

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 905/Del/2020  
(Assessment Year: 2010-11)

Narendra Singh, Jaisinghpur Khera Bawal, Rewari, Haryana (Appellant) <b>PAN: AMCPN8132C</b>	Vs. ITO, Ward-2, Rewari (Respondent)
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Assessee by :	Ms. Chanchal Gupta, Adv
Revenue by :	Shri Om Prakash, Sr. DR

Date of Hearing	04/05/2023
Date of pronouncement	04/08/2023

**ORDER**

1. This appeal has been filed by the assessee against the order of the Id CIT(A), Rohtak dated 01.10.2019 for AY 2010-11.
2. The assessee has raised the following grounds of appeal:-

*"1. That the Assessment order is bad in law on the particulars facts of the appellant case. That the assessment order passed by the AO is contrary to the facts written submission and provisions of law.*

*2. That Id AO has erred in both in law and on facts in initiating proceedings under Section 147 of the Act and further completing the assessment under Section 143(3) read with 147 of the Act without satisfying the statutory preconditions for initiation of the proceedings provided under the Income Tax Act, as such are void and without jurisdiction. That the AO has not tangible material on date of issue under Sec 148 of the Income Tax Act. That the AO has no bank statement in his possession till date of issuance of the notice under Sec 148 of the Income tax Act.*

*3. That the appellant has been served notice to make addition under Section 68 of the Income tax Act, but the additions has been made under section 69A of the Act. That AO made an addition Rs.35,39,600/- on account cash deposited in his Bank account on surmises and conjectures under section 69A.*

*4. That no addition under section 69A can be made when books of accounts has not been maintained relying upon the Bank Statement. the pass book supplied by the bank to the assessee cannot be regarded as the*

*book of the assessee, that a note book maintained by the assessee or under his instructions. Therefore a cash credit for the previous year shown in the assessee's bank pass book but not shown in the cash book maintained by the assessee for that year does not fall within the ambit of Section 68 of the Act and as such the sum so credited is not chargeable to tax as income of the assessee of that previous year.*

*5. That AO has misinterpreted the Bank Statement while making assessment. That the AO should have allowed the benefits of the Cash Withdrawal and re-deposits from the bank while assessing appellant's income.*

*6. That the appellant has submitted his income tax return that there was a business under Section 44AF as per income tax return filed. That the frequency of the deposit and withdrawal indicates that the assessee was carrying on a business. That in alternative appellant hereby requests to be assessed at rate of five percent of the deposits made in the account income as business income.*

*7. That the entries reflected in the said bank account reveals that the cash deposits and withdrawals were made regularly during the assessment year under consideration. Therefore the AO was not justified in making the addition the entire cash deposits during the assessment year under consideration. Therefore the AO was not justified in making the addition the entire cash deposits during the assessment year under consideration. Therefore cash deposits be treated as the turnover of the appellant from the business for the assessment year under consideration. As withdrawals have also been made by him throughout the year for payment to suppliers and meeting out other direct and indirect expenses.*

*8. That the AO has not observed the principles of natural justice. That the AO has relied upon the reply submitted by the RKRT Transport Company without following due care. That the reply filed by the transport company is not supported by the power of attorney. That the AO has not given the weight to the register submitted to the AO while raising contention to the RKRT. The cash depositing Branch was the branch nearby the office of M/s RKRT Transport Company which M/s RKRT Transport Company used to deposit cash in assessee's bank account. Source of cash was from the RKRT Transport Company. A.O. has not taken proper action under section 133(6) of Income Tax Act, 1961. A.O. has believed only on reply furnished by RKRT Transport Company without proper verification of their Books of Account, Bank Details, Cash Book, Their Bank Branches nearby from where they use their Banking Channel for other transactions.*

*9. That in the alternative the appellant hereby request to adopt the peak credit theory. That the appellant have furnished the bank statement the AO have not verified and noticed that there were credit and corresponding debits withdrawal. indicates which some that amount has been recycled and that peak credit can be taken into consideration for making addition.*

10. *That the appellant with folded handed hereby requests to allow him submit the documents in support of his contention taken and raised during the assessment proceedings.*

11. *That the it is well settled law that where there are two possible views in respect of a law then one in the favour of the assessee should be adopted.*

12. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the grounds are without prejudice to each other.*

13. *Under the circumstances it is prayed that the Assessment Order passed under Sec 143 read with Sec 147 is not fair and just. Hence the appeal has been preferred before your Honour. It is prayed that the additions made in the returned income of the appellant may be deleted and /or grant any other relief as your Honour may deem fit to meet the end of the justice."*

3. Ld counsel of the assessee reiterated written submissions of the assessee and submitted that the AO has not given weightage to the register submitted to the AO while adjudicating the contention of the assessee. The ld counsel further submitted that cash depositing branch was the branch nearby the office of M/s. RKRT Transport Company which said company used to deposit cash in assessee 's bank account and source of cash was from bank account of said Transport Company. The ld counsel submitted that the amount deposited by the RKRT to the bank account of the assessee was for the purpose of purchase of fuel/ diesel etc for the trucks of the said transport company and assessee has no ownership on the amount deposited by the said transport company and the assessee was merely receiving the amount of Rs. 5,000/- per month for the said service provided to the RKRT Transport Company. The ld counsel submitted that the copy of diary of assessee and bills of Vijendra Filling Station pertaining to relevant period clearly reveals that the assessee was merely working as staff member of RKRT Transport Company for the purpose of providing money to the drivers of the trucks for refueling the vehicles and safe usage of money. The ld counsel vehemently pointed out that when the assessee is not beneficiary of deposits and was providing services against monthly remuneration of Rs. 5000/- to the said transport company then the assessee cannot be held liable for the amount deposited to the bank account of the assessee by the RKRT Company without any

enquiry from the said company. Therefore, the Id counsel submitted that the addition made by the AO may kindly be deleted.

4. Replying to the above, Id Sr. DR supported the assessment order submitted that the reassessment proceedings u/s 147 of the Act against the assessee by issuing notice u/s 148 of the Act. The Id Sr. DR submitted that the story placed by the assessee before the authorities below as well as before the Tribunal is self serving and afterthought which is not sustainable and plausible explanation to the huge deposit of Rs. 35,39,600/- in the bank account of the assessee. The Id DR also submitted that the assessee is not filing return of income and not showing any income from salary from RKRT therefore, AO was right in initiating reassessment proceedings and making addition in the hands of the assessee. Therefore, the Id DR prayed that the appeal of the assessee may kindly be dismissed.

5. On careful consideration of the above submissions, first of all, we note that the Id counsel of the assessee submitted written submission, which being reproduced below for the sake of completeness of the order:-

*"1. Assessee was carrying a small hut type tea and other snacks shop at Rajasthan - Haryana border. RKRT Transport Company used assessee's bank account from last year also in preceding financial year i.e. A.Y. 2009- 10 as well as in succeeding A.Y. 2011-12 for filling diesel in trucks of RKRT Transport Company as there was much difference in the prices of diesel in the state of Rajasthan and Haryana. i.e. in Rajasthan it is Rs.35.50/- (Approx.) while in Haryana it is Rs.32.80/- (Approx.) due to which RKRT Transport Company used bank account of assessee for safety of cash due to theft etc. in travelling. Copy of earlier years (preceding financial year i.e. A.Y. 2009-10 as well as in succeeding A.Y. 2011-12) bank statement is enclosed in paper book from page no. 40 to 47 in which assessee's bank statement is showing cash deposit by RKRT Transport Company by last year as well. Assessee has just earned Rs.5000/- P.M. from the RKRT Transport Company in that amount exchange between RKRT Transport Company and their truck drivers. Assessee has maintained only one bank account with State Bank of India since long. RKRT Transport Company is depositing the cash in his bank account from earlier past year and even in later subsequent year too. Id. A.O. has just issued notice u/s 133(6) to the RKRT Transport Company and decided to make order on grounds of notice issued u/s 133(6) without making any inquiries, other requisites and without using his mind.*

*Copies of some slips of petrol pump kept in the custody of assessee which are of the trucks belonging to RKRT Transport Company is enclosed herewith for A.Y. 2010-11 and other years as well.*

*2. During the course of the assessment, assessee establish his case on the basis of bank transactions it is clearly indicated and established that day to day affairs cash deposits were made by the employees of RKRT Transport Company from Delhi SBI branch for example check into paper book page no. 48 to 89 in which RKRT Transportcompany's employees namely Rajender, Mohsin, Manoj, Ashok, Harmeet etc. etc. by mostly same branch of cash deposit into assessee's bank account and some times assessee himself from Delhi SBI branch. You may check the same by checking of the inter-city charges imposed by bank for depositing the cash from Delhi into Bawal, Rewari, Haryana's bank account. Assessee carried an ATM for the withdrawal of such cash deposits made by RKRT Transport Company to repay that cash to the truck drivers of RKRT Transport Company. Thereafter during the assessment proceedings assessee submitted detailed bank transactions before Ld. A.O. which was clearly shown that assessee was a shame person. All the transactions made only in the instruction of M/s RKRT Transport Company. All withdrawals and payments against such diesel/fuel slips submitted before Ld. A.O., but deliberately ignored by Ld. A.O. Also a register maintained by the assessee for such fuel filling and payments submitted before Ld. A.O., but deliberately ignored by Ld. A.O.*

*3. That the AO has not observed the principles of natural justice. That the AO has relied upon the reply submitted by the RKRT Transport Company without following due care. That the reply filed by the transport company is not supported by the power of attorney. That the AO has not given the weight to the register submitted to the AO while raising contention to the RKRT. The cash depositing Branch was the branch nearby the office of M/s RKRT Transport Company which M/s RKRT Transport Company used to deposit cash in assessee's bank account. Source of cash was from the RKRT Transport Company. A.O. has not taken proper action under section 133(6) of Income Tax Act, 1961. AO has believed only on reply furnished by RKRT Transport Company without proper verification of their Books of Account, Bank Details, Cash Book, Their Bank Branches nearby from where they use their Banking Channel for other transactions."*

6. In the present case, the AO proceeded to make additions in the hands of the assessee after noticing the fact of cash deposit to the bank account of the assessee to the tune of Rs. 35,39,600/- made during the relevant financial period. The AO dismissed the explanation of the assessee without any legal conclusion merely noting that the assessee has filed bald explanation without any cogent evidence.

7. On the other hand, the copy of diary of assessee, spread over of 8 pages and specimen copies of approximately 64 bills issued by Vijendra Filling Station Nh 8, Jaisingh Khera reveals that the amount which were deposited by the RKRT was withdrawn on the regular intervals by the assessee and the same was used towards purchase of diesel for the vehicles of the said transport company. From the first appellate order we note that the Id CIT(A) dismissed the appeal of the assessee in a summary manner without adjudication of the documentary evidence filed by the assessee and merely invoking provisions of section 68 and 69A of the Act. In my humble view when the amounts are deposited at one branch near to the office RKRT and same cash amount was withdrawn by the assessee own his own and the amount by the said transport company was withdrawn by the assessee to make payments of diesel/ fuel purchase by the assessee trucks of the assessee of the said transport company. The assessee consistently submitted that he has merely a staff member or support system of said transport company against monthly remuneration of Rs. 5000/- and the assessee has no means for his livelihood. The copies of diary notes of assessee and bills issued by Vijendra Filling Station Nh 8, Jaisingh Khera District Rewari reveals that the amount deposited by the said transport company further utilized by the assessee by making payments to trucks and glaring facts do not controvert neither by the AO nor by the Id CIT(A) in the orders.

8. On the other hand, I also note that the assessee, neither before the authorities below nor before this bench has ever filed any confirmation or certificate from the said RKRT Transport Company that the entire amount deposited to the said transport company was utilized by the assessee towards purchase of diesel, oil etc for their trucks and vehicles and there is no certificate on record to show that the assessee was receiving remuneration/ salary of Rs. 5000/- per month against the services rendered by him from the said transport company. Simultaneously, I also note that the amount deposited by the transport company was not kept ideal but the same was withdrawn by the assessee within the few days which supports the contention of the assessee that the amount deposited by the transport company which utilized by the assessee towards purchase of diesel, oil, etc for the trucks and vehicles of the said transport

company. In such a situation, in my humble understanding the total activity or business of the assessee is that the transport company is depositing amount at their nearest bank branch to the bank account of the assessee and the assessee is withdrawing the same and utilizing it for the purpose of purchase of diesel, oil etc for the said transport company. Thus, the entire amount of deposit is taken as receipts/ turnover of assessee and the AO is directed to make addition in the hands of the assessee by estimating net profit/ remuneration of the assessee @8% of total deposits/ turnover as per provisions of section 44AD of the Act.

9. Accordingly, sole grievance of the assessee is partly allowed.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 04/08/2023.

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

Dated: 04/08/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi