

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.478/Ind/2023
(Assessment Year: 2012-13)

Vishal Balwani 47, Shanti Niketan, Behind Bombay Hospital, Indore (Appellant / Assessee)	Vs.	ITO-3(1) Indore (Respondent/ Revenue)
PAN: ABFPB 5263J		
Assessee by	Shri Harsh Vijayvargiya, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.03.2024	
Date of Pronouncement	20.03.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by the Assessee is directed against the order dated 19.10.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2012-13. The assessee has raised following grounds of appeal:

“1.That on the facts and in the circumstances of the case Ld. AO and Ld. CIT(A) has erred in making addition U/s 68 of Income Tax Act, 1961 as unexplained cash deposits in bank account amounting to Rs. 33,26,105.

2. That on the facts and in the circumstances of the case Ld. AO and Ld. CIT(A) has erred in passing an order without providing reasonable opportunity of being heard to the appellant and without taking cognizance of documents filed by appellant during assessment proceedings and against the principles of natural justice.

3. That on the facts and in the circumstances of the case impugned orders so passed is illegal & wrong.

4. That the appellant craves leave to add, amend, alter or delete any of the grounds of appeal.”

2. The assessee is an individual and filed his return of income on 12.01.2013 declaring total income of Rs.5,16,760/-. Subsequently the AO reopened the assessment by issuing a notice u/s 148 dated 19.03.2019 to assess the income on account of cash deposit of Rs.31,30,225/- in the bank account of the assessee as per the information available on AIR. Before the AO the assessee has even denied to have deposit cash in his bank account with State Bank of India and did not disclose the bank account with ICICI Bank Ltd. in which the AO found the deposit of cash in question. Accordingly in absence of any explanation on the part of the assessee the AO added the cash deposit of Rs.33,26,105/- to the total income of the assessee. The assessee challenged the action of the AO before the CIT(A) and also filed the details of the cash deposit in the bank account with ICICI bank. The assessee contended before the CIT(A) that it has filed reply vide letter dated 18.10.2019 however, the AO has passed the assessment order without considering said reply of the assessee on 19.10.2019. The assessee has strongly contended

that as per the details of the bank account there are regular deposit and withdrawals and therefore, only peak credit can be considered for the addition on account of cash deposit in the bank account. The CIT(A) declined to accept the contention of the assessee and confirmed the addition made by the AO.

3. Before the Tribunal Ld. AR of the assessee has submitted that since there was a time gap of deposit made in the bank account and notice issued by the AO u/s 148 of the Act of about of more than six years therefore, the assessee initially could not recollect the correct facts of deposit made in ICICI bank account however, the assessee subsequently filed reply vide letter dated 18.10.2019 and explained the deposits made in the bank account which were not considered by the AO. The Ld. AR has further submitted that the AO has made addition of the entire deposit in the bank account without considering the regular withdrawals made by the assessee prior to the deposits and therefore, at the most only peak credit ought to have been considered for the addition if any on this account. He has referred to the statement of peak credit placed at page no.3 to 9 of the paper book and submitted that the assessee has furnished the details of peak credit which is also reproduced by the CIT(A) in the impugned order however, the same were not considered by the CIT(A) while passing impugned order. Thus, Ld. AR has submitted that as per the details of peak credit it comes at Rs. 3,15,735/- on 13.10.2011. He has relied upon the decision of Rajkot Bench of the Tribunal dated 1st June 2022 in case of Sagar Navinchand Chande vs. ITO in ITANo.272/Raj/2018 and submitted

that the tribunal has held that even if claim of the assessee that deposit was made out of the business receipt is not found to be acceptable at the most peak balance can be brought to tax. Thus, Ld. AR has pleaded that when the assessee furnished all the relevant details about peak credit then the addition could have been restricted only to the peak credit balance instead of entire deposit in the bank account.

4. On the other hand, Ld. DR has submitted that the assessee did not come forward with clean hands and tried to mislead the AO as the assessee denied the deposit in the bank account. He has relied upon the order of the authorities below and submitted that in the return of income the assessee has declared salary income and income from other sources and therefore, the assessee has failed to explain the source of deposit in the bank account.

5. We have considered rival submission as well as relevant material on record. Though initially the assessee denied to have deposited any money in the bank account however, subsequently the assessee filed reply and tried to explain the deposit made in the bank account. Since alleged reply was stated to be filed only on 18.10.2019 and AO passed the order on 19.10.2019 therefore, the possibility of not reaching the reply in time to the AO is not ruled out. Before the CIT(A) the assessee has produced the details of the deposit and statement of peak credit which has been reproduced by the CIT(A) in the impugned order however, the CIT(A) has rejected the contention of the assessee as under:

“The conduct on the part of the appellant as detailed above right from the date of filing the return of income prior to reassessment proceedings and filing the return of income in response thereto showing a higher income without showing the basis thereof and denying the entries in the ICICI bank account as not that of his and thereafter making out a claim of peak cash deposit do not persuade any adjudicating authority to accept the claim. And Peak Cash Deposit is a not something granted for and demanded by the appellant and that is subject to the proof let in by the appellant that the withdrawals and cash deposits constitute a cycle and therefore every withdrawal should offset the later deposit and any later deposit should be considered only if it is in excess of the prior withdrawals. For these reasons, I have no hesitation in upholding the addition made by the appellant.

All the grounds taken by the appellant viz., basis of reopening and basis of addition and ignoring the peak credit claim by the AO are dismissed.

In the result, the appeal is dismissed.”

6. Thus, the CIT(A) has declined to even considered details submitted by the assessee in respect of the peak credit in the bank account. It is evident from the details and transactions in the bank account of the assessee that there are regular deposit and withdrawals from the bank account on daily basis. Therefore, a withdrawal from the bank account cannot be denied as source of subsequent deposit on the same day or very next day or within a short span of time. Once the assessee has given the details of deposit/withdrawals and statements of peak credit then the CIT(A) ought to have considered the same instead of rejecting the claim of the assessee on the ground of conduct of the assessee. The order of the appellate authority ought to have been based on the facts and

the conduct of the assessee can influence only the discretionary aspect of the proceeding. The Rajkot Bench of the Tribunal in case of *Navinchand Chande vs. ITO(supra)* has considered an identical issue in para 14 & 14.1 as under:

“14. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there was cash aggregating to Rs. 11,54,350/- deposited in the bank account of the assessee which was treated as income from undisclosed sources by the lower authorities. The assessee before the learned CIT-A explained the amount of cash deposit represent amount deposited by the customer to whom vehicle parts were sold and from this activity he earned only commission income and repaid the amount to the actual supplier after retaining commission. The explanation of the assessee was rejected by the learned CIT-A on reasoning that the detail of person to whom vehicle parts were sold and the person who supplied parts were not submitted. Further the assessee was only acting as an agent in the transaction then why customer deposited the purchase consideration to his bank account, was not explained. At the time of hearing, the learned counsel has not brought any material on record suggesting that the assessee was actually carrying out commission agency business as contended by him. Accordingly, we reject the contention of the assessee.

14.1 Be that as it may be, on perusal of the bank statement, placed on record, we note that there were regular deposits of money in cash which was withdrawn in cash. Thus the amount withdrawn from the bank was also available with the assessee for depositing the same in cash. Accordingly, the amount of cash deposited cannot be treated as income of the assessee without considering the corresponding withdrawal. In such a situation the principles of peak credit theory should be adopted for determining the income of the assessee. The concept of the peak credit proceeds on the fundamental premise that the money deposited and/or withdrawn from the assessee's bank account belongs to the assessee, or in respect of which ownership vests in the assessee. In the given facts and circumstances, there is no allegation of the revenue that the money withdrawn from the bank has either been utilized for incurring the expenses or for the purpose of the investments. Accordingly, the working of the peak credit works out at 1,49,727 which has not been challenged by the revenue. Thus we are of the view that in the given facts and circumstances, at the most the peak balance of 1,49,727.00 can be brought to tax under the peak credit theory. However we note that the assessee has declared an income of ₹ 1,02,710/- which is less than the amount determined under peak credit theory. Accordingly, we direct the authorities below to determine the income of the assessee at 1,49,727 only. In other words, there will be an addition of Rs. 47,017/- (Rs, 1,49,727-1,02,710/-) to the total income of the assessee which is over and above the income already disclosed by the assessee in the income tax return.”

7. Accordingly in the facts and circumstances of the case and in view of the order of Rajkot Bench of the Tribunal (supra) we are of the considered opinion that when the assessee has furnished the details and statement of peak credit of deposit in the bank account and the CIT(A) has not pointed out any infirmity or defect in the statement of peak credit furnished by the assessee then the same

ought to have been considered while making the addition on account of cash deposit in the bank account. Hence, we restrict the addition to the extent of peak credit of Rs.3,15,735/- instead of the addition of total deposit of Rs.33,26,105/-.

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

Order pronounced in the open court on 20.03.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 20 .03.2024

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*