

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.4193/Mum/2016
(Assessment Year :2010-11)**

Mr. Chirag Aggarwal 20/3, Happy Cottage No.2, Wadala Shivadi Road, Shivadi Mumbai – 400 031	Vs.	Income Tax Officer 17(2)(4), Mumbai
PAN/GIR No.AIFPA2786C		
(Appellant)	..	(Respondent)

Assessee by	Shri Rakesh Joshi
Revenue by	Shri Bhangapatil Pushkaraj Ramesh
Date of Hearing	09/12/2024
Date of Pronouncement	16/12/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 12/04/2016 passed by CIT(A)-32, Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2010-11.

2. In the grounds of appeal assessee has challenged the addition of Rs.78,10,000/- made u/s 68 on account of cash deposited in the bank account.

3. The brief facts are that assessee is an individual stated to be involved in the business of sale of pre-paid cards and mobile parts and accessories. He has filed his return of income of Rs.1,99,370/- on 12/10/2010. The ld. AO noted that during the year under consideration assessee has made cash deposit to the tune of Rs. 78,10,000/- in his bank account with UCO bank. In response to the show-cause notice assessee submitted that assessee was in business of sale of prepaid sim cards and other mobile parts and all the sales were made in cash and the cash deposit of Rs.78.10 lakhs during the entire year also represent withdrawals in cash and re-deposited and contra entries also. The effective bank deposit from business operation was only Rs.38.60 lakhs. Thus, the entire contention of the assessee was that cash have been deposited out his business only and withdrawals. The ld. AO noted that since assessee had shown purchases of Rs.36,76,190/- and sales of Rs.38,98,087/- and after claiming expenses, loss of Rs.(-) 8,766/- was declared from its business. Thus, the source of deposit does not stand explained from the business and accordingly, these are income from undisclosed sources. Accordingly, the entire cash deposit of Rs.78,10,000/- was added u/s.68.

4. The ld. CIT (A) had called for the remand report for examining the issue of credit from business and the withdrawals made from the bank based on the peak credit theory. The ld. AO carried out enquiry from the purchase party and found that Shri Chetan Thakkar from whom assessee claimed to have made purchases did not file the return of income and did not have any

proper records, even though he has accepted that he has made sales to the assessee. The relevant remand report has been incorporated in the impugned appellate order. In response assessee has filed his detailed rebuttal and explanation. However, the Id. CIT(A) rejected the submissions made by the assessee and after detailed discussion and after examining cash deposit in the bank account (as discussed by him in para 7 of his order) has confirmed the addition. For the sake of ready reference, his relevant observation reads as under:-

“7. DECISION: *I have carefully considered the matter. The grounds of appeal state that the AO erred in not considering the peak credit in the bank account as the undisclosed income of the appellant and also in not giving credit to the cash sales made by him. From the submissions of the appellant read with the bank statement in which cash is deposited, a few discrepancies are noticed. The appellant claims to have made cash sales of Rs 38,98,087 and cash purchases from one Chetan Thakkar of Rs 36,76,190. The cash sales are apparently the source of cash deposits while the cash purchases are sourced out of the cash withdrawals. From the bank statement, it is seen that the total cash deposits are Rs 78,10,000, and the total cash withdrawals are Rs 40,60,000, the break up of which is as under;-*

<i>Date</i>	<i>Particulars</i>	<i>Deposits</i>	<i>Withdrawals</i>
<i>14/05/2009</i>	<i>Cash</i>	<i>2,50,000.00</i>	<i>-</i>
<i>16/05/2009</i>	<i>Cash</i>	<i>2,00,000.00</i>	<i>-</i>
<i>08/06/2009</i>	<i>Cash (self)</i>	<i>-</i>	<i>4,50,000.00</i>
<i>08/06/2009</i>	<i>Cash (self)</i>	<i>-</i>	<i>4,50,000.00</i>
<i>09/06/2009</i>	<i>Cash (self)</i>	<i>-</i>	<i>5,00,000.00</i>

10/06/2009	Cash	4,50,000.00	-
10/06/2009	Cash	4,75,000.00	-
10/06/2009	Cash	4,75,000.00	-
24/07/2009	Cash (self)	-	4,50,000.00
28/07/2009 -	Cash	3,62,000.00	-
31/07/2009	Cash (self)	-	4,00,000.00
01/08/2009	Cash	4,00,000.00	-
07/09/2009 .	Cash (Self)	-	4,00,000.00
08/09/2009	Cash	38,000.00	-
03/10/2009	Cash	10,000.00	-
03/10/2009	Cash	50,000.00	-
09/10/2009	Cash(Self)	-	5,00,000.00
21/11/2009	Cash	3,50,000.00	-
21/11/2009	Cash	2,50,000.00	-
23/12/2009	Cash	5,00,000.00	-
30/12/2009	Cash	5,00,000.00	-
09/01/2010	Cash	4,00,000.00	-
15/01/2010	Cash(Self)	-	4,00,000.00
08/02/2010	Cash	9,50,000.00	-
09/02/2010	Cash	5,00,000.00	-
09/02/2010	Cash	4,75,000.00	-

15/02/2010	Cash	2,75,000.00	-
15/02/2010	Cash	3,00,000.00	-
04/03/2010	Cash	3,00,000.00	-
06/03/2010	Cash	2,00,000.00	-
10/03/2010	Cash(Self)	-	5,00,000.00
29/03/2010	Cash(Self)	-	10,000.00
	Total	78,10,000.00	40,60,000.00

It is seen that each cash deposit is in a round figure as also each cash withdrawal is of a round figure. It is not understood how the alleged cash sales of Rs 38,98,087 being an odd figure is subsumed into the cash deposits. Similarly, each cash withdrawal is a round figure and the cash purchases are Rs 36,76,190 being an odd figure is apparently subsumed into the cash withdrawals. The appellant is also not able to identify which of the cash deposits and which of the cash withdrawals are towards the alleged cash sales and cash purchases. The appellant has also not been able to demonstrate that he is actually doing some business in cash. The same is apparent from the remand report submitted by the AO reproduced above. The submission of the alleged supplier Chetan Thakkar speaks only of purchases to the tune of Rs 36,76,190. There is no explanation forthcoming of the total of the cash deposits amounting to Rs 78,10,000. On one hand, the appellant claims that the cash withdrawals have been utilized for making cash purchases, and at the same time, the appellant would have me believe that the source of the cash deposits is from the cash withdrawals. Now if this proposition is to be accepted, the total of cash withdrawals is only Rs 40,60,000 out of which Rs 36,76,190 has been utilized for cash purchases. That leaves a balance of Rs 3,83,810 to explain the cash deposits of Rs 78,10,000. The proposition of the appellant is therefore contradictory and self serving as in any case there is no evidence filed to show the actual conduct of the business. In the circumstances, I am of the opinion that the appellant is not able to link the alleged business undertaken by him to the bank account in question and therefore he has not been able to explain the whole of the cash deposited in his bank account. I have no hesitation therefore to hold that the cash deposited of Rs.78,10,000 has no bonafide explanation about its source and

therefore deserves to be assessed as the undisclosed income. I therefore uphold the action of the AO on this count.”

5. We have heard both the parties at length and also perused the relevant finding given in the impugned orders. Ld. DR has filed his detailed written submissions. In sum and substance, his contention is that assessee was unable to corroborate with evidences to justify the nature and source of credits and his explanation was to be found to be unsatisfactory. After referring to various judgments on Section 68, he pointed out that the nature of cash deposits itself seems to be suspicious and assessee could not explain the source with proper evidence. One of the contentions raised by the assessee before the ld. CIT(A) are that there were some alleged jewellery sale which too assessee could not substantiate. *Lastly*, he submitted that peak credit theory is in applicable in the present facts.

6. On perusal of the entire facts brought on record and the reasoning given by the ld. AO and ld. CIT (A), no doubt assessee could not give proper explanation with regard to cash deposits, however, from perusal of the documents it is seen that the total deposits are Rs.78,10,000/- and there are withdrawals to the tune of Rs.40,60,000/-. We agree with the ld. DR that peak credit theory cannot be applied here, because there is no co-relation between the deposit and the withdrawal. If there is continuum of deposits and withdrawals indicating some kind of business or transaction, then to avoid double addition and to bring only the actual or to the extent possible peak can be

worked out to subset the credits and debits and arrive at undisclosed income or investment. Here there is no correlation between as the deposits and withdrawals which are random lump sum amount. However, one very important fact here is that the only source of income of the assessee is business from sale of mobile simcards and mobile parts. All these sales are in cash and assessee also had been making purchases in cash to the extent of Rs.38,98,087/- and all the goods are cash sales. Thus, it can be presumed that part of these cash deposits are from cash sales from his business. However cash deposit of Rs.78,10,000/- is much over and above declared sales, therefore it has to be reckoned that cash deposits are mostly out of undisclosed business income. In such a case, the entire cash from business deposited in the bank account cannot be treated as undisclosed income. Even if we agree with all the contentions raised by the ld. AO and ld. DR that assessee could not explain the deposit out of sales, but looking to the fact that assessee is carrying out business and entire sales is in cash therefore, the cash deposit can said to be undisclosed business on which some kind of net profit rate can be supplied to determine the true income. Accordingly, we estimate net profit rate of 8% of the cash deposit of sales over and above sales disclosed by the assessee. In other words assessee had disclosed sales of Rs.38,98,087/- which has been claimed to be deposited in the bank account and disclosed, therefore, undisclosed income from business is Rs.39,11,913/- (Rs.78,10,000.00 - 38,98,087.00) and on this

undisclosed sales, net profit rate of 8% is applied. Accordingly, appeal of the assessee is partly allowed.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced on 16th December, 2024.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER
Mumbai; Dated 16/12/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai