

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA No. 5889/Del/2015  
(Assessment Year: 2011-12)

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| Varun Gupta,<br>C52, Shakti Nagar Extension,<br>Delhi<br>PAN: ALWPG5914G | Vs. | ITO,<br>Ward47(4),<br>Room No. 406, 4 <sup>th</sup> Floor, Block-<br>D, Pratyakash Kar Bhawan,<br>Civic Centre, JL Nehru Marg,<br>New Delhi |
| (Appellant)  |     | (Respondent)  |

|                       |  |
|-----------------------|--|
| Revenue by :          | Shri K. Sampath, Adv<br>Shri V. Raj Kumar, Adv |
| Assessee by:          | Shri R. K. Gupta, Sr. DR                       |
| Date of Hearing       | 20/10/2020                                     |
| Date of pronouncement | /10/2020                                       |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-21, New Delhi dated 12.08.2015 for the Assessment Year 2011-12 wherein the appeal filed by the assessee against the order passed u/s 143 (3) of the act by the income tax officer Ward 47 (4), New Delhi dated 20 March 2014 was dismissed.
2. The revenue raised the following grounds of appeal:
  - “1. *The action of the learned CIT(A) in upholding the addition levied by A.O of Rs. 57,00,240/- u/s 68 is unjust, illegal, arbitrary, illusory and the disallowance may kindly be quashed.*
  2. *That the action of the CIT(A) in giving a finding that the assessee has failed to discharge is onus with regard to cash credit and thus upholding the addition of Rs. 57,00,420/- is unjust, illegal, arbitrary, illusory and deserves to be deleted.*

3. *That his action in not considering submissions of the assessee that section 68 is not applicable to him at all and upholding the addition is unjust, illegal, arbitrary, illusory and deserves to be deleted.”*

3. Brief facts of the case shows that assessee is an individual; he filed his return of income electronically on 26/7/2011 declaring an income of ₹ 156,841/- by filing form number ITR- 2 which is applicable to individuals and Hindu undivided family not having income from business or profession. The case of the assessee was selected for scrutiny by issue of notice u/s 143 (2) on 3/8/2012. The subject matter of the issue in appeal is that in the income tax return the assessee has only shown source of income as income from salary and income from other sources. The assessee has declared salary from HCL info system Ltd of ₹ 16,259 and salary from another concern of ₹ 172, 049/-. The assessee has also shown the income from other sources in the form of bank interest. As per information available according to the annual information return on ITD system the assessee has deposited a sum of ₹ 4,605,380/- in his savings bank account maintained with ICICI bank. As the assessee is not engaged in any business activity during the year under consideration in order to examine the AIR information available in this case with respect to the cash deposited, the assessee was asked to furnish the details of all the bank accounts along with the bank statements. He was also required to explain the source of cash deposited in the bank account during the year with supporting documents. Before the assessing officer assessee submitted that he has only three accounts with state bank of India (number 305204363338), ICICI bank (account number 002901526244) and HDFC bank account number (13921930002539). However according to the AIR information assessee was also having an ICICI bank having account number 033101507741 which has not been declared by the assessee wherein the assessee has deposited cash of ₹ 4,605,380/-. The information was not forthcoming from the assessee except the request of adjournment or non-compliance. The learned assessing officer sought information from the bank with respect to the cash deposited u/s 133 (6) of the

Act. The HDFC bank with respect to one account stated that assessee has deposited cash of ₹ 390,000/- and with respect to the two different bank accounts with ICICI bank it was found that assessee has deposited cash of Rs. 705,395 and ₹ 4,605,380/- respectively. Therefore the assessee has deposited total cash of ₹ 5,700,240/-. The learned assessing officer noted that assessee has deposited unexplained cash amounting to ₹ 5,700,240/-. It is also seen by him that most of the cash has been deposited from outside Delhi. Therefore he noted that it is the duty of the assessee to show the identity of the creditors, capacity of those creditors to advance money and the genuineness of the transactions which assessee has failed. He noted that the assessee has failed to discharge is onus to prove the above and to offer any explanation with regard to cash credits. Therefore he made an addition of ₹ 5,700,240/- to the total income of the assessee u/s 68 of the income tax act. He also found that assessee has earned bank interest of ₹ 93 96 out of which the assessee has shown interest income of only ₹ 3414/- and therefore he made the balance addition of Rs. 5982/-. Accordingly the total income of the assessee was assessed at Rs. 5,863,063/- against the returned income of ₹ 156,841 by passing an order u/s 143 (3) of the act on 20 March 2014.

4. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned Commissioner of income tax (appeals). Assessee submitted in respect of cash deposit that cash is deposited in three bank accounts on behalf of retail traders by their customers. The cash was withdrawn and paid to the traders. The transaction was between the customers and suppliers through the bank account of the assessee. It was further stated that assessee was earning a small sum of 0.5% in most cases to facilitate this deal. He further challenge that as the cash did not belong to the assessee but was withdrawn and paid back to the principal same cannot be added in the hands of the assessee. Assessee further stated that as assessee was not required to maintain any books of accounts, so addition u/s 68 of the income tax act cannot be made. The learned CIT - A found that the assessee has not furnished single

piece of evidence to substantiate the above claim and to that extent the appellant has failed to discharge his onus. He further noted that assessee has claimed that he does not have any details such as name, address, PAN of his clients with whom he claims to have had business transaction. The CIT - A also held that it is also unbelievable that though the assessee has been purportedly generating huge revenue from the impugned business activity but he has completely forgotten everything so much so that he failed to report his impugned business income in his return of income. Assessee has also completely failed to furnish the identity of creditors and debtors which is not acceptable. He further held that the assessee's claim of running business is nothing but an afterthought and cooked up story not supported by facts and no evidence is available on record. He further held that even the bank account was not disclosed by the assessee to the AO but only AIR information disclosed the above fact. Therefore he confirmed the addition. Assessee is aggrieved with that order and is in appeal before us.

5. The learned authorised representative referred to page number 55 of the paper book wherein assessee has submitted by letter dated 11th of March 2014 as per para number eight that assessee is not having any business turnover directly and is only a commission agent. With respect to the AIR information provided he submitted that assessee has deposited a sum of ₹ 4,605,380/- on various dates himself or by his clients/customers/principals for and on their behalf in order to procure various goods and services from Delhi or at stations where the assessee in question has been an agent servicing these various clients all over the country including Chennai. It was also stated that assessee has withdrawn all his cash received from his principals from time to time for various expenses he had to incur. These expenses have been incurred by the assessee in pursuit of his business and profession for which he was entitled to various rates of commission starting from 0.5% to 2.5%. Therefore, the learned authorised representative submitted that assessee has deposited cash on behalf of his principals or them, withdrawn this cash for the purpose for which the customers

have deposited cash in his bank account and has merely earned small commission. He further submitted that provisions of Section 68 of the act do not apply on the cash deposited in the bank account. It was further stated that at page number 68 of the paper book as per letter dated 19 March 2014 the assessee submitted before the assessing officer that the peak balance of all the four bank accounts is only ₹ 576,658/- and therefore the addition cannot exceed the above sum. In view of this he submitted that the addition made by the learned assessing officer is incorrect. Alternatively only the peak credit should be added.

6. The learned departmental representative vehemently supported the order of the learned assessing officer and CIT - A. It was submitted that assessee has failed to give any details before the assessing officer or before the first appellate authority with respect to the name, address, or any other details about those principals who have deposited the cash in the bank account. He further submitted that most of the cash deposited is from outside Delhi. He further submitted that though the cash has been withdrawn, the assessee has also not given any details of the sum paid to the various persons. He further stated that peak balance cannot be added in the present case unless assessee disclosed the details of the payer of the cash and recipient of the cash. He therefore submitted that there is no infirmity in the order of the learned assessing officer. He further stated that assessee himself is maintaining the books of accounts and has also enclosed the audited balance sheet and profit and loss account along with the tax audit report and therefore the claim of the assessee that amount deposited in the bank account cannot lead to an addition u/s 68 of the income tax act. He submitted that assessee is maintaining the books of accounts which is evident from the balance sheet and the profit and loss account submitted. He therefore submitted that there is no infirmity in the order of the lower authorities.
7. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case assessee is a salaried employee. He has deposited huge cash in his three different bank accounts; one of the bank

account was detected by the assessing officer through AIR information. The assessee has no explanation from whom he has received the above money and for what purpose. This fact is also not denied that most of the times cash deposited in the bank account is from outside Delhi. Therefore who deposited cash in the bank account of the assessee is the primary responsibility of the assessee. Further, assessee has withdrawn the same cash and is stated to have been used for the purpose of the person who deposited the cash in his bank account. Assessee does not have any iota of evidence to prove his story. He does not have any details of any of the person who has transacted with him for depositing the cash or for receiving the Cash so deposited. Before the assessing officer, assessee has produced his audited books of accounts in the form of profit and loss account and balance-sheet. Therefore, it cannot be now said by the assessee that he does not maintain books of account and the amount so deposited in the bank account does not invite addition u/s 68 of the income tax act. If the assessee fails to give any explanation of the source and nature of money deposited in his bank account, definitely the provisions of Section 68 of the income tax act applies, as the assessee has failed to discharge initial onus cast upon him. In absence of any evidence, that he is carrying on business as a commission agent, cannot be believed. Even if it is believed, that he is a commission agent, the ignorance of the fact that who is principal, on whose behalf he is working, is not known to the assessee or he is not disclosing, it clearly shows that addition is required to be made in the hands of the assessee as there is no explanation about the source and nature of credits. In view of this we do not find any infirmity in the order of the lower authorities in confirming an addition of ? 5,700,240/- on account of unexplained cash credit being cash deposited in the bank account of the assessee.

8. With respect to the claim of the assessee to grant the benefit of peak credit we do not find any substantial the argument in view of the decision of the honourable Delhi High Court in case of CIT versus DK Garg (404 ITR 757) it is held that that where an assessee was unable to explain the sources of deposits

and the corresponding payments , he was not entitled to get the benefit of “peak credit”. If the assessee, had wanted to avail of the benefit of the “peak credit”, he ought to have disclosed all the facts within his knowledge concerning the credit entries in the accounts. He had to explain with sufficient details the sources of all the deposits in his accounts as well as the corresponding destinations of all payments from the accounts. He should have been able to show that the money had been transferred through banking channels, from whom to his bank account, the identity of the creditors and that the money paid from the accounts of the assessee. The assessee had to discharge the primary onus in that regard. The peak credit worked out by the assessee, on the basis that the principle of peak credit applied, notwithstanding the failure to explain each of the sources of the deposits and the corresponding destinations of the payments without squaring them off, was not permissible. Similar are the facts before us assessee is unable to give any information about the persons from whom he has received the cash, purpose for which it has received, the amount paid to whom, for what purpose and what is the amount of his profit. Apparently, the facts of the case clearly show that the story for retail trade is cooked up and is merely an afterthought. Therefore we reject the request for taxing the pre-credit only.

9. In view of above facts we dismiss all the grounds of appeal of the assessee.  
Order pronounced in the open court on 22/10/2020.

-Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 22/10/2020  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi