

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.250/Ind/2023
(Assessment Year: 2012-13)

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| Santosh Sahu 16, Lane No.01 Aheerpura jahangirabad Bhopal | Vs. | ITO-1(4) Bhopal |
| (Appellant / Assessee) | | (Respondent/ Revenue) |
| PAN: BQFPS9651B | | |
| Assessee by | Shri Hitesh Chimnani, AR | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 01.04.2024 | |
| Date of Pronouncement | 02.04.2024 | |

O R D E R

Per Vijay Pal Rao, JM :

This appeal by the Assessee is directed against the order dated 26.04.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2012-13. The assessee has raised following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the decision of the learned lower authorities is contrary to law, materially incorrect, and unsustainable in law as well as facts.

And that all the adverse findings recorded therein are opposed to facts, equity, and law.

2. That on the facts and in the circumstances of the Rs case and in law, the learned lower authorities erred in their findings and estimating the unexplained money of Rs. 1109010/-, such findings are wholly injudicious and opposed to facts and, therefore, be quashed and the addition of Rs. 1109010/- as per Para 5 of the order is wholly unjustified and unlawful and, therefore, the said unlawful and unjustified addition be kindly deleted. It is very clear that every receipts is not Income, but without considering the fact learned AO has added all the receipts to the total income of the assessee.”

2. Ld. AR of the assessee has submitted that the assessee is working as accountant cum dispatch boy in Shop with M/s Pramod Traders, Bhopal dealing in trading and marketing of Medical equipment. The assessee is drawing only salary income of Rs.8000/- per month which is below minimum taxable income. Therefore, the assessee did not file any return of income for the year under consideration. He has pointed out that the proprietorship concern (the employer of the assessee) has deposited cash on various dates in the Saving Bank Account of the assessee for meeting out the routine expenses of the shop. The AO has passed an ex-parte order and made the addition of entire cash deposit of Rs.11,09,005/-. He has submitted that the assessee has pleaded before the CIT(A) that the deposits were made by the employer and further there are regular withdrawals as well as deposits in the bank account of the assessee and therefore, the assessee has also made an alternative plea of addition if any based on peak credit. Ld. AR has also

pleaded that when there are regular deposits as well as withdrawal throughout the years in the bank account of the assessee then the addition if any may be made on the basis of the peak credit theory. He has also referred to the bank account statement of the assessee placed at page no.7 to 12 of the paper book and submitted that the assessee has also filed cash flow statement showing peak credit which is negative. In support of his contention he has relied upon the decision of Rajkot Bench of the Tribunal in case of Sagar Navinchandra Chande vs. ITO dated 01.06.2022 in ITANo.272/Rjt/2018.

3. On the other hand, Ld. DR has relied upon the orders of authorities below and submitted that the assessee has failed to explain source of deposit made in the bank account of the assessee. He has further submitted that to allow the benefit of peak credit the assessee has to demonstrate that the withdrawals from the bank account are used for subsequent deposit which is not the case of the assessee.

4. We have considered rival submission as well as relevant material on record. The AO has issued a notice u/s 148 on 27.03.2019 to assess the income on account of deposits made in the bank account of the assessee to the tune of Rs.11,09,005/-. Since there was no response on behalf of the assessee to the notice issued by the AO therefore, the AO has made an addition of Rs.11,09,005/- and assessed the total income of the assessee at Rs.11,09,010/-. The assessee challenged the action of the AO before

the CIT(A) however, the CIT(A) has confirmed the addition made by the AO on the ground that the assessee has not produced any evidence about name of the depositor, purpose of deposits which have been deposited at various places outside the Bhopal. Prima facie, we find that regular deposits and withdrawals were made throughout the year in the bank account of the assessee and therefore, an alternative plea of the assessee for making addition if any based on peak credit is require to be considered after verification and examination of the relevant records and details along with explanation of the assessee. This tribunal in case of *Vishal Balwani vs. ITO in ITANo.478/Ind/2023* vide order dated 20.03.2024 has considered an identical issue as under:

“5. We have considered rival submission as well as relevant material on record. Though initially the assessee denied to have deposited any money in the bank account however, subsequently the assessee filed reply and tried to explain the deposit made in the bank account. Since alleged reply was stated to be filed only on 18.10.2019 and AO passed the order on 19.10.2019 therefore, the possibility of not reaching the reply in time to the AO is not ruled out. Before the CIT(A) the assessee has produced the details of the deposit and statement of peak credit which has been reproduced by the CIT(A) in the impugned order however, the CIT(A) has rejected the contention of the assessee as under:

“The conduct on the part of the appellant as detailed above right from the date of filing the return of income prior to reassessment proceedings and filing the return of income in response thereto showing a higher income without showing the basis thereof and denying the entries in the ICICI bank account as not that of his and thereafter making out a claim of peak cash deposit do not persuade any adjudicating authority to

accept the claim. And Peak Cash Deposit is a not something granted for and demanded by the appellant and that is subject to the proof let in by the appellant that the withdrawals and cash deposits constitute a cycle and therefore every withdrawal should offset the later deposit and any later deposit should be considered only if it is in excess of the prior withdrawals. For these reasons, I have no hesitation in upholding the addition made by the appellant.

All the grounds taken by the appellant viz., basis of reopening and basis of addition and ignoring the peak credit claim by the AO are dismissed.

In the result, the appeal is dismissed.”

6. *Thus, the CIT(A) has declined to even considered details submitted by the assessee in respect of the peak credit in the bank account. It is evident from the details and transactions in the bank account of the assessee that there are regular deposit and withdrawals from the bank account on daily basis. Therefore, a withdrawal from the bank account cannot be denied as source of subsequent deposit on the same day or very next day or within a short span of time. Once the assessee has given the details of deposit/withdrawals and statements of peak credit then the CIT(A) ought to have considered the same instead of rejecting the claim of the assessee on the ground of conduct of the assessee. The order of the appellate authority ought to have been based on the facts and the conduct of the assessee can influence only the discretionary aspect of the proceeding. The Rajkot Bench of the Tribunal in case of Navinchand Chande vs. ITO(supra) has considered an identical issue in para 14 & 14.1 as under:*

“14. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there was cash aggregating to Rs. 11 ,54,350/- deposited in the bank account of the assessee which was treated as income from undisclosed sources by the lower authorities. The assessee before the leaned CIT-A explained the amount of cash deposit represent amount deposited by the customer to whom vehicle

parts were sold and from this activity he earned only commission income and repaid the amount to the actual supplier after retaining commission. The explanation of the assessee was rejected by the learned CIT-A on reasoning that the detail of person to whom vehicle parts were sold and the person who supplied parts were not submitted. Further the assessee was only acting as an agent in the transaction then why customer deposited the purchase consideration to his bank account, was not explained. At the time of hearing, the learned counsel has not brought any material on record suggesting that the assessee was actually carrying out commission agency business as contended by him. Accordingly, we reject the contention of the assessee.

14.1 Be that as it may be, on perusal of the bank statement, placed on record, we note that there were regular deposits of money in cash which was withdrawn in cash. Thus the amount withdrawn from the bank was also available with the assessee for depositing the same in cash. Accordingly, the amount of cash deposited cannot be treated as income of the assessee without considering the corresponding withdrawal. In such a situation the principles of peak credit theory should be adopted for determining the income of the assessee. The concept of the peak credit proceeds on the fundamental premise that the money deposited and/or withdrawn from the assessee's bank account belongs to the assessee, or in respect of which ownership vests in the assessee. In the given facts and circumstances, there is no allegation of the revenue that the money withdrawn from the bank has either been utilized for incurring the expenses or for the purpose of the investments. Accordingly, the working of the peak credit works out at 1,49,727 which has not been challenged by the revenue. Thus we are of the view that in the given facts and circumstances, at the most the peak balance of 1,49,727.00 can be brought to tax under the peak credit theory. However we note that the assessee has declared an income of ₹ 1,02,710/- which is less than the amount determined under peak credit theory. Accordingly, we direct the authorities below to determine the income of the assessee at 1,49,727 only. In other words, there

will be an addition of Rs. 47,017/- (Rs. 1,49,727-1,02,710/-) to the total income of the assessee which is over and above the income already disclosed by the assessee in the income tax return.”

4.1 Accordingly we set aside this impugned order of the CIT(A) and remand the matter to the record of the AO for fresh adjudication as per law after considering relevant details and records in support of the claim of peak credit.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 02 .04.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 02 .04.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore