

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'A, CHANDIGARH**

BEFORE SHRI T.R.SOOD, ACCOUNTANT MEMBER
AND Ms. SUSHMA CHOWLA, JUDICIAL MEMBER

ITA No.713/Chd/2012
(Assessment Year : 2008-09)

Smt. Satya Bhama Bindal, Vs The Income Tax Officer,
H.No. 230, Street No. 2, Ward-1,
Shyam Nagar, Mandi Gobindgarh.
Mandi Gobindgarh.

PAN: ABJPB-2503M

(Appellant) (Respondent)

Appellant by : Shri Sudhir Sehgal
Respondent by : Shri Akhilesh Gupta

Date of hearing : 05.08.2013
Date of Pronouncement : 20.08.2013

O R D E R

PER SUSHMA CHOWLA, J.M. :

The appeal filed by the assessee is against the order of the Commissioner of Income-tax (Appeals), Patiala dated 23.05.2012 relating to assessment year 2008-09 against the order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The grounds of appeal raised by the assessee read as under:

"1. That the Worthy Commissioner of Income Tax (Appeals), Patiala has erred in confirming the addition of Rs. 29,56,000/- as made by the Assessing Officer on account of deposits on different dates in the bank account with Centurion Bank of Punjab.

2. That the Worthy CIT(A) has also erred in not considering that the deposits were in small amounts, normally aggregating between Rs. 5,000/- to Rs. 50,000/- on different dates and the amount was withdrawn immediately thereafter leaving hardly any balance in the account of the assessee.

3. *That notwithstanding the above said ground of appeal, the CIT (A) has erred in not considering the alternate submissions of the assessee that if at all, any addition is called for that could be on account of peak balance on 08.09.2007 amounting to Rs. 55,923/-.*

4. *That the CIT (A) has failed to consider the submissions as made before him in a right prospective.*

5. *That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed off.*

4. The issue raised in the present appeal is against the addition made on account of various deposits on different dates in the bank account with Centurian Bank of Punjab.

5. The brief facts relating to the issue are that the assessee had filed return of income declaring total income of Rs.18,070/-. The assessee was an insurance agent and was receiving commission from LIC of India, Mandi Gobindgarh. During the year under consideration, the Assessing Officer found that the assessee had deposited Rs.29,56,000/- in cash on different dates in her Saving Account with Centurian Bank of Punjab, Mandi Gobindgarh. The assessee was shown caused to explain the source of deposit of the said cash in her bank account. The explanation of the assessee was that the bank entries were rotated on the advice of her bank consultant and every time assessee visited her relatives at Muktsar, Malaut and Kotakpura, assessee deposited cash in her bank account, which was withdrawn also. The second plea of the assessee was that at maximum, the peak was Rs.55,000/- which was rotated through her account. The Assessing Officer rejecting the explanation of the assessee made an addition of Rs.29,56,000/- as income from unexplained sources. The CIT(Appeals), rejecting the plea of the assessee, upheld the addition of Rs.29,56,000-. The assessee is in appeal against the order of the CIT(Appeals).

6. The 1d. AR for the assessee pointed out that the assessee had deposited cash on various dates which was also withdrawn on various dates on the advice of a bank consultant, in order to obtain loan from the bank. The 1d. AR further submitted that at best, what can be added in the hands of the assessee was a peak credit of Rs.55,923/- i.e. the peak balance as on 08.09.2007.

7. The 1d. DR for the revenue pointed out that there is no proof of the plea raised by the assessee in respect of obtaining bank loan and in the absence of the same, there was no merit in the submissions made by the assessee. Reliance was placed by the 1d. DR for the Revenue on the orders of the authorities below in respect of the additions made.

8. We have heard the rival contentions and perused the record. The assessee was a LIC agent and had earned income from commission. However, during the year under consideration i.e. the financial year 2007-08, the assessee had deposited various amounts in the bank account and had also made cash withdrawals on day-to-day basis. The total deposits in cash in Centurian Bank of Punjab Ltd. during the financial year was Rs.30,13,018/-. The assessee had withdrawn a sum of Rs.30,59,283/- from the said bank account during the year. The said figures are as cited by the CIT(Appeals) in para 4.1 at page 3 of the appellate order. The assessee has furnished on record the copy of bank account at pages 3 to 12 of the Paper Book. The perusal of the said bank account reflects the assessee having made deposits in different denominations on different dates and the same repeatedly withdrawn either on the same day or on the next day. In view of the said transactions of cash deposit on one date and withdrawal on the succeeding dates, we find merit in the plea raised by the assessee in respect of the said cash deposits and cash withdrawals from the bank

account. However, in the absence of any explanation filed in respect of cash amount utilized for making the initial cash deposit and also various deposits and withdrawals claimed to be made in cash on day-to-day basis, we hold that the concept of peak theory needs to be applied to the facts of the present case both in respect of the opening introduction of cash in hand and various transactions of cash deposits and withdrawals during the year under consideration. In order to verify the claim of the assessee and to determine the quantum of addition, we restore the issue back to the file of Assessing Officer to first determine the deposit of cash at the start of the year and in case the same is not relatable to cash withdrawn during the year before that date, then such amount is to be included as income of the assessee. Further, the peak theory is to be applied to the various entries of cash deposit and withdrawal during the year under consideration in order to determine the addition in the hands of the assessee on the basis of peak theory. In view thereof, the grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on this 20th day of August, 2013.

Sd/-

Sd/-

(T.R.SOOD)
ACCOUNTANT MEMBER
Dated : 20th Aug.2013
Poonam

Copy to:

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

(SUSHMA CHOWLA)
JUDICIAL MEMBER

By Order

Assistant Registrar, ITAT,
Chandigarh