

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A" KOLKATA**

Before **Shri Mahavir Singh, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.299/Kol/2013**  
Assessment Year :2007-08

|   |             |  |
|---|-------------|--|
| Dipak Palit<br>Flat No, 4B, 2 M.L. Nehru<br>Road, Kolkata-700 029<br>[ <b>PAN No.ABMPP 2518 B</b> ] | <b>V/s.</b> | Income Tax<br>Officer, Ward-15(1)<br>169, A.J.C. Bose<br>Road, "Bamboo Villa"<br>Kolkata 700 014 |
| अपीलार्थी /Appellant  | ..          | प्रत्यर्थी/Respondent  |

|                                      |  |
|--------------------------------------|--|
| अपीलार्थी की ओर से/By Appellant      | Shri M.Dutta, FCA &<br>Shri S.K. Roy, Advocate |
| प्रत्यर्थी की ओर से/By Respondent    | None   |
| सुनवाई की तारीख/Date of Hearing      | 27-01-2016                                     |
| घोषणा की तारीख/Date of Pronouncement | 29-02-2016                                     |

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is arising out of order of Commissioner of Income Tax (Appeals)-XIV, Kolkata in appeal No.696/CIT(A)-XIV/11-12 dated 23.08.2011. Assessment was framed by ITO Ward-45(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 22.12.2009 for assessment year 2007-08.

2. At the time of hearing, none appeared on behalf of Revenue nor filed any adjournment application. However we decided to hear this appeal in presence of both Shri M.Dutta and Shri S.K. Roy, Ld. Authorized

Representatives on behalf of assessee. We also find that this is an old appeal and has been fixed for hearing as many as eight times (including today's hearing). Hence we proceed to hearing this appeal in presence of Ld. AR.

3. Grounds raised in this appeal by assessee are common, which are reproduced below:-

*"1. That the Ld. CIT(A) Committed an error in judgment in not properly appreciating and understanding the cash flow statement thereby raising a frivolous issue like nexus between deposit and withdrawals and hence came to a wrong and factually incorrect conclusion that Rs.27,15,500/- represent income of the appellant for this year which is unjustified especially when the assessee was a salaried employee and had all-along acted upon the advice of different tax consultants only and suffered.*

*2. That there is no discussion in the assessment order or in the pl order whether the addition of Rs.27,15,000/- represent unaccounted or unexplained money and the corresponding section under which the addition was made.*

*3. That the surrendered income was not accepted for making smooth passage for invoking penal provision u/s. 271(1)(c) without proper application of mind and without explaining why the revised calculation sheet was not accepted."*

4. Facts of the case are that assessee is a retired General Manager of Allahabad Bank. During the year under consideration, income of assessee was shown under the heads of salary, house property and other source. During the course of assessment proceedings Assessing Officer, on the basis of AIR's information, found that assessee deposited a sum of ₹27.15 lacs in Axis Bank on various dates being account No.011010100292337 Golpark branch, Kolkata-19. On question by AO to assessee about the source of deposited cash, the assessee replied but summarily kept on changing its stand several times. The replies of the assessee can be summarised as under:-

**Reply 1 on dated 03.11.2008**

- 1) That the sum of Rs. 27.15 lacs was received from his daughter, Miss. Meghna Palit, who is working in Infosys Technology Ltd., currently posted at Pune.

Thereafter assessee has changed his counsel and so his reply.

**Reply 2 on dated 14.07.2009**

- 2) That he has received loan from 92 persons in cash but failed to substantiate its claim in terms of u/s 133(6) of the Act.

Thereafter assessee again changed his statement and offered additional income of ₹16.60 lacs. The assessee explained the difference of Rs. 10.55 lacs (Rs. 27.15 lacs - 16.60 lacs) as the effect of contra entries i.e. money deposited and withdrawn.

However, AO disregarded the claim of assessee and made addition of ₹27.15 lacs.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). Before Ld. CIT(A) assessee offered additional income of ₹ 19.65 lakh and requested to apply the peak credit theory but Ld. CIT(A) rejected the plea by observing as under:-

*"5. I have carefully considered the assessment order and the submission filed by the appellant. I find that right from the beginning the appellant has hidden facts from the Assessing Officer. He had made up a story by stating that the cash was received from his daughter and again he changed his stand sitting that the amounts were received from 92 persons. He could not substantiate this stand before the AO. The appellant has changed his stand thrice despite the fact that the appellant has been a senior officer being General manager of a nationalized bank. When the sustained inquiry was made by the AO, the appellant again changed his stand and stated that he had committed mistake and offered a sum of Rs.16,62,000/- as his income from other source. During the appellate proceedings this amount was enhanced by the appellant to Rs.19,65,000/- from Rs.16,62,000/- As regards the contention of the Ld. A/R that peak credit method should be adopted, I am of the considered view that the appellant has failed to establish nexus between the amount withdrawn and the amount deposited in the*

*bank. This fact has been established by the Assessing Officer in the assessment order. In absence of any nexus between deposits and withdrawals I am of the considered view that the AO has correctly added the entire cash deposits. From facts narrated hereinabove, it is evident that the sum of Rs.27,15,000/- was nothing but undisclosed income of thee appellant which was deposited by him by way of cash in his account standing in the Axis Bank, Golpark Br. Kolkata. The source of these deposits have not been explained by the appellant and he has admitted that the income represented his undisclosed income which is evident from the fact that the appellant himself has stated that the income to the extent of Rs.19,65,000/- on account of cash deposits may be confirmed. However, looking to all the facts and circumstances of the case, I hold that the appellant has squarely failed to explain the source of cash deposits of Rs.27,15,000/- and I uphold the action of the Assessing Officer of adding the aforesaid income in the total income of the appellant. Accordingly, the addition of Rs.27,15,000/- is confirmed. As regards the addition of Rs.21,369/- on account of interest the appellant has not explained any mistake in the addition made by the Assessing Officer. Accordingly, this addition is also sustained. Thus, Ground Nos. 1, 2, 3, 4, 5, 6 & 7 are dismissed. Ground No. 8 of the appeal is general.”*

Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

6. Having heard Ld. AR and perused the materials available on record and auditor's report. Before us Ld. AR submitted the approach of Assessing Officer is not fair and partial from the beginning of assessment proceedings. The assessee has every right to withdraw any amount from his bank and can re-deposit same with the bank. The AO cannot dispute the nature and purpose of such withdrawals. But in the instant case the AO has denied to accept the cash flow statement and added the entire amount of cash deposit as income. From the facts of the above stated facts, we understand that assessee has not disclosed one of his bank account while filing his return income. We find that during assessment proceedings, AO found there were several entries in his bank statement where cash was deposited and assessee failed to substantiate the source of cash. Therefore AO made the addition and subsequently in appellate stage, Ld. CIT(A) confirmed. From the

contentions of the assessee, we understand that there were several withdrawals from assessee's bank account and same which has not been considered by authorities below. In our opinion and after relying on the decision of Co-ordinate Bench in the case of *ITO vs. Shri Piyush Poddar* in **ITA No. 1050/Kol/2011** for AY 2006-07 dated 07.09.2015, wherein peak credit was worked out after the withdrawals from the bank. Therefore in this view of the matter and in the interest of natural justice and fair play we deem it fit to restore back the matter before Assessing Officer with a direction to apply peak credit theory and to bring the genuine amount of such undisclosed cash to the net of tax. In terms of above, assessee's appeal is allowed for statistical purpose.

**7. In the result, assessee's appeal is allowed for statistical purpose.**

Order pronounced in the open court 29/02/2016

Sd/-  
(Mahavir Singh)  
(Judicial Member)  
Kolkata,

Sd/-  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp

दिनांक:- 29/02/2016 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Dipak Palit, Flat No. 4B, 2 M.L. Nehru Road, Kolkata-29
2. प्रत्यर्थी/Respondent- ITO, Ward-15(1), 169, A.J.C.Bose Road, Bamboo Villa, Kol-14
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,  
/True Copy/  
उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।