

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 8581/DEL/2019 [A.Y. 2010-11]

Shri Rajesh Jain  
D-1/19, 2<sup>nd</sup> Floor  
Sector - 7, Rohini  
Delhi

Vs.

The I.T.O  
Ward - 40(4)  
New Delhi

PAN: AMGPJ 8914 N

(Applicant)

(Respondent)

Assessee By : Shri Pranshu Singhal, CA  
Ms. Mansi Jain, CA

Department By : Shri Vivek Vardhan, Sr. DR

**Date of Hearing : 19.02.2024**  
**Date of Pronouncement : 21.02.2024**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 34, New Delhi dated 23.08.2019 pertaining to A.Y. 2010-11.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [the Act, for short] on account of addition of cash deposits in the bank.

3. The roots for levy of penalty lie in the assessment order dated 11.03.2015 framed u/s 144/147 of the Act. Assessment was completed by making addition as under:

a) estimated business income	Rs. 5,00,000/-
b) cash found to be deposited in the bank	Rs. 1,00,73,767/-
c) on account of house hold withdrawals	Rs. 3,00,000/-

4. Quantum additions were challenged before the appellate authorities and the ld. CIT(A) restricted the addition on account of cash deposit to Rs. 8,14,238/- on the basis of peak credit theory. Low withdrawals for household expenses of Rs. 3 lakhs was confirmed but no appeal was filed before the Tribunal for the smallness of the amount and addition on account of estimated business profit Rs. 5 lakhs was deleted.

5. Penalty has been levied u/s 271(1)(c) of the Act on account of cash found to be deposited in the bank account. No penalty was levied on the addition on account of low household withdrawals and since the estimated business profit of Rs. 5 lakhs was deleted, no penalty was levied. Thus, penalty has been levied on the addition survived amounting to Rs. 8,14,238/-.

6. Before us, the ld. counsel for the assessee vehemently stated that since addition was on account of peak credit theory, no penalty is leviable u/s 271(1)(c) of the Act. Strong reliance was placed on the decision of the co-ordinate bench in ITA No. 2453/Ahd/2013 order dated 07.02.2020 and ITA No. 728/Chny/2023 order dated 28.07.2023.

7. We have carefully considered the orders of the authorities below. There is no dispute that cash was found to be deposited in the bank account to the tune of Rs. 1,00,73,767/-. The assessee, in the appeal proceedings, pleaded for benefit of peak credit theory which was accepted by the appellate authority and addition was reduced to Rs. 8,14,238/-.

8. In our considered view, even if benefit of rotation of money has been granted to the assessee, still, he has to explain the source of deposit of Rs. 8,14,238/-, which he has grossly failed. Therefore, in our humble opinion, to the extent of cash deposit which remains unexplained, amounting to Rs. 8,14,238/-, the assessee is liable for penalty for concealment u/s 271(1)(c) of the Act. We, accordingly, direct the Assessing Officer to levy penalty on the addition of Rs. 8,14,238/-.

9. In the result, the appeal of the assessee in ITA No. 8581/DEL/2019 is partly allowed.

The order is pronounced in the open court on 21.02.2024.

**Sd/-**

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 21<sup>st</sup> FEBRUARY, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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Date of dispatch of the Order	