

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 755 /KOL/ 2015
Assessment Year: 2008-2009**

Prankrishna Bag,.....Appellant
Nandakumar,
Purba Medinipur-721 643
[PAN : AJAPB 7873 K

-Vs.-

Income Tax Officer,.....Respondent
Ward-3, Haldia,
Basudevpur,
Khanjanchak,
Haldia-721 602

Appearances by:

Shri Rabindranath Das and Shri Atin Das, Advocate, for the assessee
Shri Prabal Choudhury, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : April 29, 2016
Date of pronouncing the order : June 03, 2016

O R D E R

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax-(Appeals)-7, Kolkata dated 19.03.2015 for the assessment year 2008-09, whereby he confirmed the addition of Rs.8,79,719/- made by the Assessing Officer to the total income of the assessee on account of peak credits appearing in the undisclosed Bank accounts of the assessee and further enhanced the same by Rs.15,97,560/-.

2. The assessee in the present case is an individual, who is engaged in the business of dealing in fruits on wholesale basis. The return of income for the year under consideration was filed by him on 30.09.2008 declaring total income of Rs.1,28,900/-. As per the information received by the Assessing Officer, the assessee was maintaining three Bank

accounts with UTI (Axis) Bank Limited, Bhimerbazar, Tamluk. The said accounts, however, were not appearing in the balance-sheet filed by the assessee along with the return of income for the year under consideration. During the course of assessment proceedings, personal balance-sheet was filed by the assessee in which one of the three Bank accounts maintained with Axis Bank Limited was reflected. As regards the remaining two Bank accounts, the assessee could not offer any satisfactory explanation in respect of substantial transactions reflected therein, which had remained undisclosed. The Assessing Officer, therefore, treated the peak credits appearing in the said two Bank accounts aggregating to Rs.8,79,719/- as unexplained investment of the assessee and the same was added by him to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 27.12.2010.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) disputing the addition of Rs.8,79,719/- made on account of peak credits appearing in the undisclosed Bank accounts treating the same as unexplained investment. During the course of appellate proceedings before the Id. CIT(Appeals), a written submission was filed by the assessee along with additional evidence. The same was forwarded by the Id. CIT(Appeals) to the Assessing Officer, who in turn submitted his remand report to the Id. CIT(Appeals) offering his comments on the written submission filed by the assessee as well as the additional evidence. When the remand report submitted by the Assessing Officer was confronted by the Id. CIT(Appeals) to the assessee, the assessee filed his rejoinder in writing. After taking into consideration the entire material available on record before him, the Id. CIT(Appeals) was of the view that the peak credit worked out by the Assessing Officer in respect of two undisclosed Bank accounts of the assessee was not correct. According to him, such peak credits in the two undisclosed Bank accounts of the assessee were actually more than what was taken by the Assessing

Officer. He was also of the view that the peak credit of the third account of the assessee maintained with the Axis Bank Limited was also liable to be added to the total income of the assessee, which had not been done by the Assessing Officer and there was failure on the part of the Assessing officer even to make addition on account of interest of Rs.11,767/- credited in the said Bank accounts. He, therefore, issued enhancement notice under section 251(2) of the Act requiring the assessee to show-cause as to why the addition of Rs.8,79,719/- made by the Assessing Officer on this issue should not be enhanced to Rs.24,76,739/-. Since the assessee failed to offer any satisfactory explanation in response to the said notice, the Id. CIT(Appeals) proceeded to confirm the addition of Rs.8,79,719/- made by the Assessing Officer and further enhanced the same by Rs.15,97,560/- thereby making the total addition on this issue of Rs.24,76,739/-. Aggrieved by the order of Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The preliminary issue raised by the assessee in his appeal is that the addition made by the Assessing Officer on account of peak credits appearing in his Bank accounts by treating the same as unexplained investment has been confirmed by the Id. CIT(Appeals) and further enhanced by him without giving proper and sufficient opportunity of being heard to the assessee. In this regard, the Id. counsel for the assessee has submitted that when the appeal of the assessee was finally fixed for hearing by the Id. CIT(Appeals) on 16.03.2015, the assessee sought adjournment by way of a written application dated 10.03.2015, which was sent to the office of the Id. CIT(Appeals) by courier on the same date. He has invited our attention to the copy of the said application as well as the courier receipt placed at page no. 190 & 191 of his paper book and submitted that the Id. CIT(Appeals) without taking the cognizance of the same has proceeded to dispose of the appeal of the assessee by his impugned order passed on 19.03.2015. He has contended that the Id. CIT(Appeals) thus has not given

proper and sufficient opportunity of being heard to the assessee while disposing of the appeal by his impugned order. Although the Id. D.R. has raised strong objection in this regard by submitting that sufficient opportunity was already given by the Id. CIT(Appeals) to the assessee by admitting the additional evidence and sending the same to the Assessing Officer for his comments and again by confronting the remand report submitted by the Assessing Officer to the assessee with an opportunity to file rejoinder, the fact remains to be same is that the appeal of the assessee was finally fixed for hearing by the Id. CIT(Appeals) on 16.03.2015 and even though the assessee sent an application in writing seeking adjournment of the said hearing well in advance by courier, the Id. CIT(Appeals) has proceeded to dispose of the appeal of the assessee by his impugned order passed on 19.03.2015 without taking into consideration the request of the assessee for adjournment. In my opinion, the Id. CIT(Appeals) thus has disposed of the appeal of the assessee by his impugned order without giving proper and sufficient opportunity to the assessee and there is a clear violation of the principle of natural justice. In that view of the matter, I set aside the impugned order of the Id. CIT(Appeals) and remit the matter back to him with a direction to dispose of the appeal of the assessee afresh on merit after giving the assessee proper and sufficient opportunity of being heard.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on June 3, 2016.

Sd/-

**(P.M. Jagtap)
Accountant Member**

Kolkata, the 3rd day of June, 2016

Copies to : (1) **Shri Prankrishna Bag,
Nandakumar,
Purba Medinipur-721 643**

(2) ***Income Tax Officer,
Ward-3, Haldia,
Basudevpur,
Khanjanchak,
Haldia-721 602***

(3) *Commissioner of Income Tax (Appeals)-7, Kolkata,*
(4) *Commissioner of Income Tax- ,*
(5) *The Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.