

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.573/Bang/2025
Assessment Year : 2016-17

Shri. Umesh Babu, S O Thippeswamy Onkareshwara Badavane, Jagalur Town, Jagalur, Davangere – 577 528. <b>PAN : AANPU 1988 Q</b>	Vs.	ITO, Ward – 1, Davangere.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Subramanian S,JCIT(DR)(ITAT), Bangalore.

Date of hearing	:	10.09.2025
Date of Pronouncement	:	25.09.2025

**ORDER**

***Per Laxmi Prasad Sahu, Accountant Member :***

This appeal is filed by the assessee against the Order passed by the CIT(A) vide DIN and Order No.ITBA/N FAC/S/250/2024-25/1072842205(1) dated 03.02.2025 on the following grounds of appeal :

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
  
2. The learned CIT[A] is not justified in upholding the assessment of total income of the appellant at Rs. 64,98,790/- as against the returned income of Rs. 7,88,790/- under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A]/NFAC erred in upholding the addition of Rs.57,10,000/- made towards cash deposits treated as unexplained money u/s 69A of the Act without appreciating that the provisions of section 69A are not attracted under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A]/NFAC ought to have appreciated and accepted the explanation of the appellant that the source of cash deposit was from out of anterior cash withdrawals made by the appellant from the bank account under the facts and in the circumstances of the appellant's case.

3.2 Without prejudice to the above, the addition made is excessive and liable to be reduced substantially.

4. Without prejudice to the above, the learned CIT[A]/NFAC failed to appreciate that even in event of rejection of the explanation tendered by the appellant, only the peak credit of Rs. 12,25,000/- could be added under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A and 234-B of the Act, under the facts and in the circumstances of the appellant's case.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

2. Briefly stated, the facts of the case are that assessee is a non-filer. As per the information available with the income tax department, assessee did not file return of income inspite of having transactions of Rs.57,10,000/- in the

savings bank account No.69000932144 in Davangere District Central Co-operative Bank Ltd. Accordingly, a notice under section 148 of the Act was issued after following due procedure and the case of the assessee was selected under section 147 of the Act. In pursuance of notice issued under section 148 of the Act dated 28.03.2023, assessee filed his return on 13.04.2023 declaring total income of Rs.7,88,790/-. Subsequently, other statutory notices were issued to the assessee. In response to the notice, assessee submitted his reply stating that cash deposited of Rs.57,10,000/- in the District Central Co-operative Bank Ltd., was out of withdrawals and it can be verified from the bank statement and filed copy of the bank statement. He furnished copy of the ITR, bank statements, ledger accounts of the parties from which it had received contractual income, etc., in support of his contention. Reply submitted by the assessee was examined. On perusal of the bank statement, it was noticed that there is a total credit entry of Rs.92,32,541/- out of which total cash deposit was Rs.57,10,000/- and total cash withdrawal of R.66,48,000/-. The submission of the assessee was not accepted and the AO observed as under:

- The assessee had accepted that it had deposited cash amounting to Rs. 57,10,000/- in its bank accounts and it has submitted that the same was deposited from withdrawal made earlier from his bank account.
- The assessee had submitted the copy of bank account statement of his Savings Bank Account No: 694000932144 in support of its contention. From the bank account statements it was noticed that there were total credit entries of Rs. 92,32,541/- out of which total cash deposit were Rs. 57,10,000/- and total cash withdrawal was of Rs. 66,48,000/-.
- The contention of the assessee that it had deposited cash in its bank accounts from the withdrawals made is not acceptable as it had failed to justify the relationship b/w cash deposit and withdrawals made. No cash book proving one to one relation of cash deposited and withdrawn was established at any point of time. It is even beyond any logic that why any person would withdraw cash from its bank account regularly and deposit the same in its bank accounts. Any prudent person would withdraw cash from its bank account for a specific

- purpose only ie. For making payment, and if there is some delay/change in that transaction, then it would deposit the same in its bank accounts. But the assessee had failed to discharge its onus that what were the circumstance/situation which forced him to deposit the cash in its bank account which were earlier withdrawn by him.
- The assessee has not submitted any proof in form of cash book, ledger accounts, confirmations of various parties etc. in order to justify the source of cash deposited which was later withdrawn as stated by the assessee in his reply.
  - It is also noticed from the bank account statement that first there is some cash deposit/credit entries in the bank account of the assessee and then the assessee is withdrawing cash from its bank account, which is completely against the contention of the assessee. It is clear that first the cash is deposited in the bank account and later the same is withdrawn.
  - The assessee had shown turnover of Rs. 90,94,579/-, out of which Rs. 84,84,000/- was its contract receipts from M/s Ambauram Balarama Reddy, it has been noticed from the ledger account of M/s Ambauram Balarama Reddy and copy of bank account statement of assessee that assessee received Rs. 33,00,000/- and Rs. 50,00,000/- from the above party on 17.03.2016 and 30.03.2016 respectively, however from the bank account statement it has been noticed that assessee had deposited Rs. 55,20,000/- before 17.03.2016. This is totally against the contention of the assessee and it is hard to believe that how could any person deposit Rs. 55,20,000/- in its bank account if there was no other source of income. Even in the ITR filed for A.Y. 2015-16 the assessee had declared total turnover of Rs. 17,35,339/- only.
  - The assessee further claimed that the deposit made in the bank were out of its earlier withdrawals and it has been noticed that assessee is withdrawing cash in lakhs and also depositing in lakhs. It is beyond comprehension that why would a contractor who is getting contract work of such a huge amount would violate the provisions of Income Tax Act,1961 wherein transactions of more than Rs. 20,000/- are not allowable. Further, the assessee received 100% of its turnover in its bank account on which TDS was also deducted then the question of receiving cash from contract receipts doesn't exist. However, the assessee had failed to furnish single evidence suggesting that it had business transactions from parties which have not TDS while making payments for the same. If assessee is withdrawing cash in huge amounts from its bank account it means it had to make payment to its business entities in lakhs but no evidence with regards to such payments was furnished by the assessee at any point of time.

- The assessee was engaged in the business of contract work and was having taxable income during the year under consideration but he still decided not to file his Income Tax Return as required u/s 139 of I.T. Act, 1961, the assessee had filed its ITR for A.Y. 2015-16, it means it was well aware of Income Tax provisions and he did not want to declare its unaccounted cash during the year under consideration.
3. The AO as per the above findings was not satisfied from the explanation submitted by the assessee and added the entire cash deposits under section 69A of the Act and applied section 115BBE of the Act.
  4. Aggrieved from the above Order, assessee filed appeal before the learned CIT(A) and learned CIT(A) dismissed appeal of the assessee.
  5. Aggrieved from the above Order, assessee filed appeal before the Tribunal. The learned Counsel reiterated the submissions made before the lower authorities and before the learned CIT(A) assessee submitted cash flow statements and he calculated peak credit of Rs.12,25,000/-. Assessee agreed for addition of Rs.12,25,000/- as peak credit, the learned Counsel submitted that assessee did not have any source of income except the work carried out by him during the year and there is no bar to withdraw and deposit cash into bank account and assessee can hold the cash and if it is required then he may deposit again the said amount.
  6. On the other hand, learned DR relied on the Order of the lower authorities and submitted that the Order of lower authorities are correct. It should not be disturbed. He further submitted that assessee was unable to explain the source of deposit of cash with credible evidence and there is no correlation with the cash withdrawal and again deposit.

7. Considering the rival submissions and perusing the entire material available on record and Orders of authorities below, we noted that assessee is a non-filer of income tax return. Accordingly notice was issued to the assessee on the basis of information available with the income tax department that the assessee has cash deposited of Rs.57,10,000/- in District Central Co-operative Bank Ltd. The source of deposit of cash was not accepted by the AO as well as CIT(A) and assessee before us while arguing the case was agreed for making addition of Rs.12,25,000/- as worked out during the course of first appellate proceedings as peak credit. In this regard, it was noticed that there is judgment of the Hon'ble Delhi High Court in the case of CIT Vs. D. K. Garg reported in [2017] 84 taxmann.com 257 (Delhi) and the assessee filed before Hon'ble Apex Court against the judgment of Hon'ble Delhi High Court and the Hon'ble Apex Court has granted leave on the appeal filed by the assessee. It was brought into notice of both the parties regarding applicability of the judgment. Therefore, during the course of clarification, the learned Counsel tried to distinguish the judgment of the Hon'ble Delhi High Court and strongly supported that the facts of that case are not applicable to the present facts of the case of the assessee and submitted that in the case of D. K. Garg noted supra, is related to the entry operator and as per para 18 of the judgment, in that case, there was deposit in the name of different persons during the previous year but here in this case, assessee is accepting that he has withdrawn himself and withdrawal amount has been deposited. For the sake of convenience, we are reproducing para No.18 of the above judgment:

18. In that case, it was held that as the amount of cash credits stood in the names of different persons which the Assessee had all along been claiming to be genuine deposits, withdrawals/payments to different persons during the previous years, the Assessee was, therefore, not entitled to claim the benefit of peak credit. Later in *Vijay Agricultural Industries* case (*supra*), it was reiterated that: "The principle of peak credit is not applicable in case where the deposits remained unexplained under Section 68 of the Act. It cannot apply in a case of different depositors where there has been no transaction of deposits and repayment between a particular depositor and the assessee." On the facts of that case it was held that peak credit could be applied only in the case of squared up accounts. In other words, where an Assessee was unable to explain the sources of deposits and the corresponding payments then he would not get the benefit of 'peak credit'.

8. Considering the above para of the judgment, we also hold that this judgment is not applicable to the present facts of the case. Considering the totality of the facts and circumstances of the case, we accept arguments of the learned Counsel that peak credit theory will apply in this case. Accordingly, as accepted by the learned Counsel during the course of hearing that a sum of Rs.12,25,000/- may be considered as unexplained, we are restricting the addition under section 69A of the Act to the extent of Rs.12,25,000/-.

9. In the result, appeal filed by the assessee is partly allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(SOUNDARARAJAN K)  
Judicial Member**

**Sd/-**

**(LAXMI PRASAD SAHU)  
Accountant Member**

Bangalore.

Dated: 25.09.2025.

/NS/\*

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|---------------|------------------------|
| 1. Appellants | 2. Respondent          |
| 3. DRP        | 4. CIT                 |
| 5. CIT(A)     | 6. DR,ITAT, Bangalore. |
| 7. Guard file |                        |

By order

Assistant Registrar,  
ITAT, Bangalore.