

**IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.2297/MUM/2023
(A.Y. 2012-13)**

Piyush Manilal Mehta, G-404, Ashok Nagar, Bldg. No. 3, Vazira Naka, Borivali (West), Mumbai - 400 092, Maharashtra	v/s. बनाम	Income Tax Officer, Ward – 32(2)(5), Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACPM0861F		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Rahul Hakani, AR
Respondent by :	Mr. Virabhadra S. Mahajan,(Sr. DR)

Date of Hearing	07.07.2025
Date of Pronouncement	09.09.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The above captioned appeal has been filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Year [A.Y.] 2012-13. It may be stated here that the instant appeal is a recalled matter as the original appeal filed by the assessee before ITAT was dismissed on account of non-prosecution and it was



subsequently revived by way of MA 161/MUM/2024. Accordingly, the appeal is being taken up for substantive hearing and adjudication by the Bench.

2. The grounds of appeal are as under:

1. *The Learned CTT(A) erred in confirming the addition of cash deposits of Rs. 1,52,08,125/- u/s 68 without appreciating that the assessee had established the identity genuineness and creditworthiness of the donor and hence the addition u/s 68 may be deleted.*
2. *Without prejudice to above, the addition u/s 68 may be restricted to the peak credit.*

3. Brief facts of the case are that the assessee filed return of income declaring total income of Rs 9,82,580/- showing income from Business and Profession and Income from Other sources. Notice u/s 148 of the Act was issued to him in respect of cash deposit of Rs 1,52,08,125/- in the bank account of his son Dev Piyush Mehta (Minor) maintained with Indian Bank, Borivali (W) Branch, Mumbai. Before the AO, it was explained that his son had received cash gifts from his paternal grand parents Sri Manilal Mehta and Smt Taraben Mehta as well as from maternal grandparents Sri Prabhudas Mehta and Smt. Kanta Mehta. The assessee had submitted Will of the grandparents in this regard. However, further details showing creditworthiness of the donors were not submitted on the ground that as the testators had



expired as well as the witnesses, he was unable to give their financial details. Consequently, the AO added the entire cash deposit of Rs 1,52,08,125/- u/s 68 of the Act. Moreover, despite submissions made before the Id.CIT(A) in the subsequent appeal, the addition made was upheld by him.

4. Before us, the Id.DR has relied on the orders of the authorities below while the Id.AR has contented that the provisions of section 68 of the Act are not mandatory as it uses the word “may”. In the present case this section should not be invoked as the assessee is unable to provide details of the testators as well as prove the Will as the testators and the witnesses have expired. Besides, section 68 of the Act does not apply to cash deposits in bank account of son as said bank account do not constitute books of account of the assessee. The observation of the AO that Will cannot be relied upon as same was on a plain piece of paper and not registered is contrary to law.

4.1 Without prejudice to above, it is claimed that only real income be taxed. Before the AO, the assessee had submitted that the cash deposits were required for business purpose. The AO did not analyse the bank statement to determine the real income of assessee who had filed



additional evidence showing debits and credits of same amounts in the bank statement. The Peak is coming to Rs. 10,03,125/-.

4.2 In this regard, the ld.AR has argued that only peak credit could be added u/s 68 of the Act. He relies on CIT v. Fertilizer Traders [2014] 222 Taxman 162 (All)(HC)(MAG) wherein it was held that where credits appear in accounts and genuineness of all persons is disbelieved and all credits are held to be assessee's own money, assessee will be entitled to set off and peak credit is to be determined after arranging all credits in chronological order. He also relied on ITO v. Pawan Kumar (2015) 153 ITD 448 (Delhi) (Trib.), Maktexchem Products 83 ITD 96 (Pune) and Hindustan Marble Pvt. Ltd. [2010] 327 ITR 312 (HC) (Guj.)

5. We have given thoughtful consideration to the entire issue in hand. It is an admitted fact that the assessee has failed to satisfactorily explain the cash deposits made in the bank account of his minor son. Besides, the contention that the impugned sum was received by the son by way of Will of the grand parents could not be confirmed on account of their demise. However, the alternative ground of the assessee to restrict the addition to the Peak credit only deserves sympathetic consideration. It has been stated that the said bank account revealed both credits and debits and the AO was not justified in making addition in respect of



credit entries only, ignoring the debit entries or withdrawals. It appears from the annexure to the assessment order that the Assessing Officer had added all the figures of difference relating to various months for making the addition. This approach is erroneous. We agree to the proposition of the assessee that it is only the peak amount which could be assessed and the corresponding expenditure would have to be allowed.

5.1 Both the sides have fairly admitted that applying the peak credit method could be the correct way to determine the undisclosed income. For any withdrawal made from an undisclosed bank account is available with the assessee for subsequent deposits in the same bank account or in other undisclosed bank accounts. Therefore, for any withdrawal made from any undisclosed bank accounts, corresponding credit has to be allowed against subsequent deposits made in the same bank account or in other undisclosed bank accounts. Once the peak credit method is accepted, then the peak credit worked out on the basis of deposits and withdrawals of all the undisclosed bank accounts is the only correct method for determining the undisclosed income.



5.2 In the light of above discussion, we consider it appropriate to remand the issue of peak credit to the AO for examining the claim of the assessee and after satisfying himself, he would work out the peak credit which would be liable to be added u/s 68 of the Act. The balance excess would therefore stand deleted.

6. In the result, the appeal is **allowed for statistical purposes.**

Order pronounced in the open court on **09.09.2025.**

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 09.09.2025

Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai



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A.Y. 2012-13
Piyush Manilal Mehta, Mumbai

5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

