

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'F' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 272/Mum/2023 (A.Y. 2019-20)

DCIT, CC-2(1) Old CGO Building 804, 8 th Floor M.K. Road Mumbai-400 020.	Vs.	Shri Jugraj Jain 301/302, Vaastu Park A-Wing, Malad West Mumbai-400 064. PAN : AEHPJ9145A
(Appellant)		(Respondent)

Assessee by	Shri Karan Jain
Department by	Shri Ankush Kapoor
Date of Hearing	28.03.2023
Date of Pronouncement	18.04.2023

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order passed by the learned CIT(A)-48, Mumbai in granting partial relief in respect of addition made under section 69 of the I.T. Act in assessment year 2019-20.

2. Facts relating to the case are stated in brief. The assessee is an individual and he filed his return of income for the year under consideration declaring total income of Rs. 1.61 crores. The assessee is a promoter of M/s. Gold medal Group of companies. M/s Gold medal Group was subjected to search under section 132 of the Act. During the course of search WhatsApp Chat made by one of the employees Mr. Deepak Jain was examined. It was noticed that the above said employee was maintaining ledger of cash transactions entered by the group in WhatsApp Chats in three telephone numbers, which were saved as "Bh", "Sweet Home" and "My home". In the statement recorded under section 132(4) of the Act on 13.11.2019, Shri Deepak Jain admitted that the cash transactions were not recorded in the

books of account and his statement was also confirmed by one of the directors of the assessee group Mr. Kapil Jain. The assessee herein, being a promoter of Gold medal group, submitted a letter dated 16.3.2020 before the Investigation Wing owning up the cash transactions and also suo moto admitted to surrender a sum of Rs. 10.85 crores as his undisclosed income earned by him from A.Y. 2017-18 to 2020-21. The above said amount was arrived at by aggregating cash transactions found recorded in the WhatsApp Chats of three telephone numbers mentioned above.

3. We are concerned here with the amount admitted for AY 2019-20. For the assessment year 2019-20, the assessee had admitted a sum of Rs. 8.14 crores, which consisted of Rs.6.64 crores offered under section 28 of the Act as undisclosed business income and Rs.1.50 crores offered under section 69 of the Act as unexplained money.

4. However, while filing returns of income, the assessee offered a sum of Rs.6.49 crores in aggregate in AY 2017-18 to 2020-21 in the returns of income filed u/s 153A of the Act. During the course of assessment proceedings, the assessee explained before the Assessing Officer that there was error in computing undisclosed income at the time of search proceedings and hence it was erroneously computed at Rs.10.85 crores. It was submitted that, after completion of search proceedings, unaccounted cash transactions appearing in the WhatsApp Chats of all the three phone numbers were aggregated and chronologically listed out. Accordingly, the peak credit has been properly worked out, which comes to Rs.6.49 crores. According to the revised computation made by the assessee, he offered a sum of Rs.82 lakhs in the year under consideration i.e. in A.Y. 2019-20. The assessee submitted that the amount of Rs. 10.85 crores offered before the Investigation Wing consisted of duplicate items and the peak credit was computed separately for six segments, which was not correct approach. It was submitted that if the entire cash transactions of six segments are aggregated and chronologically

placed, the peak credit amount works out to only Rs.6.49 crores. Accordingly, it was pleaded by the assessee that the revised peak credit working computed at the time of filing of return of income be accepted.

5. The Assessing Officer did not agree with the submissions made by the assessee. He took the view that the assessee himself has offered a sum of Rs.10.85 crores in the statement recorded under section 132(4) of the Act by collating the figures found in the WhatsApp Chat. The Assessing Officer also observed that the assessee has offered the above said amount voluntarily without any coercion. Accordingly, he took the view that there is no reason to modify the income so offered. Accordingly, he held that the amount of Rs. 8.14 crores originally offered by the assessee should be assessed to tax. Accordingly, the Assessing Officer added the difference amount of Rs. 7.32 crores to the total income returned by the assessee.

6. In the appellate proceedings before Ld CIT(A), the assessee contended that there was error in computing the undisclosed income and the said errors have been corrected in the revised workings. In view of the above said submission, the Ld CIT(A) called for a remand report from the AO on the revised workings. However, the AO did not examine the revised workings and reiterated that the addition already made by the AO should be sustained.

7. Hence, the Ld CIT(A) examined the revised workings and concurred with the same. Accordingly, the Ld CIT(A) deleted the addition made by the AO with the following observations: -

“10.4 I carefully considered the above submissions of the appellant in the light of old working of peak credit and the revised working submitted during assessment/appellate proceedings. As per the old working of peak credit, the summary of transactions found in the WhatsApp Chat is as under :-

Annexure	Description	A.Y.	Amount (in Rs.)
A	Expenses in excess of cash withdrawal	2020-21	82,04,416
B	Excess of sundry income over expenditure	2020-21	1,25,15,916
C	Capital built up out of earnings	2019-20	1,50,04,167
D to H	Year-wise peak of amount received and paid	2017-18 2018-19 2019-20 2020-21	37,99,940 6,00,000 6,64,92,445 11,51,711
Total			10,77,68,595

10.5 The above table forms the base for disclosure of Rs, 10,77,68,595/- made before the Investigation Wing. **According to the appellant, the above working of peak credit under separate head is incorrect for the reason that whatever cash is received and spent is out of the unified business activity of the appellant. In his opinion, the correct method would have been to combine all transactions in the WhatsApp Chat so as to cumulatively consider the incomings and outgoings from all activities/heads.** It is further explained that for calculating peak credit the receipt of a particular day from all activities/head should be taken. Similarly the money spent on a particular day from all the heads/activities should be clubbed together and the balance should be C/F for next day.

10.6 The appellant has further submitted year wise details of additions vis-a-vis the amounts offered to tax by the assessee in the return of income are reproduced below for your honour's ready reference:

A.Y.	U/s.	AMOUNT ERRONEOUSLY CONSIDERED	TOTAL	AMOUNT OFFERED TO TAX	ADDITION
2017-18	28	37,99,940	37,99,940	37,99,940	NIL.
2018-19	28	6,00,000	6,00,000	4,00,000	2,00,000
2019-20	28 69	6.64.92.445	8,14,96,612	82,00,060	u/s.28 5,82,92,385
		1,50,04,167			
					u/s.69 1,50,04,167
2020-21	28	1,43,99,032 (1,36,67,627) + 7,31,405)	2,26,03,448	5,25,05,804	NIL

	69				
		82,04,416			
Total			10,85,00,000	6,49,05,804	

10.7 According to the appellant, the method adopted for determining peak credit which is as under:

- a. All the cash deposits and withdrawals are placed in date wise chronological order.
- b. The balances are ascertained against each deposit and withdrawal.
- c. Deposit in the first entry becomes closing balance against that first entry.
- d. The closing balance of first entry becomes opening balance for second entry, e. Deposit or withdrawal of the second entry is adjusted to the opening balance, f. Then closing balance against the second entry is drawn.
- g. This closing balance of second entry becomes opening balance of the third entry and so on.

Thus, highest closing balance against a particular day in the accounting period, arising after such adjustment of deposit/withdrawal becomes the peak in the accounting period which has been offered as income in the respective year while filing ROI in response to notice issued u/s 153A of the IT Act, 1961.

10.8 After carefully verifying the nature of transactions and the fund flow during the entire period, I am in agreement with the appellant about the revised working of peak credit. When the entire transaction has been found from one source i.e., WhatsApp Chat of an employee and the same business is continued through out the FYs under consideration, the peak credit is required to be computed taking all the transactions together in a linear fashion.

10.9 Hon'ble Allahabad High Court in the case of Commissioner of Income-tax (Central), Kanpur Vs. Fertilizer Traders [2014] 42 taxmann.com 476 (Allahabad), has held that even where credits appear not in same account but in accounts of different persons, if genuineness of all persons is disbelieved and all credits appearing in different accounts are held to be assessee's own money, then the assessee will be entitled to set off and determination of peak credit after arranging all credits in chronological order. In the case of Commissioner of Income-tax (Central), Kanpur, Vs. Sharraf Trading Co [2016] 67 taxmann.com 176 (Allahabad), the Hon'ble High Court held as under :-

"30. We may also notice that against Tribunal's earlier order dated 13th February, 2004, department filed appeal under Section 260A before this Court. We are informed that these appeals preferred by department have also been dismissed by this Court. These appeals i.e. ITA No. 179/2004 and other connected appeals have been dismissed by a Division Bench vide judgment dated 13th December, 2013. Therein the Court in paragraphs no. 14 and 15 has said:

14. Regarding the peak theory, it may be mentioned that the peak theory was defined in the Sampath Iyengar's Law of Income-tax, Vol. 3, 9th edition, page 3547. Accordingly, "Peak credit" theory One of the commonest defects of an assessee, where a single credit or number of credits appear in the books in the account of any particular person side by side with a number of debits is that they should all be arranged in serial order, that a credit following a debit entry should be treated as referable to the latter to the extent possible and that, not the aggregate but only the "peak" of the credit should be treated as own explained. To give a simple example, suppose there are credits in the assessee's book in the account. As or Rs.5,000 each on 1st October, 1990 and again on 5th November, 1990 but there is a debit by way of repayment shown on 27th October, 1990, the explanation will be that the credit appearing on 5th November, 1981 has or could have come out of the withdrawal/repayment on 27th October, 1981. This plea is generally accepted as it is logical and acceptable (whether the creditor is a genuine party or not), provided there is nothing in the material on record to show that a particular withdrawal/repayment could not have been available on the date of the subsequent credit.

15. A refinement or extension of the plea occurs where the credits appear not in the same account but in the accounts of different persons. Even then, if the genuineness of all the person is disbelieved and the credits appearing in the different account are held to be the assessee's own moneys, the assessee will be entitled to set off and a determination of the peak credit after arranging all the credits in the chronological order."

10.10 Considering the totality of the facts and circumstances of the issue involved, the revised working of peak credit for AY 2017-18 to 2020-21, as tabulated in the preceding paragraphs is accepted instead of old working as adopted by the AO. Thus, the impugned additions of Rs. 5,82,92,385/- as undisclosed business income u/s 28 of the Act and Rs. 1,50,04,167/- as unexplained investments u/s 69 of the Act, for AY 2019-20 are deleted. Thus, grounds of appeal no. 1 to 7 are allowed."

8. We heard the parties and perused the record. While the Ld D.R supported the order passed by the AO, the Ld A.R supported the order

passed by Ld CIT(A). There is no dispute with regard to the fact that the amount of Rs.10.85 crores surrendered during the course of search as well as the revised workings considered at the time of filing of return of income were based on working of "peak credit". It is stated that during the course of search, the peak credit was arrived at by considering credits/debits appearing in three different phone numbers separately and they were aggregated. Subsequently, it was realized that the above said methodology is incorrect and accordingly all the transactions appearing in all the three phones have been aggregated and placed chronologically and then the peak credit was arrived at. We notice that the revised workings made by the assessee find support from the decision rendered by Hon'ble Allahabad High Court in the case of Fertilizer Traders (supra) and Sharraf Trading Co (supra).

9. We also notice that the Ld CIT(A) has confronted the revised workings with the assessing officer, but the AO did not examine the same and stick to the addition originally made by him. Hence, the Ld CIT(A) has examined the workings himself and has agreed with the same. Since the revised workings made by the assessee is in accordance with the view expressed by the Hon'ble Allahabad High Court, we are of the view that the Ld CIT(A) was justified in accepting the same. Accordingly, we do not find any infirmity in the order passed by Ld CIT(A). Accordingly, we uphold the order passed by Ld CIT(A).

10. In the result, the appeal filed by the revenue is dismissed.

Pronounced in the open court on 18.4.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 18/04/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai