

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

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1871/KOL/ 2012
Assessment Year : 2009-2010**

Smt. Anindita Basuthakur,.....Appellant
Avirampur, B.G. Roda,
Mokdumpur,
Malda-732 103
[PAN : AFSPT 3068 A]

-Vs.-

Income Tax Officer,.....Respondent
Ward-1, Malda,
Netaji Commercial Market,
Malda-732 103

Appearances by:

Shri Subash Agarwal, Advocate, for the assessee
Shri A.P. Roy, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : December 01, 2015
Date of pronouncing the order : December 04, 2015

O R D E R

Per Shri P.M. Jagtap:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Jalpaiguri dated 27.09.2012 for the assessment year 2009-10, whereby he enhanced the addition of Rs.17,11,726/- made by the Assessing Officer on account of entries appearing in the undisclosed Bank account of the assessee to Rs.17,16,782/-.

2. The assessee in the present case is an individual, who is engaged in the business of trading of fertilizers, pesticides, etc. The return of income for the year under consideration was filed by her on 30.11.2009 declaring total income of Rs.1,82,730/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has

not disclosed her account maintained with Union Bank, Malda. From the perusal of the entries appearing in the said account, the Assessing Officer found that there was a peak debit of Rs.13,00,000/- in the form of cash withdrawal on 26.03.2009. He accordingly added the said amount to the total income of the assessee under section 69C of the Act. He also found that the total amount credited in the said Bank account of the assessee was Rs.40,40,491/-. In the absence of any satisfactory explanation forthcoming from the assessee, the said amount was treated by the Assessing Officer as undisclosed turnover of the assessee's business and gross profit estimated at Rs.4,11,726/- by applying the gross profit at the rate 10.19% was added by him to the total income of the assessee. Accordingly total income of Rs.17,11,726/- was made by the Assessing Officer to the total income of the assessee on account of transactions appearing in her undisclosed Bank account.

3. The addition of Rs.17,11,726/- made by the Assessing Officer on account of transactions appearing in her undisclosed Bank account was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings, the Id. CIT(Appeals) analyzed all the transactions reflected in the undisclosed Bank account of the assessee on the basis of submissions made by the assessee as well as remand report submitted by the Assessing Officer. On the basis of such detailed analyses, the Id. CIT(Appeals) arrived at his conclusions on the issue as under:-

“(i) The cash deposits of Rs.16,83,000/- includes opening balance of Rs.1,24,509/-. Excluding this opening balance, the net cash deposit would be Rs.15,58,491/-. Since total credit of Rs.41,65,800/- includes the encashment of FDRs, opening balance and interest earned during the year, excluding the other elements, the net cash deposit of Rs.15,58,491/- is ordered to be treated as income of the assessee for the year under appeal.

(ii) Since closure proceeds from FD have been segregated, the investment in FD which was encashed during the previous year has to be treated separately. Since the bank has confirmed that all 40 FDRs which in the name of the

assessee and encashed between 02.02.2009 to 17.02.2009 seems to have been investment in the year 2007-08. Therefore, the AO is directed to initiate suitable action in respect of assessment year 2008-09 in case of the assessee to assess the principal amount of Rs.10,00,000/- and interest accrued during that year.

Fixed deposit principal encashed.....Rs.10,00,000/-

Interest earned on fixed deposits.....Rs. 1,37,189/-

(iii) Since the fresh investment of Rs.12,00,000/- was made out of the encashment of the aforesaid amount of Rs.11,37,189/- (and partially out of available credit balance), no action is required in respect of these FDRs.

(iv) The Bank Statement reflects that the assessee had earned interest on FDRs of Rs.1,37,189/- and Rs.1,899/- during the year. Apart from the same, on the credit balance, the assessee had earned further interest of Rs.19,203/- on the credit balance. These three amounts shall also be treated as interest income of the assessee for the year.

(v) As the amount of cash deposit and interest income are treated as income of the assessee, the additions made by the AO on the basis of peak debit balance and GP of Rs.4,11,726/- @ 10.19% on the deposited amounts, are ordered to be deleted".

The Id. CIT(Appeals) thus enhanced the addition of Rs.17,11,726/- made to the total income of the assessee on this issue to Rs.17,16,782/-. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee at the time of hearing before us has not disputed the addition of Rs.1,58,291/- made by the Id. CIT(Appeals) on account of interest earned by the assessee from Bank. He has only disputed the quantum of addition of Rs.15,58,491/- made by the Id. CIT(Appeals) on account of net cash deposits found to be made in the Bank account of the assessee by raising the limited contention that there being withdrawals also made in cash by the assessee from the said Bank account, the addition should have been

worked out on the basis of peak credit. In this regard, he has invited our attention to the copy of the statement of Bank account of the assessee placed at page nos. 13 to 15 of the paper book to show that there are withdrawals made in cash by the assessee on various dates. Keeping in view this position clearly evident from the Bank account of the assessee, which has not been disputed even by the Id. D.R., we are of the view that the addition on account of cash deposits found to be made in the undisclosed Bank account of the assessee is required to be made on peak credit after taking into consideration the withdrawals made in cash from the said Bank account, which in the absence of any other utilization can be presumed to have been made available to the assessee to make the corresponding deposits. In this regard, the Id. Counsel for the assessee has prepared and furnished peak credit working showing such peak credit at Rs.7,68,000/-, which, in our opinion, requires verification by the Assessing Officer. We, therefore, restore this issue to the file of the Assessing Officer with a direction to verify the peak credit working filed by the assessee and restrict the addition made by the Id. CIT(Appeals) on account of cash deposits found to be made in the Bank account of the assessee to the extent of such peak credit.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on December 04, 2015.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 4th day of December, 2015

Copies to : (1) ***Smt. Anindita Basuthakur,***
Avirampur, B.G. Roda,
Mokdumpur,
Malda-732 103

(2) ***Income Tax Officer,***
Ward-1, Malda,
Netaji Commercial Market,
Malda-732 103

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

By order

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

Laha/Sr. P.S.