आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE**

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
**BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM**

**आयकर अपील सं. / ITA No.762/PUN/2015**
**निर्धारण वर्ष / Assessment Year : 2010-11**

Mr. Imroz Khan Mohiyoddin Khan,
R/o. H. No. 1847, Hataipur, Kandhar,
Tq. - Kandhar, Distt.-Nanded – 431714

PAN : BAXPK0376H

.......अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,
Ward – 2(3), Nanded

......प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 01-02-2018
घोषणा की तारीख / Date of Pronouncement : 02-02-2018

## आदेश / ORDER

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 23-03-2015 for the assessment year 2010-11.

The solitary ground raised by the assessee in appeal is against confirming of addition of Rs.7,60,960/- made on account of peak bank balance.

2. The case was called twice for hearing. However, none appeared on behalf of the assessee. A perusal of case file shows that the first notice of appeal was sent to the assessee on 09-04-2017 for 13-06-2017. The notice was duly served on the assessee as is evident from acknowledgment available on the file. On the said date since none appeared on behalf of the assessee, the appeal was adjourned to 31-08-2017 and fresh notice of appeal was issued to the assessee. On 31-08-2017 the adjournment request was received from the assessee through e-mail. On written request received from assessee the case was adjourned to 15-11-2017. Again on the said date none was present on behalf of the assessee. In the interest of justice fresh notice was issued to the assessee for 01-02-2018 through RPAD. The notice of appeal was duly served as is evident from acknowledgment card available on record. On 01-02-2018 when the case was called, neither the assessee nor any Authorized Representative of the assessee was present in the Court. It seems that the assessee is not keen to pursue his appeal. Accordingly, we proceed to decide the present appeal of assessee on the basis of material available on record and the submissions made by ld. DR.

3. The facts as emanating from records are : The assessee is a civil contractor. The assessee filed his return of income for the impugned assessment year on 09-07-2012 declaring total income of Rs.1,18,700/-. On the basis of AIR information, notice u/s. 148 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) was issued to the assessee on 26-03-2012. During the course of assessment proceedings, the assessee appeared along with his Authorized Representative once and furnished the copy of return of income. Thereafter, the assessee did not co-operate with the Assessing Officer. The Assessing Officer issued several notices u/s.

142(1) but the assessee did not respond to the same. Under such circumstances, the Assessing Officer was constrained to complete the assessment by invoking the provisions of section 144 of the Act. The Assessing Officer observed that the assessee is maintaining several bank accounts. There are several entries of cash deposits in the Bank accounts that are not explained by the assessee. The Assessing Officer made additions on following counts :

i. Peak Credit balance in State Bank of Hyderabad Rs.12,60,960/-,
ii. Peak Credit balance in Axis bank Rs.2,55,000/- and
iii. Closing Bank Balance (not shown in balance sheet) Rs.8,66,765/-.

Aggrieved by the assessment order dated 21-03-2013 passed u/s. 144 r.w.s. 147 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority vide impugned order partly allowed the appeal of assessee and restricted the addition on account of peak balance in the bank to Rs.7,60,960/- only. Now, the assessee is in second appeal before the Tribunal assailing the addition confirmed by Commissioner of Income Tax (Appeals).

4. Shri Ajay Modi representing the Department vehemently supporting the findings of Commissioner of Income Tax (Appeals) submitted that the assessee has not been able to show the source of cash deposit in the bank. The Commissioner of Income Tax (Appeals) has been very generous in granting substantial relief to the assessee. As against the addition of Rs.23,82,725/- the Commissioner of Income Tax (Appeals) has sustained addition of Rs.7,60,960/- only. The ld. DR contended that the assessee was non-cooperative before the Assessing Officer and even before the Tribunal, the assessee has not appeared despite service of notice. This

clearly shows that the assessee is defiant and has no respect for the law of country. The ld. DR prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by ld. DR and have perused the material available on record. The assessee in appeal has assailed the addition of Rs.7,60,960/-, confirmed by the Commissioner of Income Tax (Appeals) on account of peak balances in the bank as on 02-02-2009. The relevant extract of the findings of Commissioner of Income Tax (Appeals) are as under :

> *"In respect of peak balances in State Bank of Hyderabad account Rs.12,60,960/- on 02/12/2009 in Axis Bank account Rs.2,55,000/- on 23/10/2009, it has been noticed that the closing balance in the said accounts is Rs.1,402/- and Rs.5,205/- respectively. It has also been noticed that the peak balance in State Bank of Hyderabad account Rs.12,60,960/- can only be considered as the said balance was on 02/12/2009 whereas the peak balance in Axis Bank was on 23/10/2009. Therefore, the said balance in Axis bank could be withdrawn and deposited in State Bank of Hyderabad or used for business purpose. It is also a fact that the appellant was working as piece worker and has also carried out the business of supply of material to Rida Constructions and has received business receipts of Rs.24,83,000/- and Rs.27,31,700/- in F.Y.2008-09 & 2009-10. Further, the appellant had also substantial savings from amount sent by him from Dubai. Considering the totality of the facts, the peak credit balance of Rs.12,60,960/- in my opinion could be out of previous savings and business receipts to the extent of Rs.5,00,000/-. The addition on account of peak balances in bank as on 02/12/2009 is, therefore, restricted to Rs.7,60,960/- as against made by the A.O. at Rs.15,15,960/- (Rs.12,12,960/- + Rs.2,55,000/-)."*

6. The contentions of the assessee before the Commissioner of Income Tax (Appeals) were that the assessee was previously working in Dubai and had sent substantial amount to India through NRE account with Canara Bank at Tarasingh Market, Gurudwara, Nanded. In the said account the assessee had also deposited amount sent by his cousin. The assessee had filed copy of the said account before the Commissioner of Income Tax (Appeals). Apart from above the assessee also filed an affidavit of Mohd. Abdul Azim Rauf who is a Government Civil Contractor working under the name and style of M/s. Rida Construction. Shri Mohd. Rauf in his affidavit confirmed that he had made payments to the assessee in the Financial

Year 2008-09, Rs.24,83,000/- and in Financial Year 2009-10 Rs.27,31,700/- on account of piece work and supply of material. We find that the Commissioner of Income Tax (Appeals) after considering the submissions of the assessee restricted the addition to Rs.7,60,960/- only. The order of Commissioner of Income Tax (Appeals) is well reasoned and we concur with the same. There is no material before us to take a different view. Accordingly, the impugned order is upheld and the appeal of assessee is dismissed.

7. In the result, appeal of assessee is dismissed.

Order pronounced on Friday, the 02nd day of February, 2018.

| Sd/- | Sd/- |
|---|---|
| (अनिल चतुर्वेदी / Anil Chaturvedi) | (विकास अवस्थी / Vikas Awasthy) |
| लेखा सदस्य / ACCOUNTANT MEMBER | न्यायिक सदस्य / JUDICIAL MEMBER |

पुणे / Pune; दिनांक / Dated : 02nd February, 2018
RK

**<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Aurangabad
4. The Principal Commissioner of Income Tax-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune