

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 705/JP/2024
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Gaurav Mitra 1-NA-2,Jawahar Nagar Jaipur	बनाम Vs.	The ITO Ward 6 (1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGBPM 3598A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 30/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 27 /08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 22-03-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2009-10 raising therein following grounds of appeal.

“The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs.12,36,000/- on account of alleged unexplained cash deposit in the bank account by holding that assessee has not produced any evidence to prove that the transactions in the bank account statement were meant for the purpose of business only. He has further erred in confirming the addition of entire cash deposit ignoring that the peak deposit works out at Rs.1,44,000/- by not considering the submission of assessee and by making incorrect and irrelevant observations.”

2.1 The only ground raised in the present appeal is with regard to challenging the order of ld. CIT(A) appeal in confirming the additions of Rs. 12, 36, 000 on account of unexplained cash deposits in the bank account. It was also challenged that ld. CIT(A) appeal further erred in conforming the addition of entire cash deposit ignoring that the peak deposit works out at Rs.1,44, 000.

2.2 I have heard the arguments of both the parties and I have also perused the material placed on record, judgements cited by the respective parties as well as orders passed by the revenue authority. As per the facts of the present case the notice u/s 148 of I T Act was issued on account of the fact that assessee had not filed return and there is cash deposit of Rs.12,36,000/- in 3 bank accounts by the assessee. The Assessee apart from filing reply on 3rd of October 2016 had also filed its return on 4th October 2016 declaring income of Rs.1,30,010/- under Section 44 AF of the IT Act and also explained that the cash deposit relates to sales made by him and the same was directly deposited by the customers in his bank account but the AO without referring to the reply filed had passed the order of assessment under section 144 read with section 147 on 4th of October 2016 by treating the entire cash deposit as unexplained. These additions were also confirmed by ld.CIT(A).

2.3 Now after having gone through minutely the facts of the case and also appreciating the documents placed on record I found that it is an undisputed fact that assessee filed the Return in response to notice under section 148 on 4th October 2016 declaring total income of Rs.1,30,010/- under Section 44 AF of the Act there by declaring profit of 5% on the total turnover of Rs. 26,00,205/-. The fact that the assessee is carrying out business is also evident from the registration of his firm under Rajasthan shop and commercial Establishment Act 1958 which is at paper book page number 19. The Assessee has placed on record all the documents which were placed before the revenue authorities including that of bank statement of ICICI bank account which are at paper book page number 1 to 11 and therefore after perusal of the same I find from the bank account that there were regular cash and other deposits and regular cash withdrawals. So under these circumstances I am of the view that Id CIT (A) was incorrect to presume that there is no evidence to prove that the transactions in the bank account were carried out for the purpose of business. Even otherwise the assessee has declared turnover of rupees 26,00,205/- which is much more than Rs.12,36,000/- deposited in the bank account. Apart from this I have also noticed that date wise statement of the cash deposit and the cash withdrawals have been filed, which is at paper book page number 17 and 18 and from these documents it can very well be noticed that that the maximum cash deposit in the bank account was Rs.1,44,000/- as on 13.12.

2008 therefore in such a circumstances it was not correct to consider the entire cash deposit in the bank account as unexplained without allowing the set off of cash withdrawals from the bank account. For this proposition I found strength from the following decision.

(i) CIT v/s Surinderpal Anand (2010) 192 Taxman 264 (Punj & Har)

The relevant Para 7 & 8 of this judgement are reproduced as under:

“7. Sec. 44AD of the Act was inserted by Finance Act, 1994 w.e.f. 1st April, 1994. Sub-s. (1) of s. 44AD clearly provides that where an assessee is engaged in the business of civil construction or supply of labour for civil construction, income shall be estimated at 8 per cent of the gross receipts paid or payable to the assessee in the previous year on account of such business or a sum higher than the aforesaid sum as may be declared by the assessee in his return of income notwithstanding anything to the contrary contained in ss. 28 to 43C of the Act. This income is to be deemed to be the profits and gains of said business chargeable of tax under the head "Profits and gains of business". However, the said provisions are applicable where the gross receipts paid or payable do not exceed Rs. 40 lacs.

8. Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax @ 8 per cent of the gross receipts itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts. The stand of the assessee before CIT(A) and the Tribunal that the said amount of Rs. 14,95,300 was on account of business receipts had been accepted. Learned counsel for the appellant with reference to any material on record, could not show that the cash deposits amounting to Rs. 14,95,300 were unexplained or undisclosed income of the assessee.”

(ii) Sind Medical Stores vs. CIT 117 DTR 0497 (Raj.) (HC)

Para 12 of this judgement is reproduced as under:

“12. This court in the case of Commissioner of Income Tax Vs. Tyaryamal Balchand (supra), after relying on several judgments, also upheld the finding about peak credit theory. This Court in CIT Vs. Ishwardas Mutha (2004) 270 ITR 597 (Raj.) also accepted the contention to take into account, the peak credit. When any

amount is paid, later withdrawn from the books, would be available for recycling and rotation, unless otherwise established as invested elsewhere by the Revenue. We hold the assessee was entitled to the benefit of peak credit which ought to have been allowed instead of making separate addition of entire amount. However, we may observe that the Assessing Officer has to come to a definite finding that the amount withdrawn was used by the assessee in any other expenditure or investment. If the Assessing Officer comes to a finding that withdrawn amount was used or spent by the assessee for any other investment or expenditure than the benefit of peak of such credit, in such circumstances, may not be available.”

(iii) CIT vs. Ishwardas Mutha 270 ITR 597 (Raj.) (HC)

In this case the Tribunal worked out the peak of the credits and sustained the addition for peak credit only. Against this department preferred a reference application to the High Court for challenging the addition confirmed on peak basis instead of entire credit. The High Court rejected the reference application and held that no referable question arose from the order of the Tribunal.

(iii) ITO vs. Mahesh Kumar Jayantilal Vora 3 SOT 96 (Rajkot)

In this case the AO found cash deposits in the assessee’s bank account and made additions of aggregate of such cash deposits in each of the assessment years ignoring the withdrawals from the bank account. On these facts, Hon’ble ITAT at Para 5 of the order held as under:

“5. We have duly considered the rival contentions and the material on record. The only dispute for our resolution is whether peak credit method applied in the facts of the case is rightly applied or not. It is well established that no income can be taxed twice. It is also not in dispute that these deposits include refunds of the subscriptions made from the deposits. Thus, by aggregating all deposits, they tend to get taxed twice which is against the principles of taxation the decisions cited by the learned counsel lend support to the case of the assessee and hence we decline to interfere with the decision of the CIT(A).”

I am also of the view that where there are regular deposits and withdrawals from the bank account then in that eventuality only the peak of such amount can be considered as the income for this proposition I find Reliance from the following cases.

“1. Sind Medical Stores vs. CIT 117 DTR 0497 (Raj.) (HC)

This court in the case of Commissioner of Income Tax Vs. Tyaryamal Balchand after relying on several judgments, also upheld the finding about peak credit theory. This Court in CIT Vs. Ishwardas Mutha (2004) 270 ITR 597 (Raj.) also accepted the contention to take into account, the peak credit. When any amount is paid, later withdrawn from the books, would be available for recycling and rotation, unless otherwise established as invested elsewhere by the Revenue. We hold the assessee was entitled to the benefit of peak credit which ought to have been allowed instead of making separate addition of entire amount. However, we may observe that the Assessing Officer has to come to a definite finding that the amount withdrawn was used by the assessee in any other expenditure or investment. If the Assessing Officer comes to a finding that withdrawn amount was used or spent by the assessee for any other investment or expenditure than the benefit of peak of such credit, in such circumstances, may not be available.

2. CIT vs. Ishwardas Mutha 270 ITR 597 (Raj.) (IHC) In this case the Tribunal worked out the peak of the credits and sustained the addition for peak credit only. Against this department preferred a reference application to the High Court for challenging the addition confirmed on peak basis instead of entire credit. The High Court rejected the reference application and held that no referable question arose from the order of the Tribunal.

3. Shri Jitendra M. Doshi vs. ACIT (2012) ITA Nos.3310 to 3313/Mum/2011

In this case the Hon'ble ITAT held that the entire deposits in the bank account cannot be treated as unexplained investment, the only proper course should be to determine the peak credit and after determining the peak credit, the said amount should be treated as unexplained investment.

4. Jayesh Mehta vs. ITO I.T.A. No. 5142/Mum/2009

In this case the Hon'ble ITAT set aside the issue and directed the AO to verify the peak deposits of all the bank accounts together and after verifying, to make the addition of the peak deposits so determined after giving reasonable opportunity of being heard to the assessee.

5. ITO vs. Mahesh Kumar Jayantilal Vora 3 SOT 96 (Rajkot)

In this case the AO found cash deposits in the assessee's bank account and made additions of aggregate of such cash deposits in each of the assessment years ignoring the withdrawals from the bank account, it was held that for making additions on account of unexplained deposits, only peak credits should be taken as by aggregating deposits they tend to get taxed twice."

Since as per the facts of the present case the peak of the cash deposit and withdrawals from saving bank account works out to Rs. 14,4000/- for the year

under consideration which is reflected at paper book page number 17 and 18 therefore the said amount can be taken as income against the additions of Rs. 12,36,000/- made by the AO. Therefore I direct the AO to calculate the income of the assessee accordingly. Thus the ground raised by the appellant stands partly allowed.

3.0 In the result, the appeal of the assessee is partly allowed with no orders as to costs.

Order pronounced in the open court 27 /08/2024.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27/08/2024

*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Gaurav Mitra, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward 6(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.705/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar