

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 4116, 4117 & 4118/Del/2016
Assessment Years: 2008-09, 2010-11 & 2011-12

Income Tax Officer, Ward -5(4), Room No. 229B, C.R. Building, New Delhi	Vs.	Sh. Vineet Gupta, D-10, Bhagwan Dass Nagar, New Delhi
PAN : AGZPG0140Q		
(Appellant)		(Respondent)

Appellant by	Sh. N.K. Bansal, Sr.DR
Respondent by	S/sh. Gautam Jain & Piyush Kamal, Advocates

Date of hearing	02.03.2017
Date of pronouncement	31.03.2017

ORDER

PER O.P. KANT, A.M.:

These three appeals by the Revenue are directed against separate orders dated 29/04/2016 of Ld. Commissioner of Income-tax (Appeals)-10, New Delhi (in short the CIT-A) for assessment year 2008-09, 2010-11 and 2011-12 respectively. Since the facts and circumstances as well as the grounds raised in all the three appeals are common, except difference in amount, same were heard together and disposed off by this consolidated order.

2. As the common issues are involved, we take up the appeal filed by the Revenue in ITA No. 4116/Del/2016 for assessment year 2008-09 as a lead case. The grounds raised by the Revenue in ITA No. 4116/Del/2016, read as under:

- i. Whether on the facts and in the circumstances of the case, the learned CIT(A) has erred in law in holding that the deposits of Rs.55,59,989/- were not unexplained credits but represented trading receipt.*
- ii. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

3. The facts in brief are that the assessee filed return of income on 11/02/2009, declaring total income of Rs.3,46,100/-, which consist of salary income of Rs.3,00,000/-, capital gain of Rs.19,811/- and interest income of Rs.1,26,287/-. The return of income was processed under section 143(1) of the Act on 17/12/2009. During the course of assessment proceeding for AY 2009-10, the Assessing Officer called a copy of bank statement from the ICICI Bank and on perusal of the same, he found deposits of Rs.55,60,287/- for the financial year corresponding to the assessment year under consideration. The deposits included cash deposits of Rs.19,41,239/-. Since the returned income could not justify the deposits of Rs.55,60,287/-, the case was reopened under section 147 of the Act, by way of issuing notice under section 148 of the Act. In response to the notice, the assessee filed return of income on 05/11/2012, declaring total income of Rs.6,24,000/-, wherein the assessee included a sum of Rs.2,78,000/- as net profit earned at the rate of 5% on the sale of Rs.55,59,989/- being cash deposits in the bank account maintained with the ICICI Bank. The Assessing Officer after obtaining explanation from the assessee, concluded that claim of deposits as trading receipt was not acceptable since no sales tax/VAT number, no details of parties to sales were made, no name/address of a single buyer/seller, proof of freight/cartage in respect of purchase/sale was filed. The AO also stated that even in the statement recorded during the course of AY 2009-10 the same has been declined by the assessee.

He, therefore, treated the deposits of Rs.55,59,989/- as unexplained cash credit in terms of section 68 of the Act. On appeal, the Ld. CIT-A following the order of the Tribunal in the case of the assessee for AY 2009-10 in ITA No. 3263/Del/2010 dated 11/01/2016, directed the AO to compute the income of the assessee for the year under consideration at the rate of 5% of the total receipt of Rs.55,59,989/- which works out to Rs.2,77,999/- and balance addition of Rs.52,81,990/- was deleted. Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

4. The ground No. 1 relates to addition of Rs.55,59,989/- being cash deposits in the bank account of the assessee, held as unexplained cash credit under section 68 of the Income-tax Act, 1961 (in short ~~the~~ Act).

5. Before us, the Ld. Senior DR opposed the conclusion of the Ld. CIT-A. He contended that facts of year under consideration are not identical to the facts for AY 2009-10 and, therefore, the Ld. CIT-A could not have mechanically followed the precedent cited by the assessee. He contended that neither the nature nor the quantum of the deposits and withdrawals were furnished by the assessee for the instant year. It was contended that the Ld. CIT-A ought to have examined the claim of fresh evidences and tabulation furnished in AY 2009-10 were not furnished during the appellate proceeding for the instant year. It was contended that the claim of the assessee that the deposits were trading receipt, is an afterthought and could not have been justifiably accepted, as no evidence to support the above claim were furnished by the assessee. The Ld. DR submitted further that bank account in the year under consideration is different from the bank account considered in AY 2009-10. He submitted that assessee has filed return of income under presumptive Scheme of computation of income under section 44AF of the Act, which is available for retail trade. The Ld. DR further submitted

that money was deposited in bank account at outstations like Jaipur, Bareilly, Amritsar, Ludhiana etc., and which is not possible in case of retail trade. According to the Ld. Authorized Representative, the onus was on assessee to satisfy that it was covered under section 44AF of the Act. He further submitted that the assessee has not enclosed the documents alongwith the return which were required in terms of explanation (f) to section 139(9) of the Act.

6. The Ld. Authorized Representative, on the other hand, prayed that neither by the Assessing Officer, nor by the Ld. CIT-A or even the Revenue in its ground has alleged that fact for assessment year 2009-10 were not identical to facts of the year under consideration. It was stated that bank account in respect of which addition has been made in the instant year, was also under consideration in assessment year 2009-10. It was also submitted that all facts as were furnished in the assessment or appellate proceeding for assessment year 2009-10, were also submitted in corresponding proceeding for the year under consideration. It was contended that the order of the Tribunal in the case of the assessee for assessment year 2009-10 was correctly applied by the Ld. CIT-A, while adjudicating the claim for instant year. The Ld. Authorized Representative further submitted that the fact of non-maintenance of books of accounts and vouchers is identical to the facts observed in assessment year 2009-10 and thus it was irrelevant for assessment of the income, whether the income was declared under presumptive taxation or otherwise. He further submitted that return of income filed by the assessee was not held as defective in terms of section 139(9) and therefore reference of explanation (f) to section 139 at the stage of appeal before the ITAT is also irrelevant.

7. We have heard the rival submission and perused the relevant material on record. We find that in the case of the assessee for

assessment year 2009-10, the Tribunal in ITA No. 3263/Del/2010 has decided the issue of deposits in the bank account maintained with the ICICI bank, holding the deposits as representing sales of the trading activity carried out by the assessee. The relevant findings of the Tribunal are reproduced as under:

“6.2 We have considered the rival submissions and perused the material on record. The addition made and disputed in this appeal is of Rs.97,07,593/- representing the deposits made in the bank account of the appellant under section 68 of the Act. The explanation of the assessee vis-a-vis the said deposits is that the said deposits represented business transactions of the assessee and therefore, such deposits could not be taxed as such under section 68 of the Act but a rate of profit at 5% be applied to the said deposits and income be estimated at Rs.4,85,379/- instead of Rs.97,07,593/- as held by the authorities below under section 68 of the Act. However, the aforesaid explanation has not been found acceptable on the ground that there is no evidence to support the claim that such deposits represent trading receipts in the course of the business of chemicals carried on by the appellant company. To appreciate the above conclusion, we' firstly notice the break-up of the deposits in the bank account of the appellant which is as under:

Month	Total Deposits (Rs.)				
	Total Deposits	No . of Deposits	Maximum Deposits	Minimum Deposits	Average
April,2008	15,04,590.00	49	1,50,000.00	4,000.00	77,000.00
May,2008	9,13,520.00	45	49,000.00	4,700.00	26,850.00
June,2008	11,71,705.00	37	2,00,000.00	2,800.00	1,01,400.00
July,2008	8,41,178.00	22	1,00,000.00	9,000.00	54,500.00
August,2008	5,96,925.00	16	50,050.00	18,000.00	34,025.00
September,2008	4,85,975.00	16	47,650.00	6,000.00	26,825.00
October,2008	3,65,625.00	12	40,850.00	10,000.00	25,425.00
November,2008	3,28,310.00	10	53,250.00	5,200.00	29,225.00
December,2008	6,59,515.00	19	90,000.00	5,800.00	47,900.00
January,2009	9,88,270.00	29	50,000.00	11,570.00	30,785.00
February,2009	7,49,480.00	25	84,640.00	8,000.00	46,320.00
March,2009	11,02,500.00	31	1,00,000.00	1,360.00	50,680.00
Total	97,07,593.00	311	10,15,440.00	86,430.00	5,50,935.00

6.3 From the aforesaid table, it is apparent that there are 311 deposits and the minimum deposit is Rs. 1,360/- in the month of March, 2009 and maximum deposit is of Rs. 2,00,000/- in the month of June, 2008. Further the average deposits range from Rs. 76,000/- in April, 2008, Rs. 26,850/- in May, 2008, Rs. 1,01,400/- in June, 2008, Rs. 54,500/- in July, 2008, Rs. 34,025/- in August, 2008 and likewise in the range of Rs. 26,000/- to 50,000/- in September, 2008 to March, 2009. It is

also noticed that these deposits included cash deposits of Rs. 41,21,685/- and cheque deposits of Rs. 55,82,908/-. The break-up of the said deposits would reveal the following position:

Month	Deposits by Cheque (Rs.)				
	Total Deposits	5 No. of Deposits	Maximum Deposits	Minimum Deposits	Average
April, 2008	11,50,950.00	38	1,50,000.00	4,000.00	77,000.00
May, 2008	6,61,535.00	36	49,000.00	4,700.00	26,850.00
June, 2008	7,63,405.00	25	2,00,000.00	2,800.00	1,01,400.00
July, 2008	3,77,428.00	9	1,00,000.00	21,700.00	60,850.00
August, 2008	3,24,425.00	8	50,050.00	18,000.00	34,025.00
September, 2008	1,81,375.00	5	41,250.00	29,625.00	35,437.50
October, 2008	97,725.00	4	40,850.00	10,000.00	25,425.00
November, 2008	53,250.00	1	53,250.00	53,250.00	53,250.00
December, 2008	4,57,615.00	12	90,000.00	8000.00	49,000.00
January, 2009	4,39,620.00	13	50,000.00	11,570.00	30,785.00
February, 2009	4,05,080.00	13	84,640.00	10,000.00	47,320.00
March, 2009	6,73,500.00	18	1,00,000.00	1,360.00	50,680.00
Total	55,85,908.00	182	10,09,040.00	1,75,005.00	5,92,022.50

Month	Deposits by Cash (Cash				
	Total Deposits	No. of Deposits	Maximum Deposits	Minimum Deposits	Average
April, 2008	3,53,640.00	11	49,000.00	13,400.00	31,200.00
May, 2008	2,51,985.00	9	43,800.00	7,550.00	25,675.00
June, 2008	4,08,300.00	12	48,000.00	9,500.00	28,750.00
July, 2008	4,63,750.00	13	49,850.00	9,000.00	29,425.00
August, 2008	2,72,500.00	8	41,450.00	29,250.00	35,350.00
September, 2008	3,04,600.00	11	47,650.00	6,000.00	26,825.00
October, 2008	2,67,900.00	8	40,000.00	20,000.00	30,000.00
November, 2008	2,75,060.00	9	49,000.00	5,200.00	27,100.00
December, 2008	2,01,900.00	7	46,000.00	5,800.00	25,900.00
January, 2009	5,48,650.00	16	49,000.00	18,000.00	33,500.00
February, 2009	3,44,400.00	12	46,100.00	8,000.00	27,050.00
March, 2009	4,29,000.00	13	46,500.00	11,600.00	29,050.00
Total	4,12,1685.00	129	5,56,350.00	1,43,300.00	3,49,825.00

6.4 Having regard to the above quantum of deposits and frequency of deposits, it can be reasonably concluded itself that there is merit in the claim of the appellant that such deposits are not pure cash credits being loans or advances raised by the appellant. There is no dispute that appellant has adequate expertise in the business of chemicals since he is deriving salary from his father who is engaged in the business of chemicals. The statement of the appellant dated 28.6.2011 and 7.12.2011 support the claim of the appellant that deposits are in the course of business carried out by the appellant. The Assessing Officer has regarded the deposits as unexplained cash credit under section 68 of the Act on the ground that the following up with the persons from whom deposits have been received is a time consuming and laborious process and therefore, in view of the fact that the assessment was getting time barred by limitation, further efforts to identify the nature of credits are not possible. It is thus apparent that despite the request of the assessee, vide letter dated 12.12.2011 to make adequate enquiries, the Assessing Officer has not brought out any material to rebut explanation of the assessee. In such circumstances, the explanation tendered by the assessee cannot be rejected arbitrarily as has been held by the Hon'ble Jurisdictional High Court in the case of Sona Electric Co. Ltd. vs. CIT 152 ITR 507. It is also a matter of fact that there is no other source of income as the appellant is salaried employee. An affidavit filed by the appellant, statements of the appellant without rebutting the contents thereof cannot be disregarded as has been held by the Hon'ble Apex Court in the case of Mehta Parikh & Company vs. CIT 30 ITR 181 and Hon'ble Madras High Court in the case of CIT v. Krishnaveni Ammal 158 ITR 826. We therefore conclude that deposits represented trading receipts in the business of chemicals carried out by the appellant of Titanium Dioxide. Accordingly such deposits, could not have been taxed under section 68 of the Act. In arriving at the above conclusion, we also derive strength from the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Pradeep Shantilal Patel 221 Taxman 436, wherein the Gujarat High Court has held that where manner of carrying out both credit and debit transaction clearly indicate that the payments have been made to different parties out of cash deposits which are claimed by the appellant and the same represented sale proceeds and purchases in the bank account, it could be reasonably concluded that the transaction in the bank account pertains to the business of the appellant. It was held that in absence of any other evidence to disbelieve the claim of the appellant, the statement of the appellant having regard to the nature of business should be accepted. Here too, the revenue has proceeded to bring to tax the entire deposits without leading any material and rebut the claim of the appellant. During the course of hearing, one of the arguments raised by the learned Senior DR is that the assessee has stonewalled enquiries by not producing any evidence and therefore, no relief is warranted on the facts of the case of the appellant more particularly when the assessee is not maintaining any books of accounts. We find that the aforesaid argument of the revenue does not deserve any merit for the reason that here admittedly even as per the Assessing Officer, there is no stonewalling of the enquiry. On the contrary, it is not a case where either of the authorities below have even alleged that the assessee has not cooperated during the course of assessment proceedings. It is a matter of record that two statements of the assessee have been recorded, affidavit was filed and replies have been furnished during the course of assessment proceedings. Thus, it is a case where assessee has tendered an explanation and such an explanation

has not been found acceptable and therefore, the matter is before us and it is not a case where the assessee has evaded assessment proceedings. So far as the argument that assessee has not been able to produce evidence in the shape of bills or for that matter, books of accounts to support nature of the deposits, that fact cannot be a ground to assume that the assessee has stonewalled enquiries. On the contrary, the Assessing Officer himself has admitted that it is time consuming and laborious process to conduct enquiry and he has chosen not to conduct enquiry and that fact would overlook other factors which assessee has highlighted before us to establish that the deposits represents trading receipts in the course of business of the appellant and therefore, income has to be computed only by applying the rate of profit on the total number of deposits in the bank account of the appellant. It is also a matter of record and it is also noticed from the bank account that the total cash withdrawals are of Rs. 91,55,450/- whereas out of the total deposit of Rs. 97,07,593/-, there are withdrawals made of Rs. 91,55,450/- and therefore, to suggest that all deposits are income of the appellant would otherwise be an incorrect estimation of income of income of the appellant.

6.7 Further, so far as rate of profit is concerned, it is noticed that the assessee has placed on record a chart showing rate of profit declared by the comparable concerns which are as under:

S. No.	Name of the party	Average rate
1.	M/s. Chemical De Enterprises	4.784
2.	M/s. Bharat Enterprises	3.51
3.	M/s. Rohit Exim (P) Ltd.	3.97
4.	M/s. Bharat Solvent & Chemical Corporation	5
5.	M/s. R.S. Chemical Suppliers	3.14

Also, the assessee has given average rate of profit of M/s. Chemical De Enterprises which is as under:

List of G.P. Rate of M/s Chemical De Enterprises			
F.Y.	Sale	Gross profit	G.P. Rate
2003-04	5,37,10,583	28,82,047	5.366
2004-05	2,76,73,42150	16,51,966	5.970
2005-06	8,22,30,598	35,46,813	4.313
2006-07	14,34,12,490	44,82,016	3.125
2007-08	14,51,79,374	56,06,805	3.862
2008-09	15,05,88,371	80,33,847	5.335
2009-10	11,89,86,724	65,65,531	5.518
		Average G.P.	4.784

6.8 Having regard to the above, we also accept that rate of profit @ 5% on the deposits would be a fair and reasonable estimate to compute the income of the appellant. At this moment, we are also guided by the well established principle that real income of the assessee should be computed and the purpose of assessment is to bring to tax and determine the correct and true tax liability of the assessee and not to determine any notional or hypothetical income of the assessee. In view of that matter, we direct the Assessing Officer to compute the income of the assessee @ 5% of the total receipts of Rs. 97,07,593/- at Rs. 4,85,379/- and the balance addition of Rs. 92,22,214/- is therefore, directed to be deleted. The ground raised are thus partly allowed.”

8. The Ld. CIT-A following the order of the Tribunal (supra) decided the issue in favour of the assessee and directed the Assessing Officer to delete the impugned addition. The finding recorded by the Ld. CIT-A in para-4.1 from page 22-27 of the impugned order has not been controverted by the Department by bringing any positive material on record.

9. The Ld. DR has contended before us that facts for assessment year 2009-10 and facts of the instant year are not identical. However after having examined the assessment order, we are unable to accept the above contention. The AO had initiated the proceeding under section 147 of the Act on the basis of the assessment proceeding for assessment year 2009-10. Further while making the addition in the year under consideration, the AO has not recorded any independent findings or observation but has referred to investigation carried out during the assessment proceeding for assessment year 2009-10. Even the Ld. DR has not placed on record any material after having been granted time to support the contention that facts for assessment years 2008-09 and 2009-10 are not identical except the fact that assessee in the return of income filed, declared profit under presumptive scheme of taxation under section 44AF of the Act and the documents as required under explanation (f) to section 139(9) of the Act were not filed. In our opinion, the issue before us is whether the cash deposits in bank account are the

sales receipt of the business carried on by the assessee. This issue has been examined by the Tribunal in assessment year 2009-10 in view of the facts that the assessee was not having any sales tax or VAT number or any details of purchaser or seller etc. We have observed that all those facts are in existence in the year under consideration also. Therefore, the issue that the income declared in the year under consideration is under presumptive scheme of taxation, is not relevant for deciding issue in dispute raised in grounds before us. If the assessee has not complied the provision of section 44 AF of the Act, then there are other measures under the Act available before the Assessing Officer. Further, the issue whether the return of income was defective or not, cannot be raked before us at this stage after accepting the return of income and completing the assessment. Further, the contention of the Ld. DR that money was deposited in bank account at outstations, itself shows that the amount deposited in Bank account, cannot be the assessee's own money alleged to be routed through bank account. In view of above, we do not find any error on the part of the Ld. CIT-A to have followed the order of the Tribunal for assessment year 2009-10. The Ld. DR has also contended that apart from the trading addition, the Ld. CIT-A ought to have examined the issue of unexplained investment as this was the first year of bank account which was not the case for AY 2009-10. However, in absence of any ground or any material to support the above contention, we reject the same. Having regard to the above, we do not find any reasons to interfere in the order of the Ld. CIT-A. Accordingly the ground No. 1 of the appeal is dismissed.

10. The ground No. 2 of the appeal being general in nature, we are not required to adjudicate upon.

11. As regards to ITA No. 4117/Del/2016 for assessment year 2010-11 and ITA No. 4118/Del/2016 for assessment year 2011-12, are

concerned, following the consistent view as taken in ITA No. 4116/Del/2016 for assessment year 2008-09, also stands dismissed.

12. In the result, all the three appeals of the Revenue are dismissed. The decision is pronounced in the open court on 31st March, 2017.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 31st March, 2017.
RK/(D.T.D)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi