeal no.1 to 7. Hence, the same are dismissed is not pressed.

4. Brief facts of the case are that the assessment was reopened on the basis of AIR information that the assessee has deposited Rs.68,00,867/- and Rs.32,72,900/- during FY 2009-10 relevant to 2010-11 in bank. The assessee has not filed the return for the AY 2010-11 and no details of the assessee was available with the AO due to non availability of PAN. The AO has issued the notice u/s 142(1) time and again but no compliance was made therefore AO has completed the assessment u/s 144 of the Act after making addition of Rs.1,00,73,767/- on account of cash deposited in the bank account and also estimated the business income of the assessee at Rs.5 lacs and made addition of Rs.3 lacs on account of household withdrawal. Total income assessed at Rs.1,08,73,767/- vide order dated 11.03.2015.

4.1. With regard to the issue of deposit of cash of Rs.68,00,867/- and Rs.32,72,900/- during the FY 2009-10, the Ld. CIT(A) while adjudicating the issue agreed that the AO has passed order without considering the withdrawal in the account. He proceeded to hold that peak credit in Axis Bank and ICICI bank account in combined manner may be

taken and peak should be added. The order of the Ld. CIT(A) reads as under:-

“7.3. I have considered the facts of the case, finding of the AO and submission of the appellant. Appellant has deposited Rs.32,72,900/- in his Axis Bank Account and Rs. 68,00,867/- in ICICI Bank account. The AO has made the addition of all the deposits in the bank account without considering the withdrawal made by the appellant. The appellant has submitted that he is engaged in the business of trading of zinc and all the sales and purchases were made in cash. The appellant has stated that it is evident from the bank accounts that there were credits and corresponding debits which give an indication that some amounts has been routed again and it is a settled principle that in such cases peak credit is taken into consideration for the purpose of making an addition. I have gone through the bank account and it is observed that there were credits and corresponding debits in the bank account. It shows that appellant has deposited cash and after that withdrawal is made and again cash is deposited in the bank account. Thus cash is rerouted in the bank account. In such a situation peak credit theory could be applied. There are several items of deposits and withdrawals in the bank accounts. The AO has simply picked up the deposit sides of the passbook and made the addition for all the deposits made in the bank accounts, ignoring that there are several withdrawals also. If there are certain deposits and withdrawals as well and there is nothing in the assessment order to correlate these withdrawals any investments made by the appellant, the presumption is that such withdrawals are utilized for making deposits. Thus in the case of the appellant addition on the basis of peak credit in the bank accounts would be justified. The appellant has furnished the detail of the credit in the bank account and the peak credit in the Axis Bank account at Rs. 3,28,744/- and in ICICI Bank account at Rs.4,85,494/- and combined peak of both the bank account is at Rs.5,62,591/-. Thus total peak credit on the basis of individual bank accounts worked out to Rs. 8,14,238/-.”

5. The Ld. CIT(A) further referred to several case laws and finally concluded as under:-

“7.6. The facts of the case of the appellant are identical. The AO has added entire credit entries without considering the withdrawals from the bank accounts. Where there are deposits and withdrawals entries into the bank account, it would be presumed that amount withdrawal was available with the appellant for depositing the same. Therefore it cannot be

concluded that entire deposits were from unexplained sources. Considering the above facts and finding of the Hon'ble ITAT, addition is confirmed on the basis of the peak credit at Rs.8,14,238/- and balance addition made by the AO at Rs.92,59,529/- is hereby deleted."

6. Against this order, the assessee is in appeal before us.
7. We have heard both the parties and perused the records. The Id. Counsel pleaded that the peak should not be considered by combining of two bank accounts at Rs.8,14,238/- but it should be considered on single basis being combined peak of the two accounts and hence the addition should be reduced accordingly. Upon careful consideration, we note that the Ld. CIT(A) has given considerable relief to the assessee without the assessee establishing the existence of any business. The huge deposits and withdrawal in the bank account have permitted to be taken out the ambit of taxation on peak theory and only two peak have been added. In this process the Ld. CIT(A) has deleted Rs.92,59,529/- of the addition made by the AO. The Revenue has not filed any appeal in this regard. In our considered opinion, the assessee has been granted sufficient relief by authorities below and in our considered opinion the assessee does not need any more relief. We affirm the order of the Ld. CIT(A) in this regard.
8. Another issue raised in this regard is that the AO has made an estimated addition of Rs.5 lakhs as profit of business. The AO in this regard having noted that the assessee has not co-operated and after adding the cash deposits, estimated the income of Rs.5 lakhs.
9. Upon assessee's appeal, the Ld. CIT(A) has confirmed the addition by observing as under:-

“I have considered the facts of the case, finding of the AO and submission of the appellant. The appellant has admitted during the appellate proceedings that he had engaged in the business of trading in Zinc. There are cash deposits in the bank account and if the contention of the appellant is accepted, then AO is justified in estimating the business income of the appellant. The appellant has not filed the return either u/s 139 or in response to notice issued u/s 148. The appellant has filed the return for the subsequent year disclosing business income of Rs.1,90,000/- but he has not given any reason for not filling the return and making huge deposits and withdrawals from the bank account. Considering the above facts, addition made by the AO of Rs.5 lakhs is hereby confirmed.”

10. Against this order, the assessee is in appeal before us.
11. The Ld. Counsel for the assessee submitted that peak credit has already been added, therefore, there is no need of adding further estimated business profit. Upon hearing both the parties and perusing the records, we find ourselves in agreement with this proposition that when the Ld. CIT(A) has already granted relief of Rs.92,59,529/- on cash deposits and added only peak credit, there is no justification of further addition of business profit. Hence, we set-aside the order of the authorities below on this issue and decide the issue in favour of the assessee.
12. In the result, this appeal of the assessee is partly allowed.

Order pronounced in the open court on 14th February, 2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; Dated: 14.02.2023.

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi