

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI
BEFORE SHRI J. S. REDDY, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-5888/DEL/2012
(ASSESSMENT YEAR-2009-10)**

Praveen Kumar 16/82-C, Gali No. 3. Joshi Road, Karol Bagh New Delhi AASPK0045K (APPELLANT)	vs	ITO Ward-25(3) Vikas Bhawan New Delhi (RESPONDENT)
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Appellant by	Sh. K. Sampath, Adv.
Respondent by	Ms. Anima Barnwal, SR. DR

Date of Hearing	22.02.2016
Date of Pronouncement	17.05.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 25/09/2012 passed by CIT (A)-XXIV, New Delhi for the Assessment Year 2009-10.

2. The grounds of appeal are as follows:-

- “1. *That the Learned Authority below grossly erred in passing the order on erroneous and insufficient grounds.*
2. *That the Learned authority below erred in making an addition of Rs.12,84,429/- u/s 69 on erroneous and insufficient grounds.*

3. *That in any event the order passes is illegal, un-lawful and unjustified taking into consideration the above additions and the same are liable to the deleted and oblige.”*

3. Ground No. 1 and 2 are not pressed by the assessee/AR, hence dismissed.

4. The assessee filed his return of income on 29/09/2010 declaring net income of Rs.1, 59,267/-. The case was selected for scrutiny and statutory notice u/s 143(2) of the Act was issued on 21/8/2010. Notice u/s 142(1) along with detailed questionnaire was issued on 2/9/2011. The assessee is in the business of manufacturing sale and distribution of flexo Printing Material. AIR information was received by the Assessing Officer that the assessee had deposited cash amounting to Rs.12, 84,429/- in his bank account in ICICI Bank Ltd., Punjab Bagh, New Delhi. The assessee was required to give details of the cash deposits with source thereof, along with documentary evidence and complete address of the parties involved in the transaction in respect of credit interest. Since, the assessee could not explain the source of cash deposits to the satisfaction of the Assessing Officer, the Assessing Officer added Rs.12,84,429/- to the income of the assessee u/s 69A of the Income Tax Act.

5. The assessee filed appeal before the CIT (A). The assessee submitted before the CIT(A) that he was having an account with ICICI Bank through which he was doing retail business on small

scale. It was averred before CIT (A) that the debit/credit entries in the bank account represent purchase/sales and other expenses such as School fees of children, Electricity bill payments and other small expenses. During the year, the assessee incurred a loss on this retail business due to rejection of material. The assessee claimed that the Assessing Officer never pointed out about the small saving accounts otherwise, the same would have been explained at the relevant time. The assessee further submitted before the CIT(A) that the balance as on 31st March 2009, for ICICI Bank account was Rs.2,500/- which shows that the assessee did not earn enough profit. The assessee offered that his income may be considered at 5% of the total credit entries in this bank account.

6. The CIT (A) held in para 4.3 of the order that “...*There are certain facts pertaining to these issues, which are incontrovertible. The most crucial fact is that this bank Account No. 015501501915 in ICICI Bank, Punjabi Bagh Branch, New Delhi in the name of the appellant was not disclosed by him in his return of income. The Ld. AR of the assessee accepted the fact during the appellate proceeding that this was an undisclosed bank account*”. Although the appellant has claimed that this account pertains to his side business in which he has incurred a loss, the story does not appear believable on a perusal of the bank account entries, many of which pertain to expenditures like credit card payments, school fees payments, electricity bill payment and LIC payments etc. The Ld. AR of the appellant was asked to submit bills for purchase and sale of material, which was transacted through this bank account. The Ld.

AR submitted certain bills for purchase and sale which appears to be self-serving document since none of the entries in the photocopies of the bills can be matched with the entries in the bank account, as no payments were either made or received through cheques. Therefore, in the light of the evidences available on record and in the light of the nature of the entries reflected in this undisclosed bank account in ICICI Bank, I am of the considered opinion that the appellant has not been able to prove beyond doubt that he was carried out a side business of polythene bags and tubes and the cash deposited in ICICI Bank account was the sale proceeds of such business. Under these circumstances, the addition made by the AO of total cash deposits in ICICI Bank of Rs.12,84,429/- is sustained and this ground of appeal is dismissed.”

7. The Ld. AR submitted that it was a mistake on part of the assessee that the said amount was not properly entered in the returns of income of the assessee and the assessee has rightly claimed deduction u/s 44AE. The Ld. AR submitted that bills for purchase and sale were submitted before the CIT(A).

8. The Ld. DR submitted that there is no evidence that the said amount was in respect of the assessee's business. There was specific AIR information which state that there was a cash transactions and Assessing Officer has rightly added back the said amount.

9. We have perused all the records and heard both the parties. From the Assessment Order, it can be seen that the assessee has

not filed any documentary evidence whatsoever to prove the cash transactions in respect of the ICICI Bank Accounts. The assessee could not make out his case that he was having a side business before the Assessing Officer. Therefore, the transaction to the extent of Rs.12,84,429/- was correctly held as undisclosed income under Section 69A of the Act by the Assessing Officer. The CIT (A) also confirmed the same. The said finding of CIT(A) is correct. Only, whether the amount was in the nature of peak credit entries has to be seen. Therefore, the matter needs to be verified by the Assessing Officer. Hence, the matter is remitted back to the Assessing Officer with the direction that the documentary evidence has to be looked into and accordingly to pass fresh order. Needless to say, the Assessee has to be given full opportunity of being heard.

10. In result, appeal is partly allowed for statistical purpose.

The order is pronounced in the open court on 17th of May, 2016.

Sd/-

**(J.S. REDDY)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 17/05/2016

R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	22/02/2016	PS
2.	Draft placed before author	23/02/2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	17.05.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	17.05.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		