

**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

(Conducted through Virtual Court)

**ITA No.270/RJT/2019
Assessment Year : 2013=14**

Shri Vishwajit N. Mashru C/o. Kalpesh S.Doshi & Co. Chartered Accountants 411, Cosmo Complex Near Mahila College Circle Kalawad Road Rajkot - 360 001 PAN: BCIPM 6925K	Vs	The Income Tax Officer Ward-1(2)(3) Rajkot
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Kalpesh Doshi, AR
Revenue by :	Shri B.D. Gupta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 12 /04/2023
घोषणा की तारीख /Date of Pronouncement: 11/07/2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

This appeal is filed by the Assessee against the order dated 24/09/2019 passed by the Commissioner of Income-tax (Appeals)-1, Rajkot ["CIT(A)" in short] for Assessment Year 2013-14.

2. The effective grounds raised by the assessee are as under:

"1. That, the Learned CIT(A) has wrongly confirmed addition u/s.68 of the I.T.Act of Rs.34,77,658/- on account of cash deposited in the bank account.

2. That, the Learned CIT(A) has wrongly confirmed the disallowance of losses of Rs.32,60,489/- on account of trading in derivative and set-off of the same against the addition of cash deposits in the bank account."

3. As derived from the grounds raised by the assessee, the assessee is aggrieved on account of addition made to its income on account of alleged unexplained cash deposits in bank and secondly on account of denial of benefit of set off of losses incurred in trading of derivative against the addition made. The addition made on account of cash deposits u/s.68 of the IT Act, being Rs.34,77,658/- and the set off of losses not allowed to the assessee being Rs.32,60,489/-.

4. The solitary plea of the Id.counsel for the assessee before us was that the addition made by the AO on account of alleged unexplained cash deposits was the peak balance from the various bank accounts of the assessee. He drew our attention to the fact that emanating from the paragraph No.3.7 of Assessing Officer's order, which reads as under:-

"3.7. In view of the above findings, I treat the cash deposits made in the above accounts as unexplained cash credit within the meaning of section 68 of the IT Act, 1961. On perusal of bank statements, it is notice that the assessee has made frequent cash deposits and cash withdrawals. The assessee as per his submission received on 26.02.2016, the assessee has worked out telescopic peak balance from all these accounts at Rs.34,77,658/- for cash deposit made during FY 2012-13. I adopt the amount of Rs.34,77,658/- as unexplained cash credit u/s.68 of the IT Act, 1961 and added back to the total income. Penalty u/s.271(1)(c) of the IT Act, is initiated for furnishing inaccurate particulars of income and concealment of income.

(Addition of Rs.34,77,658/-)"

4.1. The Id.counsel for the assessee contended that this peak balance was positive cash balance appearing in its cash book and was not on account of

negative cash balance. He contended that this fact was brought to the notice of the Ld.CIT(A) , and drew our attention to the submissions of the assessee in appellate proceedings ,reproduced at page No.4 of the CIT(A)'s order (point No.11) as under:-

"11. The peak balance reflected by the authorized representative in the cash book is the positive peak cash balance and therefore there is no negative cash balance and therefore the same cannot be regarded as peak cash u/s.69 of T.T.Act. The copy of cash book is enclosed at page no.____."

4.2. The ld.counsel for the assessee further contended that the cash balance being a positive cash balance as appearing in the cash book, there was no case for making any addition on account of peak cash balance. He pointed out from the findings of the Ld.CIT(A) that he had rejected the contention of the assessee without understanding the import /implication of the same. Our attention was drawn to page No.15 of the ld.CIT(A)'s order rejecting this contention of the assessee as under:-

"....The other contention of assessee is that there was no negative cash balance in cash book and the addition of peak deposit in bank account, is not justified. I find that the assessee had categorically stated that he was salaried employee and transactions in bank account, had been carried out by his brother without his knowledge and that he not maintaining any Books of Account. When the assessee has not maintained Books of Account there is no question of there being a cash book. Therefore the contention of assessee challenging the peak deposit on basis of non existent cash book is not tenable."

The ld.counsel for the assessee therefore contented that the addition made on account of unexplained cash deposited in the bank account of the assessee being positive peak balance as reflected in the cash book produced

by the assessee, it only meant that was cash sufficiently available with the assessee at all points of time to justify deposits in the Bank.

5. The ld.DR, however, relied on the order of the Ld.CIT(A).

6. We have heard both the parties and gone through the orders of the authorities below. We find merit in the contention raised by the ld.counsel for the assessee that the addition made on account of cash deposited in the bank account of the assessee to the tune of Rs.34,77,658/- representing the peak cash balance reflected in the cash statement furnished by the assessee to the Assessing Officer , and which was a positive balance, there was no case for making any addition u/s.68 of the I.T. Act.

The fact of addition of peak cash balance as reflected in the cash statement of the assessee is evident from the assessment order ,relevant portion of which is reproduced above. The fact that this peak balance was a positive balance was pointed out by the assessee to the Ld.CIT(A) ,who has not controverted the same. Even otherwise the copy of the cash statement furnished to the AO ,from which the peak balance was picked up for addition , was filed before us at P.B 36-38 and we find the contention of the assessee of the peak balance being positive balance , to be correct. The Ld.DR was unable to point out any infirmity in this fact , before us.

Positive cash balance represents surplus cash available with the assessee and can by no stretch of imagination or logic can it be the basis for treating cash deposited in the bank account as remaining unexplained. It is only the peak negative cash balance ,which reflects shortage of cash available with the assessee, which can be added as unexplained cash deposited in the bank . In view of the undisputed fact that the addition made in the present case being of the positive peak of cash balance available with the assessee,

there is no case, we hold of making addition of the same as unexplained cash credit u/s.68 of the I.T.Act. The addition so made is, therefore, directed to be deleted.

Ground No.1 of appeal of the assessee is allowed.

Vis-à-vis the prayer of the assessee in Ground No.2 of appeal regarding disallowance of set off of losses incurred by the assessee in trading of derivatives against the addition made on account of unexplained cash credits u/s.68 of the I.T. Act,the said ground is of no relevance since we have deleted the addition made u/s.68 of the I.T. Act, in ground No.1 of assessee's appeal supra. In view of the same, ground No.2 of assessee's appeal is not being dealt with by us.

7. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in the Court on 11th July, 2023 at Ahmedabad.

Sd/-
(MADHUMITHA ROY)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, Dated 11/07/2023

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-1, Rajkot
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Rajkot,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Rajkot