

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

**BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER
AND SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 4551/Del/2012
AY: 2009-10**

Sh. Balbir Chand
258/10, Hansi Raod
Karnal

vs. ITO, Ward 4
Karnal

PAN: ADRPC 8197 L
(Appellant)

(Respondent)

Appellant by : Sh. Girish Aneja, CA

Respondent by : Sh. R.K.Garg, Sr. D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals), Karnal dated 16.5.2012 pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2009-10.

2. Facts in brief:- The facts as emanating from the order of the Ld.CIT(A) are as follows.

"1.1. The facts are that return declaring income of Rs. 1,20,000/- under the head profit and gains of 'Business and profession' was filed on 19.3.2010. The assessee also declared agriculture income of Rs. 1,45,600/-. Later on, the case was taken in scrutiny per issue of notice u/s 143(2) on 25.8.2010. Notice u/s 142(1) of the Act along with questionnaire was issued on 7.01.11 and the proceedings were fixed on 28.1.2011, which were not complied with. Case was again fixed for 22.06.11 per issue of notice u/s 142(1) of the Act on 06.06.2011, in response to which, the counsel of the

appellant attended the proceedings and filed some information.

1.2. *The appellant stated that he has been doing the business of earth moving at small scale and has also agriculture land about 8 acres. The appellant claimed that he has been maintaining only one bank account, viz., with ICICI Bank. Total cash was deposited in this bank during the year Rs. 8,92,856/-. The A.O noted that the appellant declared income u/s 44 AD of the Act from the receipt of Rs.8,70,000/- from the earth moving business and hence the total deposits made in the bank account were out of these receipts and hence the some stands explained.*

1.3. *During the assessment proceedings, the appellant filed an affidavit declaring that he is not having any bank account except the one with the ICICI Bank at Karnal. The AO confronted the fact of maintaining a bank account also with Bank of India, Karnal. The appellant submitted that the said bank account has been maintained in the joint name with his brother and claimed that the same is being maintained by his brother for his business. The appellant also submitted that some of the EMIs have been deposited by him in the said account to help his brother. To verify the fact, summons were issued on 7.10.2011 to Sh. Prem Kumar, brother of the assessee, at the address available on record. Sh. Balbir Chand, the appellant was available at that address and stated that he does not aware about Sh. Prem Kumar. The AO noted in the assessment order that assessee did not- comply with the directions and confrontations made to him regarding production of his brother for verification of the entries made in that bank account. Finally, the AO held the total of cash deposits in assessee's bank account amounting to Rs.17,54,319/- during the year is unexplained income of the assessee."*

3. On appeal the First Appellate Authority upheld the findings of the A.O.

4. Further aggrieved the assessee is before us on the following ground.

"Ignoring the material available on record, the action of the A.O. in drawing adverse inferences resulting in an arbitrary addition of Rs.17,54,391/- is illegal and uncalled for and the Ld.CIT(A) has erred in confirming the same."

5. We have heard Shri Girish Aneja, the Ld.Counsel for the assessee and Shri R.K.Garg, Ld. Sr.D.R. on behalf of the Revenue. On a careful

consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

6. A perusal of the bank account with Bank of India, Karnal demonstrates that loans were taken by Mr. Prem Kumar and are being regularly repaid in monthly instalments of Rs.22,300/- and at Rs.90,700/- p.m. respectively. These two repayments of loans by way of monthly fixed instalments belonging to Mr. Prem Kumar are the major transactions recorded in this bank account. Thus the argument of the assessee that this bank account with Bank of India does not belong to him but belongs to Mr. Prem Kumar has force. When Mr. Prem Kumar is operating these accounts and is regularly utilising this bank account for repayment of the loans taken by him for procuring JCB machine and one jeep for his own earthmoving business, the conclusion drawn by the A.O. that this bank account belongs to the assessee, in our view is erroneous.

7. In view of the above discussion, we delete the additions made to the assessee's income being credits in the Bank of India account, Karnal.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 26th May, 2016.

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 26th May, 2016

*manga

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar