

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “A” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
Dr.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.943 & 944/Del/2020  
[Assessment Years : 2008-09 & 2009-10]**

ITO, Ward-1, Haryana	Narnaul,	vs	Ashok Kumar Gupta, S/o-Shri Ram Avtar Gupta, H. No. 118/4, Ward- 19, Mohalla - Devsthan, Mahendragarh, Haryana. <b>PAN-AUVPK5435A</b>
<b>APPELLANT</b>			<b>RESPONDENT</b>
<b>Appellant by</b>		Shri A.K.Sinha, CIT. DR	
<b>Respondent by</b>		None	
<b>Date of Hearing</b>		25.04.2024	
<b>Date of Pronouncement</b>		17.05.2024	

**ORDER**

**PER KUL BHARAT, JM :**

These two appeals filed by the Revenue are directed against the common order passed by Ld.CIT(A)-, Rohtak, both dated 18.12.2019 for the assessment years 2008-09 & 2009-10 respectively. Since the similar grounds have been raised, both the appeals of the assessee are taken up together for hearing and are being decided by way of this consolidated order for the sake of brevity.

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that there is no representation on behalf of the assessee since 12.07.2022. The notices of hearing are returned back unserved by the Postal Authority with remark “*left without address*”. Under these facts, both appeals filed by the Revenue are proceeded *ex-parte* to the assessee and being decided on the basis of material available on record.

**ITA No.943/Del/2020 [Assessment Year : 2008-09]**

3. First, we take up the appeal of the Revenue for the Assessment Year 2008-09 i.e. ITA No.943/Del/2020. The Revenue has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case the Ld. CIT(A) has erred in law in restricting the addition amounting to Rs.35,76,000/- out of Rs. 4,47,71,100/- made by the assessing officer on account of unexplained cash deposits made by the assessee, without appreciating the facts brought on record by the AO in assessment order as no substantial documents has been brought on record regarding the source of cash deposits.*
2. *Appellant craves leave to add, amend, alter, modify, delete and of change any of the above grounds on or before the date of hearing.”*

4. The only effective ground raised by the Revenue in this appeal is against the restricting the addition of INR 35,76,000/- out of total addition of INR 4,47,71,100/- made by the Assessing Officer (“AO”) on account of unexplained cash deposits.

5. Facts giving rise to the present appeal are that the case of the assessee was re-opened on the basis of information received by the AO regarding huge cash deposited in his bank accounts amounting to INR 4,47,71,100/-. In response to the statutory notices, no one attended the proceedings on behalf of the assessee. Therefore, the AO proceeded to treat the entire cash deposits as undisclosed income of the assessee and while framing the assessment u/s 144/147 of the of the Income Tax Act, 1961 (“the Act”) vide order dated 11.03.2015, assessed the income of the assessee at INR 4,47,71,100/-.

6. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions of the assessee, restricted the addition to the extent of INR 35,76,000/- treating the entire cash deposits as business receipts and applied net profit @ 8%.

7. Aggrieved against the order of Ld.CIT(A), the Revenue is now in appeal before this Tribunal.

8. Apropos to the grounds of appeal, Ld.CIT DR for the Revenue supported the assessment order and submitted that Ld.CIT(A) grossly erred in reducing the addition by applying the provision of section 44AD of the Income Tax Act, 1961 ("the Act"). He submitted that the provision of section 44AD of the Act is not applicable under the facts of the present case. He contended that the assessee has not filed any Income Tax Return. No such claim was made before the Ld.CIT(A). Hence, the Ld.CIT(A) grossly erred in presuming the cash deposits as business receipt of the assessee.

9. We have heard Ld. CIT DR for the Revenue and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue by observing as under:-

*6.2. "I have carefully considered the facts of the case, assessee's submissions, assessment order and find that:*

*6.2.1 During the appellate proceedings the assessee has submitted that addition should not be made of the entire deposits and only profit from business or peak credit of deposits should be added. He has also submitted that assessee is suffering from cancer and is not in a*

*position to explain each and every entry in the bank statement. He has relied on certain case laws to support his contention.*

*6.2.2 A perusal of the assessment order shows that addition u/s 69 of the Act was made of Rs.4.77 crore as no explanation was given regarding the source of cash deposits and there was no compliance. In response to the remand report the assessee has submitted that only net profit rate should be applied or peak credit may be added in his case.*

*6.2.3 Vide letter dated 11/09/2019 assessee was asked to explain why there was no compliance even during remand proceedings and he was asked to submit an affidavit regarding the claim of his illness and also submit P&L account, balance sheet and GP and NP rates of last two years and next two years to support his contention regarding applicability of reasonable profit rate. However, no response was submitted by the assessee till date which shows that he has no explanation regarding the cash deposits in his account.*

*6.2.4 The report of DDIT shows that the shop of the assessee was about 8 feet in front and did not appear to be containing the stock which is commensurate with the cash deposits in the bank account. The assessee's residence and shop at home also did not match with the transaction shown in STR in his bank account. No reply whatsoever has been given at any stage by the assessee nor any documentary evidence such as books of accounts/bills/vouchers regarding business activity submitted in remand proceedings or appellate proceedings to support his contention that net profit of 0.83% may be applied and the same is not acceptable. A perusal of the report of DDIT, Gurgaon and the bank statement shows that payments have been made to Oil Mills and there have been several cash deposits and withdrawals. Some of the cash deposits are of very big amount such as more than Rs. 10,00,000/- and so on a regular basis which show that the nature of transactions are not of a small business and the assessee did not file any return of income when he was making*

such heavy deposits and earning income and profits. The pattern seen in the bank statement is heavy cash deposits and thereafter payments made by cheque and transfer. Thus, assessee's contention that there were withdrawals for which benefit may be given is without any basis. Considering the facts of the case and huge cash deposits it is held that if this was out of business activity, the audited books of account should have been submitted for verification during the appellate proceedings to substantiate his claim. In the absence of any documentary evidence and as no books of accounts have been maintained, the assessee's contention that .83% profit may be applied is not acceptable. However, in view of principle of natural justice the entire receipts/deposits are not treated as undisclosed income as the report of DDIT (Inv.) and material on record shows that assessee was doing business activity, so **net profit @8% (as per section 44AD of the Act) is applied and addition of Rs.35,76,000/- is made on the total cash deposits of Rs.4.47 crores. This ground of appeal is partly allowed.**

6.2.5 The burden of proof regarding the cash deposits is on the assessee both in the case of cash credit and money deposited in the bank account, as held in the following decisions- **The Supreme Court in the cases of Roshan Di Hatti v. CIT (1977) 107 ITR 938 (SC) and Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC)** held that the law is well- settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source. In the case of **Shankar Industries v. CIT [1978] 114 ITR 689 (Cal.)**, the Calcutta High Court held that it is necessary for the assessee to prove prima facie

the transaction which results in a cash credit in his books of account. Such proof includes proof of the identity of his creditor, the capacity of such creditor to advance the money and lastly the genuineness of the transaction. Only after the assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts to the department. **The Madras High Court in the case of V. Datchinamurthy v. Asstt. Director of Inspection [1984] 149 ITR 341 (Mad.)** held that it has been a long accepted principle of income-tax law that an assessee is obliged to explain the nature and source of cash credits in his accounts and in the absence of satisfactory explanation on his part, the assessing authorities can very well proceed to treat the amount of cash credits in question as representing the taxpayer's income, **The Kerala High Court in the case of ITO v. Diza Holdings (P.) Ltd. [2002] 120 Taxman 539 (Ker.)** held that it is clear on the terms of section 68 that the burden is on the assessee to offer a satisfactory explanation about the nature and source of the amount found credited in the books of the assessee. It is also clear that the mere furnishing of particulars is not enough. The mere fact that payment was made by way of account payee cheque is also not conclusive. Therefore, the Assessing Officer would be entitled to consider whether notwithstanding the fact that the payments were made by cheques, whether the assessee has satisfactorily explained the nature and source of the amounts found credited in the books of the assessee. **The Rajasthan High Court in the case of CIT v. R.S. Rathore [1995] 212 ITR 390 (Raj.)** held that while explaining the various credits and investments, it is possible that the assessee may be successful in explaining some of them, but that does not by itself mean that the entire investments has to be considered axing authority when an explanation is offered by the assessee. **The Calcutta High Court in the case of C. Kant & Co. v. CIT [1980] 126 ITR 63 (Cal.)** held that in the case of cash credit entry it is

necessary for the assessee to prove not only the identity of the creditors but also to prove the capacity of the creditors to advance the money and the genuineness of the transactions. On whom the onus of proof lies in a particular case is a question of law. But whether the onus has been discharged in a particular case is a question of fact, In the present case the onus to establish the source of money deposited (Rs 10 lacs) has not been discharged by the assessee. On this issue, reliance is also placed on the following case laws: **Commissioner Of Income-Tax. vs P. Mohanakala. 291 ITR 278(SC); Sethi Cotton Traders 286 ITR 548(P&H)** HELD- "A perusal of the concurrent findings recorded by all the authorities below reveals that it is a case where the assessee was unable to prove the genuineness of the credit standing in the name of Sh. Surinder Kumar. The assessee was further unable to prove not only his capacity but also identifiable source to advance the loan of R. 50,000 to the assessee. The assessee could not lead any evidence to the satisfaction of the Assessing Officer to prove the genuineness of the credit shown in the name of Sh. Surinder Kumar. In spite of a clear-cut finding of fact recorded by all the authorities, the appellant has sought to challenge the same by raising the substantial questions of law as has been referred to above"; **Gumani Ram Siri Ram 98 ITR 337(P&H); Sat Parakash Ram Naranjan. 100 ITR 130(P&H)** "Now the contention of the appellant is that assuming that he had failed to establish the case put forward by him, it does not follow as a matter of law that the amounts in question were income received or accrued during the previous year, that it was the duty of the department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of such evidence, it is argued, the finding is erroneous. We are unable to agree. Whether a receipt is to be treated as income or not, must depend very largely on the facts and circumstances of each case. In the present case the receipts are

*shown in the account books of a firm of which the appellant and Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs. 80,000 and the other being receipt of Rs. 42,000 from business of which he claimed to be the real owner. **When both these explanations were rejected, as they have been, it was clearly open to the Income-tax Officer to hold that the income must be concealed income.** There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature." (Emphasis supplied); **Raunaq Ram Nand Lal. vs Commissioner Of Income Tax And Another- 254 ITR 617(P&H); D. Siva Sankara Rao (Dr.) v.ITO (2013) 212 Taxman 151 (AP) (HC).** The above discussed case laws are applicable in the instant case as the assessee has not been able to prove to source of cash deposits, as discussed above."*

10. From the finding of Ld.CIT(A), it is clear that he treated the entire deposits in the bank account as business receipts and applied net profit @ 8% invoking the provisions of section 44AD of the Act. The assessee had prayed for peak credits be taken as income of the assessee since there were both deposits and withdrawals from bank accounts during the year. However, the Ld.CIT DR urged for treating the entire cash deposits in the bank account as undisclosed income of the assessee without giving set off of cash withdrawal made during the year. We are unable to accept this submission of Ld.CIT DR. In this regard, the law is well-settled that if there are both credit and debit entries in the bank account of the assessee, in that event peak credit may be taken as undisclosed income considering the facts of each case. But for

making addition of entire cash deposits when the debit entries are also there, in our considered view such action by AO would not be justified. The assessee is not in appeal before us, nor any representation is made on his behalf. Moreover, Ld.CIT DR could not controvert the finding of Ld.CIT(A) that the Investigation Wing had reported about the business activity carried out by the assessee. It is not the case where the Ld.CIT(A) had returned finding without having supporting material. The contention of Ld. DR that there was no business activity by the assessee is contrary to records. We therefore, do not see any reason for disturbing and/or reversing the finding of Ld.CIT(A). The grounds raised by the Revenue lacks merit hence, dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

**ITA No.944/Del/2020 [Assessment Year : 2009-10]**

12. Now, we take up the appeal of the Revenue in the Assessment Year 2009-10 i.e. ITA No.944/Del/2020. The Revenue has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case the Ld. CIT(A) has erred in law in restricting the addition amounting to Rs.1,59,96,541/- out of Rs. 19,99,56,770/- made by the assessing officer on account of unexplained cash deposits made by the assessee, without appreciating the facts brought on record by the AO in assessment order as no substantial documents has been brought on record regarding the source of cash deposits.*
2. *Appellant craves leave to add, amend, alter, modify, delete and or change any of the above grounds on or before the date of hearing.”*

13. Facts in this case are also identical and similar as in ITA No.943/Del/2020 [AY 2008-09] except figures.

14. We have heard Ld. CIT DR for the Revenue and perused the material available on record. We find that the facts and issues are similar and identical to the **ITA No.943/Del/2020 [AY 2008-09]** except figures. Ld. CIT DR for the Revenue has adopted the same arguments in respect of grounds of appeal. Since the facts are identical and no change into the facts and circumstances has been pointed by the Revenue in the year under appeal, the grounds raised in this appeal filed by the Revenue are dismissed. Our decision in **ITA No.943/Del/2020 [AY 2008-09]** would apply *Mutatis Mutandi* in this appeal filed by the Revenue as well.

15. In the result, appeal of the Revenue is dismissed.

16. In the final result, both appeals of the Revenue in **ITA Nos.943 & 944/Del/2020** for the **Assessment Years 2008-09 & 2009-10** are dismissed.

Order pronounced in the open Court on 17<sup>th</sup> May, 2024.

**Sd/-**

**(Dr.B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI