

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

(Before Sri J. Sudhakar Reddy, Accountant Member)

ITA No. 190/Kol/2017
Assessment Year: 2011-12

Santosh Kumar Keshari.....Appellant
14/15, Topsia Road
Tiljala
Kohinoor Market
Kolkata - 700 039
[PAN : AGVPK 4645 G]

Income Tax Officer, Ward-25(3), Kolkata.....Respondent

Appearances by:

Shri V. Dasgupta, Advocate, appeared on behalf of the assessee.

Shri Robin Choudhury, Addl. CIT, D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : July 2nd, 2018

Date of pronouncing the order : August 24th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-7, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 22/12/2016, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2011-12.

2. The assessee is an individual and the Assessing Officer states that he is in the business of rejected shoes. He filed his return of income for the impugned Assessment Year 2011-12, on 22/03/2012, declaring total income at Rs.1,51,154/-. During the course of assessment proceedings. The assessee was asked to explain a deposit of a sum of Rs.54,82,600/-, in cash in the bank account maintained by the assessee with SBI, Picnic Garden Branch, Kolkata. The assessee explained that the deposits were made in the said account from his daily sales to local parties. It was explained that monies collected from street vendors, who sold rejected shoes were deposited in the account and withdrawals were from ATM to make payments for purchases. The Assessing Officer found that no evidence was filed by the assessee in support of these contention. As the assessee has disclosed turnover of Rs.10,18,276/-, the difference of Rs.44,64,324/- was added as income. Aggrieved the assessee carried the matter in appeal, without success.

3. Further aggrieved, the assessee is before me.

4. After hearing rival contentions, I find that the Assessing Officer has made an addition of the gross deposits made into the account. It is well settled that only peak deposit can be added, for the reason that circulation of money would have been done by the assessee. On a conspectus of the matter, and as the undisputed fact is that the assessee is a seller of rejected shoes, this issue is set aside to the file of the Assessing Officer with a direction that, the peak credit in this bank account be added as income of the assessee. Reliance in this regard is placed on the decision of the Co-ordinate Bench of this Tribunal in the case of *ITO vs. Shri Piyush Poddar in ITA No.1050/Kol/2011 for Assessment Year 2006-07, order dt. 07/09/2015*, wherein it was held as follows:-

“10. We have heard the rival submissions and perused the materials available on record. It is seen that the assessee apart from his regular income had a bank account with Central Bank of India which was used by him only for the limited purpose of providing accommodation entries to various parties. Initially the assessee took a stand that he was deriving finance commission @.25% of all the transactions in the accommodation entry business and offered the same to tax., However, he shifted his stand by accepting the peak credit theory before the Id. CIT(A). This is evident from the fact that he had not preferred further appeal before the Tribunal against the Id. CIT(A)'s order. In accordance with the directions of the Hon'ble Calcutta High Court, we had examined the veracity of the claim of peak credit theory made by the assessee in respect of all the transactions in Central Bank of India. It is observed that the assessee had rotated his own funds in Central Bank of India for providing accommodation entries to various parties. It is not disputed that the genuineness of the transaction could not be proved by the assessee by mentioning the names, addresses, PAN, confirmation of the parties to whom the payments were made and from payments were received by the assessee. Hence it is proved that transactions contained in the bank account are not genuine. Once the transactions in the bank account are proved ingenuine then it is an accepted practice of adopting the peak credit theory for the purpose of determination of undisclosed income of the assessee. Hence, reliance placed by the Id. DR in the decision of the Hon'ble Allahabad High Court reported in 276 ITR 38 which rejected the concept of peak credit theory is not applicable to the facts of the instant case. In the case before the Hon'ble Allahabad High Court, the assessee claimed that the credits in the bank account represented genuine loans borrowed and the character of the loan transactions were not disputed and hence their lordships of Allahabad High Court held that the peak credit theory would not be applicable in that case. But in the facts of the instant case, the assessee had clearly owned up the transactions and that he is engaging himself in accommodation entry business with his own funds as well as funds received from parties to whom the accommodation entries are provided by the assessee and the names and addresses of such parties could not be provided by him for want of maintenance of books and details. This goes to prove that the genuineness of the transactions

contained in the accommodation entry business as reflected in the said bank account could not be proved by the assessee. This is a distinct and crucial factor which distinguishes the decision rendered by the Hon'ble Allahabad High Court in 276 ITR 38 which was heavily relied upon by the Revenue.

11. *On perusal of the bank account with Central Bank of India, we are satisfied that the deposits and withdrawals are closely linked with and related to each other on day-to-day basis. It is also observed that the ld. AO had not brought any material or evidence on record to prove that the withdrawals made by the assessee from the said bank account having utilized for making any other investments outside the books or meant for any other purpose other than for accommodation entry business. It is pertinent to look into the decision rendered by the Kolkata Tribunal in the case of Mahesh Kumar Gupta in IT(SS)A. No.11/Kol/2014 dated 0.2.2005 wherein ITAT observed that the claim of the assessee was that the cheque withdrawals were for giving loan for the short period. Held as follows :-*

"The AO cannot refuse to grant set off for the withdrawal made by cheque without bringing on record any materials so that the amount withdrawn by cheque cannot have been received back by the assessee and utilized by him in making subsequent deposits by cheque. Taking all this into consideration, we are of the considered opinion that AO should adopt peak credit method to arrive at the undisclosed income of the assessee in the undisclosed bank account No.SB 6664 with the Syndicate bank."

Reference may also be drawn to the decision of the Hon'ble Apex Court in the case of CIT vs Smt. P.K.Noorjehan reported in 237 ITR 570(SC) wherein their lordships have held that mere unsatisfactoriness of the explanation offered by the assessee, does not, and need not, automatically result in deeming the value of investment to be the income of the assessee. That is still a matter within the discretion of the officer and, therefore, of the Tribunal. In other words, the discretion has been conferred on the Income tax Officer u/s 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case. The Income Tax Officer is not obliged to treat the value of investment as income in every case where the explanation offered by the assessee is found to be unsatisfactory.

12. *Hence it would be unreasonable to tax all the deposits in the bank account of the assessee. To this extent, we do not appreciate the action of the ld. AO in taxing the entire credits of Rs.6,30,89,413/- as undisclosed income of the assessee for A.Y.2006-07. To put this ongoing dispute to rest, in the interest of justice and fair play, we direct the ld. AO to assess the peak credit in this case in respect of both cash as well as cheque transaction contained in the said bank account by verifying the veracity of the figures worked out by the assessee and bring to tax the same. We draw support from the decision rendered by 'C' Bench of Kolkata*

ITAT in ITA No.2069/Kol/2010 for A.Y.2007-08 dated 23.03.2012 in the case of ITO vs Shri Ganga Prasad Vyas wherein it was held that

“We find that the assessee has filed statement of peak credit i.e. deposit and withdrawals from the bank account of SBBJ wherein the peak credit as on 24.01.2007 was at Rs.1,80,247/-. We further find that the money deposited in the bank account was withdrawn either on the same day or on subsequent dates. It is seen that the total addition of the aggregate deposits in the bank account after giving benefit of withdrawals is the peak amount and in that case peak amount is to be added. We find that the assessee has maintained a bank account which is admittedly not disclosed to the revenue and there is no doubt that the deposits in this bank account represents undisclosed income of the assessee to be assessed as undisclosed income but qua only the peak amount. The assessee has filed complete statement of peak deposit and withdrawals which is at Rs.1,87,247/- and before CIT(A). We are of the view that the CIT(A) has rightly directed the AO to restrict the addition to the extent of peak amount and we confirm the same. This issue of revenue’s appeal is dismissed.”

13. However, we would like to make it clear that this direction to the ld. AO to assess the peak credit in this case should not be construed as a conclusive proof in the hands of the beneficiary in the said bank account for explaining their amounts. Accordingly, this issue is set aside to the file of the ld. AO to complete the assessment in accordance with the directions mentioned hereinabove.”

5. In terms of the above, we set aside the order of the lower authorities and remand the matter back to the file of Assessing Officer for ascertaining the correct income in terms of the ratio laid down in the case of *Shri Piysh Poddar* (supra) of the co-ordinate Bench of this Tribunal. Accordingly, this appeal of assessee is allowed for statistical purposes.

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

Kolkata, the 24th day of August, 2018.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 24.08.2018
{SC SPS}

Copy of the order forwarded to:

- 1. Santosh Kumar Keshari**
14/15, Topsia Road
Tiljala
Kohinoor Market
Kolkata - 700 039
- 2. Income Tax Officer, Ward-25(3), Kolkata**
3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches