

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI R.S. SYAL, AM AND SHRI C.M. GARG, JM

ITA No.2075/Del/2011
Assessment Year : 2007-08

ITO,
Ward 4 (2), Room No.413A,
CR Building, IP Estate,
New Delhi.

Vs. Karan Mehra,
D-6/6006/1, Vasant Kunj,
New Delhi.

PAN : ACEPM0866C

(Appellant)

(Respondent)

Assessee By : Shri R.S. Ahuja, CA
Department By : Shri S.N. Bhatia, Sr.DR

ORDER

PER R.S. SYAL, AM:

This appeal by the Revenue arises out of the order passed by the CIT(A) on 17.02.2011 in relation to the assessment year 2007-08.

2. The only issue raised in this appeal is against restricting the addition of ₹1,14,74,500/- made on account of AO u/s 69A of the

Income-tax Act, 1961 (hereinafter also called 'the Act') to ₹ 2,80,000/-.

3. Briefly stated, the facts of the case are that the AO got some AIR information divulging that the assessee deposited cash in his bank account maintained with Standard Chartered Bank and also made some investments in mutual funds. On being called upon to state the source of such deposits in the banks, the assessee stated that one Ms Vandana Chandra, NRI, based in USA paid cash to the assessee as imprest for making investments on her behalf in India. Despite repeated adjournments, the assessee did not furnish the necessary evidence as called for. The AO observed that the total credit entries in assessee's bank account No.531-1-0273146-6 were to the tune of ₹ 86,01,500/- and in the other bank account No.531-1-020774-7 were ₹ 28,73,000/-. Total of these credit entries at ₹1,14,74,500/- was treated as unexplained money u/s 69A of the Act. During the course of the first appellate proceedings, the assessee furnished copies of bank statement of both the accounts maintained with Standard Chartered Bank, Gurgaon, Branch, Haryana ; copy of passport of Ms Vandana Chandra ; bank statement of NRI account of Ms

Vandana Chandra ; affidavit declaring investments and transfers of Ms Vandana Chandra, etc. The Id. CIT(A) sent this additional evidence to the AO in terms of Rule 46A(3) of the Income-tax Rules, 1962 for further examination of the matter and cross-examination of the witnesses, if necessary. The AO vide his remand report dated 10.08.10, objected to the admission of such additional evidence. He, however, did not consider it expedient to discuss the merits of the addition so made by him in the original assessment proceedings in the light of the additional evidence filed by the assessee. The Id. CIT(A) admitted the additional evidence. After perusing the written submissions filed on behalf of the assessee, which have been reproduced on pages 5-9 of the impugned order and the fresh material filed before him, he noticed that the source of cash deposits and deposits through cheques in the bank accounts was fully explained by the assessee inasmuch as several deposits in the bank accounts represented the earlier withdrawals apart from the amount received from Ms Vandana Chandra. It was held that there was a peak of the credit balance in the bank accounts amounting to ₹ 2,80,000/- which was required to be added. He, therefore, restricted the addition

to this level. The Revenue is aggrieved against this deletion of addition.

4. After considering the rival submissions and perusing the relevant material on record, it is noticed that though the assessee did not extend co-operation to the AO during the assessment proceedings, but such deficiency was made good by submitting the relevant evidence before the Id. CIT(A) as additional evidence. The Id. first appellate authority, in all fairness, remitted such additional evidence to the AO for examination and recording of statement of witnesses, if any. The AO did not adversely comment on such evidence but chose to oppose the admission of the additional evidence. In our considered opinion, the AO should have no objection if the additional evidence was entertained by the Id. CIT(A), as the same was first sent to him for verification. If he was not satisfied with the correctness of the assessee's claim in the light of such fresh evidence, he could have controverted the same.

5. On merits, it can be noticed that the AO chose to pick up deposit side of the bank accounts, totaled the same and made

addition for the equal sum without giving benefit of the amounts withdrawn. In other words, certain amounts were withdrawn, then deposited, again withdrawn and re-deposited. When the position is such that there are certain debits and credits in the bank account, it is wholly impermissible to consider only the deposits in the bank account for the purposes of making addition by totaling ignoring the fact that there are withdrawals of the amount as well. In such a situation, it is a peak amount which is required to be added, which exactly has been done by the Id. CIT(A) in this case. The Id. DR could not point out any infirmity in the calculation of the peak amount, by which the Id. CIT(A) restricted the addition to ₹ 2.80 lac. We, therefore, uphold the impugned order.

6. In the result, the appeal is dismissed.

The order pronounced in the open court on 04.07.2014.

Sd/-

[C.M. GARG]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 04th July, 2014.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.