

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos.2811, 2813 & 2814/DEL/2018  
[Assessment Years: 2008-09, 2011-12 & 2012-13]**

Sh. Rajesh Mangla, RRA Taxindia, D-28, South Extension, Part-1, New Delhi-110049 <b>PAN-AKBPM6493Q</b>	vs	Dy. Commissioner of Income Tax, Central Circle-II, Faridabad, Haryana
Appellant		Respondent

**ITA Nos.2994, 2996 & 2997/DEL/2022  
[Assessment Years: 2008-09, 2011-12 & 2012-13]**

Sh. Rajesh Mangla, RRA Taxindia, D-28, South Extension, Part-1, New Delhi-110049 <b>PAN-AKBPM6493Q</b>	vs	Dy. Commissioner of Income Tax, Central Circle-II, Faridabad, Haryana
Appellant		Respondent

Appellant by	Dr. Rakesh Gupta, Adv. & Sh. Somil Agrwal, Adv. Sh. Deepesh Garg, Adv.
Respondent by	Sh. Daya Inder Sidhu, CIT-DR

<b>Date of Hearing</b>	<b>07.02.2024</b>
<b>Date of Pronouncement</b>	<b>21.02.2024</b>

**ORDER****PER BENCH,**

Captioned appeals by the assessee arise out of separate orders of learned Commissioner of Income Tax (Appeals)-2, Gurgaon and culminate from quantum as well as penalty proceedings under section 271(1)(c)/271AAA of the Income Tax Act, 1961 (hereinafter 'the Act'). The appeals pertain to Assessment Years 2008-09, 2011-12 and 2012-13

2. Since, the appeals relate to the same assessee and involve common issues, they have been clubbed together and disposed of in a consolidated order, for the sake of convenience.

**ITA No.2811/Del/2018 (Quantum Appeal)**  
**(Assessment Year-2008-09)**

3. The grounds of appeal raised by assessee in ITA No.2811/Del/2018 are as under:-

*"1. That having regard to the fact and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153A of the Act.*

*2. That in any case and in any view of the matter, the assessment framed under section 153(1)(a) of the Act, is bad in law and against the facts and circumstances of the case.*

*3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making addition of Rs. 17,20,000/- on account of cash deposited in the bank account as alleged income from undisclosed sources and that too in the proceedings u/s 153A of the Act.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 17,20,000/- is bad in law and against the facts and circumstances of the case.*

5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making addition of Rs. 1,340/- on account of saving bank interest and that too in the proceedings u/s 153A of the Act.*

6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making addition of Rs. 22,98,414/- on account of alleged undisclosed investments in the shares and that too in the proceedings u/s 153A of the Act.*

7. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 22,98,414/- on account of alleged investment in shares out of alleged undisclosed sources is bad in law and against the facts and circumstances of the case.*

8. *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate opportunity of being heard.”*

4. Briefly the facts are, the assessee is a resident individual. A search and seizure operation under section 132 of the Act was carried out on assessee on 09.05.2012. Consequent upon search and seizure operation, proceedings under section 153A of the Act were initiated. In course of assessment proceeding, the Assessing Officer observed that as per the bank statement of the assessee, cash deposit of Rs.17,20,000/- were found to have been made during the year. Therefore, he called upon the assessee to explain the source of such cash deposit. Though, the assessee explained that such deposits were out of earlier withdrawals, however, the Assessing Officer was not convinced

with the submissions of assessee and proceeded to add the amount of Rs.17,20,000/- to the income.

5. Further, he noticed that assessee has earned interest income of Rs.1,340/- from savings bank account, which he also added to the income of the assessee. Besides aforesaid additions, referring to seized material found in course of search and seizure operation, the Assessing Officer called upon the assessee to explain transactions made in shares during financial year 2007-08. In reply, the assessee explained that seized material is a loose sheet, hence, does not relate to the assessee. The Assessing Officer, however, was not convinced with the explanation of the assessee. Holding that the transactions appearing in the seized documents relates to the assessee, he treated the purported investment in shares amounting to Rs.22,98,414/- as income of the assessee.

6. Though, the assessee contested the aforesaid additions before learned First Appellate Authority, however, he was unsuccessful.

7. We have considered rival submissions and perused materials available on record. In so far as, additions of

Rs.17,20,000/- and Rs.1,340/- representing cash deposits in bank account and savings bank account interest, respectively, the submission of the assessee, in nutshell, is they have not been made with reference to any incriminating material found as a result of search. Hence, these additions are unsustainable. A reading of assessment order clearly indicates that the Assessing Officer has not referred to any incriminating material *qua* the aforesaid two additions. The Assessing Officer has simply made these additions based on the bank account statement furnished by the assessee.

8. Considering the fact that assessment for the impugned assessment year did not abate on the date of search and seizure operation, the Assessing Officer could not have made any addition in absence of any incriminating material. This is so because of the ratio laid down by the Hon'ble Supreme Court in case of PCIT vs Abhisar Buildwel (P.) Ltd. [2023] 150 taxmann.com 257 (SC).

9. Before us, the Revenue was unable to bring on record any material to establish that the aforesaid two additions were made based on any incriminating material found as a result of search. In view of the aforesaid, following the ratio laid down by the

Hon'ble Supreme Court in case of Abhisar Buildwell (P.) Ltd.(supra), we delete the additions.

10. In so far as, the addition of Rs.22,98,414/- is concerned, ld. Counsel for the assessee has submitted before us that in course of proceedings before learned First Appellate Authority, an enhancement notice was issued, wherein, based on certain documents furnished by the assessee, learned First Appellate Authority has worked out peak amount of Rs.46,56,796/- as on 24.03.2008 and considered the same for addition. It is the specific contention of learned counsel for the assessee that neither in the enhancement notice nor anywhere else in the order, learned First Appellate Authority has discussed in detail or furnished any working of the peak amount of Rs.46,66,796/-. He submitted, the assessee is completely in dark regarding the working of the peak amount of Rs.46,66,796/-. Thus, he submitted, the issue may be restored back to learned First Appellate Authority for providing the detail working of the peak amount added to the income of the assessee.

11. Learned Departmental Representative agreed for restoration of the issue to learned First Appellate Authority.

12. Having considered the submissions of both parties, we find the addition of Rs.22,98,414/- has been enhanced by learned First Appellate Authority to Rs.46,66,796/- by applying peak theory. However, how the peak amount was arrived at is not discernible from the order of learned First Appellate Authority. In view of the aforesaid, we are inclined to restore this issue to the file of the Assessing Officer for examining afresh and decide it after providing due and reasonable opportunity of being heard to assessee.

13. In the result, appeal is partly allowed.

**ITA No.2994/Del/2022 (Penalty Appeal)**

**Assessment Year 208-09**

14. This appeal is against the confirmation of penalty imposed under section 271(1)(c) of the Act for an amount of Rs.12,41,689/-. As discussed in the earlier part of the order while dealing with the quantum appeal, being ITA No.2811/Del/2018, at the time of completion of assessment under section 153A r.w.s 143(3) of the Act, the Assessing Officer made following three additions.

- i. Unexplained cash deposits of Rs.17,20,000/-
- ii. Interest from bank account of Rs.1,340/-

iii. Undisclosed income from shares of Rs.22,98,414/-

15. The additions so made were confirmed by learned First Appellate Authority. Based on these additions, the Assessing Officer initiated proceeding for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order imposing penalty of Rs.12,41,689/-. The penalty so imposed was confirmed by learned First Appellate Authority.

16. We have heard both the parties and perused the material available on record. While dealing with the quantum appeal of assessee (supra), we have deleted the additions of Rs.17,20,000/- and Rs.1,340/-. Whereas, the issue relating to the addition of Rs.22,98,414/- has been restored back to the Assessing Officer for deciding afresh. Thus, at present, there is no surviving additions against the assessee. That being the factual position on record, the penalty imposed u/s 271(1)(c) of the Act cannot survive. Accordingly, we delete the penalty imposed u/s 271(1)(c) of the Act.

**ITA No.2813/Del/2018 (Quantum Appeal)**  
**Assessment Year 2011-12**

17. The only dispute in the present appeal is in relation to addition of Rs.13,50,000/- made on account of cash deposits in bank account.

18. Briefly the facts are, in course of assessment proceeding, the Assessing Officer, on examination of bank account statement noticed that in the year under consideration, the assessee had deposited cash aggregating to Rs.13,50,000/- in bank account. Therefore, he called upon the assessee to explain the source of cash deposits. In reply, the assessee submitted that cash deposits were made out of earlier withdrawals. The Assessing Officer, however, was not convinced with the submission of the assessee and proceeded to treat the amount of Rs.13,50,000/- as income from undisclosed sources and accordingly, added back to the total income of the assessee.

19. Though, the assessee contested the aforesaid addition before learned First Appellate Authority, however, learned Commissioner (Appeals) confirmed the same.

20. Before us, learned counsel for the assessee reiterated the stand taken before the authorities below. He submitted the assessee had sufficient cash withdrawals from the bank account to explain the source of cash deposit. He further submitted that Departmental Authorities have not established on record that the cash withdrawals were utilized for any other purpose. Therefore, the cash deposits have to be telescoped in to the cash

withdrawals. In support of said contention, ld. Counsel for the assessee relied upon following decisions:-

- i. Jaya Aggarwal vs ITO [2018] 254 taxman 398 (Del)
- ii. Moongipa Investment Limited vs ITO [2012] 70 DTR 132
- iii. ACIT vs Baldev Raj Charla & Ors. [2009] 18 DTR 413

21. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

22. We have heard both the parties and perused the material available on record. As could be seen from the bank account statement, in the year under consideration, the assessee had deposited cash amounting to Rs.30,95,000/-, whereas, he had total withdrawals of Rs.25,50,000/-. The consistent stand taken by the assessee is to the effect that cash deposits were made out of cash withdrawals. As can be seen from the materials on record, on 03.04.2010, the assessee withdrew cash of Rs.7,50,000/-, whereas, he deposited cash of Rs.3,00,000/- on 25.05.2010. Similarly, he withdrew cash of Rs.7,50,000/- on 26.06.2010 and 26.08.2010 and deposited cash aggregating Rs.4,45,000/- on 31.08.2010 and 21.10.2010. Further, cash aggregating to Rs.10,50,000/- was withdrawn on

06.12.2010 and 18.01.2011. Whereas, cash deposits of Rs.6,50,000/- was made on 02.02.2011. As can be seen from the aforesaid facts, the proximity between cash withdrawal and deposit is quite close. Further, the Departmental Authorities have not brought any material on record to establish that the cash withdrawals were utilized for any other purpose and not available with the assessee for re-deposit. Thus, applying the ratio laid down in the judicial precedents cited before us, we hold that the source of cash deposit has been explained by the assessee. Accordingly, we delete the addition of Rs.13,50,000/-

23. In the result, the appeal is allowed.

**ITA No.2996/Del/2022 (Penalty Appeal)**

**Assessment Year 2011-12**

24. We have heard the parties and perused the material available on record. While deciding the quantum appeal of the assessee, being ITA No.2813/Del/2018 (supra), we have deleted the addition based on which penalty under section 271(1)(c) of the act was imposed. That being the case, the penalty imposed cannot survive. Accordingly, we delete it.

25. In the result, appeal is allowed.

**ITA No.2814/Del/2018 (Quantum Appeal)****Assessment Year 2012-13**

26. At the outset, learned counsel for the assessee, on instructions, submitted that he does not want to contest the addition of Rs.10,090/- on account of interest from savings bank account as raised in ground nos. 5 and 6. Accordingly, ground nos. 5 and 6 are dismissed as not pressed.

27. The only surviving addition is of Rs.7,22,000/- made on account of cash deposits in the bank account.

28. Briefly the facts are, in course of assessment proceeding, while examining the bank account statement of the assessee, the Assessing Officer noticed that in the year under consideration, the assessee has deposited cash amounting to Rs.7,22,000/- in the bank account. Though, the assessee explained that the said deposits were made out of opening cash balance and earlier withdrawals, however, the Assessing Officer remained unconvinced and proceeded to treat the amount of Rs.7,22,000/- as undisclosed income and added back to the income of the assessee.

29. The addition so made was also sustained by learned First Appellate Authority.

30. Before us, learned counsel appearing for the assessee submitted that the cash deposits were made out of opening cash balance and earlier cash withdrawals. Whereas, learned Departmental Representative relied upon the observations of the departmental authorities.

31. We have considered rival submission and perused material available on record. From the material placed on record, it is observed that in the year under consideration, the assessee had opening cash balance of Rs.6,62,200/- and cash withdrawals from bank account amounting to Rs.8,00,000/- . Thus, the total cash available with the assessee was to the tune of Rs.14,62,200/-. Whereas, the assessee has deposited cash in the bank account to the tune of Rs.11,72,000/-. As could be seen from the aforesaid facts and figures, out of the total cash deposit, the Assessing Officer has disputed the source of cash deposit amounting to Rs.7,22,000/- . Whereas, he has accepted the balance amount. As discussed earlier, the assessee had total cash available with him to the tune of Rs.14,62,200/-. Thus, assessee's explanation that the cash deposits were out of

cash available cannot be disbelieved in absence of any material brought on record by the Departmental Authorities to establish that the cash available with the assessee was utilized for some other purpose. In view of the aforesaid, we delete the addition of Rs.7,22,000/-.

32. Appeal is partly allowed.

**ITA No.2997/Del/2022 (Penalty Appeal)**

**Assessment Year 2012-13**

33. The present appeal is against imposition of penalty under section 271AAA of the Act.

34. While deciding the quantum appeal of the assessee, being ITA No.2814/Del/2018, we have deleted the addition based on which penalty under section 271AAA was imposed. That being the factual position on record, penalty imposed cannot survive. Accordingly, we delete the penalty imposed under section 271AAA of the Act.

35. Appeal is allowed.

36. To sum up ITA No.2811/Del/2018 and ITA No.2814/Del/2018 are partly allowed, ITA No.2813/Del/2018 is

allowed, ITA No.2994/Del/2022, ITA No.2996/Del/2022 and ITA No.2997/Del/2022 are allowed.

Order pronounced in the open court on 21<sup>st</sup> February, 2024.

**Sd/-**

**[M. BALAGANESH]**  
**ACCOUNTANT MEMBER**  
**Delhi; Dated: 21/02/2024.**  
*Shekhar,*

**Sd/-**

**[SAKTIJIT DEY]**  
**VICE PRESIDENT**

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi