

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

**Before Sh. N. K. Saini, AM And Sh. H. S. Sidhu, JM**

**ITA No. 1156/Del/2012 : Asstt. Year : 2008-09**

Income Tax Officer Ward-42(1), Room No. 318, 3 <sup>rd</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi-110002	Vs	Sh. Prathish Bansal, 5007, 2 <sup>nd</sup> Floor, Jaisav Place, Sirkiwalan, Hamdard Marg, Delhi-6
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AFTPB8250P</b>		

**Assessee by : Ms. Meenakshi Sharma, CA**

**Revenue by : Sh. Vikram Sahay, Sr. DR**

<b>Date of Hearing : 31.12.2014</b>	<b>Date of Pronouncement : 31.12.2014</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the department against the order dated 14.12.2011 of Id. CIT(A)-XXX, New Delhi.

2. Following grounds have been raised in this appeal:

*“On the facts and in the circumstances of the case and in law, the CIT(A) has erred:-*

*1. Deleting the additions of cash deposits of Rs. 40,67,559/- & Rs. 16,000/- in assessee bank account have been made out of, cash withdrawn from assessee's bank account.*

*2. AO should have considered the revised return at time of making assessment u/s 144 inspite of the fact that the AO had no communication that revised return has been filed by the assessee before ITO, Ward-22(1), Delhi.*

*The appellant craves the right to alter, amend, add or substitute the grounds of appeal.”*

3. The facts of the case in brief are that the assessee filed the return of income on 31.07.2008 declaring an income of Rs. 1,03,091/- which was processed u/s 143(1) of the I. T. Act, 1961 on 29.01.2009. In the said return the only source of income was from salary. Later on, the case was selected for scrutiny. The AO framed the assessment u/s 144 of the Act by making the addition of Rs. 40,67,559/- on account of cash deposited in ICICI Bank and Rs. 16,000/- in Canara Bank.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the assessee revised the return on the same day when the original return was filed i.e. 31.07.2008 with ward 22(1) and disclosed income from Business of trading in Electrical Goods in addition to salary income. It was stated that the revised return could not be filed with the salary ward 42(1) as when the assessee approached to file the revised return in the salary ward, the respective Officer in the ward did not accept the return and asked the assessee that since he has business income therefore the return should be filed in the business ward. Accordingly, the assessee filed the revised return in ward 22(1) vide acknowledgment no. 2212001408. It was contended that the AO framed the assessment u/s 144 of the Act considering only the original return filed by the assessee and ignoring the revised return. The assessee also submitted to the Id. CIT(A) as under:

*“i) During the assessment year 2008-09 the appellant was engaged in the business of trading in Electrical Goods.*

*ii) During the year under consideration the appellant had received salary of Rs. 1,80,100/- and has earned profit of Rs. 46,620/- from the business of trading in electrical goods.*

*iii) During the Assessment Year 2008-09 the appellant was engaged in business of trading in electrical goods wherein cash sale of electrical items were made. The appellant had made cash sales of Rs. 9,11,080/- which were deposited in the bank account by the appellant or directly by the purchaser in appellants bank account. Further purchases of Rs. 7,50,995/- were made during the Assessment Year 2008-09 to make the above mentioned sales. (copy of Balance Sheet and Profit & Loss Account enclosed.)*

*iv) Further during the year under consideration the appellant has taken unsecured loan from LIC of Rs. 1,00,000/- and from Ruchika Bansal of Rs. 20,000/-.*

*v) The nature of business of the appellant is such that purchases are made and sold to parties only when payment is received either in cash or directly deposited by the buyer in appellants bank account. The appellant **on receiving call from the clients withdraws cash from his bank account in anticipation of purchases to be made in case the order is confirmed** but if the client does not turn up **the appellant deposits the cash back into his bank account**. Hence there were many transactions of cash withdrawal and deposits in the bank account. The appellant withdraws cash from the bank account in anticipation of purchases to be made which are supplied to the parties only on receiving the payment from them and any surplus cash in hand was deposited in the bank account on regular intervals.*

***The yearly summary of cash book is as follows:***

	<u>Amount (Rs.)</u>
Opening Balance of Cash	1,36,550.00
<b>Add:</b> Amount withdrawn from ICICI Bank	41,10,722.00
Salary & Incentives received	19,100.00
<b>Less:</b> Drawings in cash	1,20,000.00
Expenses paid in cash	68,465.00
Amount deposited in ICICI Bank	33,06,891.00
Amount deposited in Canara Bank	16,000.00
Payment to Creditors in cash	<u>7,50,995.00</u>
Closing Balance of cash	<u>4,021.00</u>

*Therefore as is evident from above total cash withdrawn during the year from ICICI Bank was of Rs. 41,10,722/- and total cash deposits in ICICI Bank is of Rs. 33,06,891/-. Therefore cash was withdrawn in anticipation of purchases to be made and surplus cash in hand was deposited in bank account on regular intervals. Therefore cash withdrawals and deposits were made in the ordinary course of business.*

*Further as is evident from the yearly summary mentioned above total cash deposit in ICICI bank was Rs. 33,06,891/- however the Ld. Assessing Officer has added Rs. 40,67,559/- as undisclosed cash deposited in appellant ICICI Saving Bank account which is against the principal of natural justice.”*

5. It was further submitted as under:

*“As is evident from the above the Ld. Assessing Officer has passed the assessment order in the assumption that during the Assessment Year 2008-09 the appellant had earned only salary income. However the Ld. Assessing Officer has completely ignored the business income of the appellant as per the revised return filed by the appellant on the same date on which original return was filed. As the Ld. Assessing Officer has made the above additions without considering the revised return therefore the above additions are completely against the law and*

*facts of the case. (Copy of Revised Return and Revised Computation of Income enclosed).*

*Furthermore as is evident from the above that the Ld. Assessing Officer has made the above additions only on the ground that the source of cash deposits of Rs. 40,67,559/- in the ICICI Bank Account and Rs. 16,000/- in Canara Bank remained unexplained.*

*The appellant is a normal businessman and is not aware of the procedure of assessment proceedings before the income tax department. On receipt of notice from the Income Tax Department the appellant has handed over all relevant documents to his CA to submit them before the Ld. Assessing Officer. The appellant is not aware of the law for Income Tax proceedings and he was in the idea that his CA has duly complied with all the requirements for the assessment proceedings. It was only when the assessment order was received by the appellant he came to know about the non compliance by his Counsel. The appellant apologizes on behalf of his Counsel as he completely relied upon his CA who did not present the case properly.*

***Even if the appellant could not submit the required evidences but revised return was duly filed with the Income Tax Department under his PAN for which the Ld. Assessing Officer did not need any supporting and the Ld. Assessing Officer should have considered the same. Therefore the additions made by the Ld. Assessing Officer is completely erroneous and against the law and needs to be deleted.***

***Copy of the Revised Return, Computation of Income, Bank Statement of ICICI Bank, Canara Bank, Balance Sheet, Profit & Loss Account are now enclosed herewith for your reference.***

*The above additions have been made ignoring the revised return and facts of the case. The above mentioned cash deposits and withdrawals were made in the ordinary course of business and*

*hence by no means there is any undisclosed income which may be added u/s 68 of the Income Tax Act, 1961. This is therefore we again request your goodself to delete the additions made by the Ld. Assessing Officer.”*

6. The ld. CIT(A) forwarded the additional evidences furnished by the assessee under Rule 46A of the Income Tax Rules, 1962 to the AO twice on 28.04.2011 and 23.06.2011. The AO furnished the remand report on 04.05.2011 and 08.07.2011 but did not mention anything about the revised return filed by the assessee nor rejected the existence of revised return. Both the remand reports were given to the assessee by the ld. CIT(A) for his comments. In response thereto, the assessee submitted his reply and stated to reject the remand reports as the same were not based on the facts of the case. Reliance was placed on the judgment of the Honøble Allahabad High Court in the case of Dhampur Sugar Mills Ltd. Vs CIT (1973) 90 ITR 236.

7. The ld. CIT(A) after considering the submissions of the assessee and the remand reports of the AO, categorically stated that he had verified Bank Statements, Books of Accounts, Purchase and Sale Ledgers, Cash Book, Bank Book etc. relating to the business of the assessee. He also verified the revised return filed by the assessee with ward 22(1) of the Income Tax Department. He also mentioned that the additional evidences were sent for remand report to the AO who must have examined the same and should have given his remand report after considering the revised return. It was emphasized that sufficient opportunity was given to the AO

to verify the additional evidences but he failed in his duty. The Id. CIT(A) pointed out that the assessee was carrying on his business in subsequent years also and the gross profit chart for next three years was as under:

<i>Financial Year</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>
<i>Total Sales</i>	<i>9,11,080</i>	<i>8,73,655</i>	<i>8,97,484</i>	<i>3,31,080</i>
<i>Total Purchases</i>	<i>7,50,995</i>	<i>7,02,924</i>	<i>7,17,987</i>	<i>2,77,223</i>
<i>Gross Profit</i>	<i>46,620</i>	<i>78,246</i>	<i>83,137</i>	<i>53,857</i>
<i>GP Ratio</i>	<i>5.12%</i>	<i>8.96%</i>	<i>9.26%</i>	<i>16.27%</i>

8. On the basis of the above chart the Id. CIT(A) observed that the assessee was doing the business and the revised return filed by him included business income. The Id. CIT(A) also reproduced the yearly summary of the cash book which was verified by him as under:

	<b><u>Amount (Rs.)</u></b>
<i>Opening Balance of Cash</i>	<i>1,36,550.00</i>
<i>Add: Amount withdrawn from ICICI Bank</i>	<i>41,10,722.00</i>
<i>Salary &amp; Incentives received</i>	<i>19,100.00</i>
<i>Less: Drawings in cash</i>	<i>1,20,000.00</i>
<i>Expenses paid in cash</i>	<i>68,465.00</i>
<i>Amount deposited in ICICI Bank</i>	<i>33,06,891.00</i>
<i>Amount deposited in Canara Bank</i>	<i>16,000.00</i>
<i>Payment to Creditors in cash</i>	<i><u>7,50,995.00</u></i>
<i>Closing Balance of cash</i>	<i><b><u>4,021.00</u></b></i>

9. The Id. CIT(A) was of the view that the cash deposited in the bank account was out of cash withdrawn during the year and the assessee had withdrawn the cash from bank accounts as and when need arises. The Id. CIT(A) observed that after using the cash for expenses, the surplus cash

had been re-deposited in the same bank account and that the cash withdrawals & deposits were made in the ordinary course of business. He, therefore, directed the AO to delete the addition of Rs. 40,67,559/- and Rs. 16,000/- on account of undisclosed deposits u/s 68 of the Act. However, the Id. CIT(A) considered the business income of the assessee on the basis of Peak Credit Theory and estimated the Income at Rs. 1,90,088/.

10. Now the department is in appeal. The Id. DR strongly supported the order of the AO and reiterated the observations made in the assessment order dated 28.12.2010. In her rival submissions the Id. Counsel for the assessee reiterated the submissions made before the Id. CIT(A) and strongly supported the impugned order. It was further stated that the assessee filed the revised return u/s 139(5) of the Act on the same date i.e. 31.07.2008 and that in the original return income from business was not shown due to oversight and inadvertently but in the revised return income from business was shown and the return was filed in ward 22(1) wherein the returns having income from business were to be filed. It was stated that the AO while passing the assessment order ignored the revised return and framed the assessment u/s 144 of the Act in an arbitrary manner and even in the remand report he did not give any cognizance to the evidences furnished by the assessee. However, the Id. CIT(A) considered all the relevant documents, Bank Statements, Books of Accounts, Purchase and Sale Ledgers, Cash Book, Bank Book etc. and after proper verification estimated the business profit at Rs. 1,90,088/- instead of Rs. 46,622/- declared by the assessee in the revised return. The said business income



was estimated on the basis of Peak Credit Theory. Ld. Counsel for the assessee submitted that the ld. CIT(A) was justified in deleting the impugned additions made by the AO.

11. We have considered the submissions of both the parties and carefully gone through the material available on record. In the present case it is an admitted fact that the assessee revised the return of income and filed the same in the ward 22(1) wherein the jurisdiction of the case lies. The said facts were brought to the knowledge of the AO by the ld. CIT(A) who asked his remand report but the AO ignored the same for the reasons best known to him. It is well settled that the powers of the ld. CIT(A) are co-terminus with that of the AO and the ld. CIT(A) can do all those things which the AO ought to have done. In the present case the ld. CIT(A) categorically stated that sufficient opportunity was given to the AO to examine the case but the AO had not given any cognizance to the additional evidences furnished by the assessee in the form of revised return and supporting documents etc. On the other hand, the ld. CIT(A) examined and verified the Bank Statements, Books of Accounts, Purchase and Sale Ledgers, Cash Book, Bank Book etc. relating to the business of the assessee. This fact has been mentioned by the ld. CIT(A) at page no 14 of the impugned order. The ld. CIT(A) after proper verification and examining the books of account came to the conclusion that the business income of the assessee was required to be estimated on the basis of 'Peak Credit Theory' and accordingly he estimated the business income at Rs. 1,90,088/- which was the Peak Credit on 11.10.2007, instead of the

business income shown by the assessee at Rs. 46,620/- in the revised return of income. In our opinion the ld. CIT(A) has taken a just view which do not require any interference on our part. Accordingly, we do not see any merit in the appeal of the department.

12. In the result, the appeal of the department is dismissed.

(Order pronounced in the open Court on 31/12/2014).

Sd/-  
**(H. S. Sidhu)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 31/12/2014**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**

		Date	Initial	
1.	Draft dictated on	31.12.2014		PS
2.	Draft placed before author	31.12.2014		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			