

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.7063/Del./2018
Assessment Year: 2010-11

Sh. Satish Arora, C-456, Vikas Puri, New Delhi	Vs.	ITO, Ward-67(2), New Delhi
PAN :AAAPA0285D		
(Appellant)		(Respondent)

Appellant by	Sh. Dharamvir Taneja, CA
Respondent by	Sh. R.K. Gupta, Sr. DR

Date of hearing	07.06.2021
Date of pronouncement	28.06.2021

ORDER

PER O.P. KANT, AM:

This appeal filed by the assessee is directed against order dated 30/08/2018 passed by the Learned CIT(Appeals)-21, New Delhi [in short 'the Learned CIT(A)'] for assessment year 2010-11 raising following grounds:

1. *Ld. CIT(A) erred in facts and in Law in confirming order passed by Ld. Assessing Officer in Completing Assessment as Individual whereas return filed and business done is of HUF and thus Assessment framed as Individual is Bad in Law.*
2. *CIT(A) Misdirected in Confirming Observations of Ld. A.O. that HUF should have formal Deed HUF should have trade Licence are opposed to facts Law and Circumstances of the case and*

Assessment framed in Individual Capacity as against HUF is Bad in Law.

3. *Ld. CIT(A) misdirected in observing Appellant failed to establish the genuineness of his claim that cash deposit pertained to HUF as no documentary evidence whereas Appellant filed return u/s 44AF. Ld. A.O. completely ignored business done by HUF u/s 44AF and return filed by HUF u/s 44AF at Rs.165571 and completed Assessment as Individual of Rs. 1589570/- treating entire cash deposited as business Income as against Income declared u/s 44AF more than 5%.*
4. *Case Laws are not applicable to the Appellant case and conformation of entire cash deposits at Rs.1326900/- is Bad in facts and in Laws whereas HUF deposited Rs. 1329600 and simultaneous withdrawals of 1210400 in Punjab National Bank. Net deposit was only 119200/-. Ld. CIT (A) ignored Appellant placed on record Income earned at Rs. 302460/- u/s 44AF from 1985 to 2010 and deposit was only 119200/-.*
5. *Order passed by Ld. CIT(A) is Bad in Law.*

2. Briefly stated facts of the case are that during the period relevant to assessment year under consideration, the assessee was employed with Indian Bank and income was shown from salary and interest. According to the Assessing Officer, an information was received relating to cash deposit in the bank account of the assessee and thereafter satisfaction for reason to believe that income escaped assessment was recorded. The case was reopened in terms of section 147 of the Income-tax Act, 1961 (in short 'the Act') and notice under section 148 of the Act was issued on 30/03/2017. During assessment proceeding, the assessee contested that cash deposit was income of his Hindu Undivided Family (HUF) from trading in auto parts. However, the assessee failed to substantiate this claim with documentary evidence and therefore the Assessing Officer held the cash deposit in bank account as unexplained income in terms of section 69A of the Act. Before the Ld. CIT(A) also the assessee failed to

substantiate the claim of business activity alleged to be carried out by the HUF and therefore Ld. CIT(A) also upheld the finding of the Assessing Officer.

3. Before us, both the parties appeared through Video-Conferencing facility.

4. The learned Counsel of the assessee submitted not to press the claim of cash deposit as income of HUF, however, he submitted that peak of cash deposits might be added in the hands of the assessee and matter may be restored back to the file of the Assessing Officer for computation of peak credit. The Learned DR though relied on the order of the lower authorities, but did not seriously object for restoring the matter to the file of the Assessing Officer.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in the instant case is of explaining cash deposits in the bank account. Before us, the Learned Counsel of the assessee has pleaded for taking peak of the cash credits appearing in the bank account of the assessee. In our opinion, if the cash withdrawn from the bank account, has been reinvested in the form of cash deposit, then such claim of the assessee of making addition for the peak credit is justified. Since no statement of the bank account and details of the cash deposits are available on record, therefore, we feel it appropriate to set aside the order of the lower authorities and restore this issue to the file of the Learned Assessing Officer for examining the applicability of peak credit and computation thereof. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard.

The grounds of appeal raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28th June, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 28th June, 2021.

RK/-(DTS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi