

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

(Before Sri S.S. Godara, Judicial Member & Dr. A.L. Saini, Accountant Member)

ITA No. 1400/Kol/2017

Assessment Year: 2010-11

&

ITA No. 138/Kol/2016

Assessment Year: 2011-12

Binita Bubna.....Appellant

125, N.S. Road

3rd Floor

Kolkata - 700 001

[PAN : AHMPB 8566 F]

Vs.

Income Tax Officer, Ward-34(1), Kolkata.....Respondent

Appearances by:

Shri A.N. Kesari, CA, appeared on behalf of the assessee.

Shri Saurabh Kumar, Addl. CIT D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : January 17th, 2019

Date of pronouncing the order : April 16th, 2019

ORDER

Per S.S. Godara, JM :-

Both these assessee's appeal for Assessment Years 2010-11 & 2011-2 arise against the separate orders of the Commissioner of Income Tax (Appeals) - 10, Kolkata passed in case nos. 52/CIT(A)-10/34/(1)/2016-17/Kol & 46/CIT(A)-10/Wd-34(1)/14-15/Kol, confirming the Assessing Officer's action making additions on account of unexplained cash credits, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both parties. Case files perused.

3. The assessee's only argument raised during the course of hearing challenges correctness of both the lower authorities action holding her deposits amounting to Rs.31,25,595/- and Rs.49,80,000/- to be unexplained cash credits in the two impugned assessment years. Our attention is invited to assessee's additional grounds of appeal as well seeking to delete both the impugned addition in principle. It transpires during the course of hearing that the CIT(A) has followed his detailed discussion in latter

Assessment Year 2011-12 *mutatis mutandis* in earlier Assessment Year 2010-11 whilst confirming the impugned assessment order. The CIT(A)'s findings under challenge reads as under:-

2011-12-13 has been

3. **Ground No.1** is general in nature and is therefore not adjudicated upon.

4. **Ground No.2:** This ground is related to the addition made by the A.O. of Rs.49,80,000/- on account of Income from undisclosed sources. This issue has been dealt by the A.O. the in assessment order as under:

"There is information received from Annual Information Return (AIR) of Axis Bank that the assessee has deposited cash in a savings bank account. Accordingly, notice u/s.133(6) was issued to Axis Bank and a statement of account number 411010400023737

2

was received. The authorized representative was asked to explain the source of all the deposits in the said account. The authorized representative filed a cash flow statement and stated that the assessee had done commodity trading and produced the contract notes for the commodity trading. The said contract notes were sent to National Multi Commodity Exchange of India, Ahmadabad for verification. On verification, all the contract notes produced were found to be not genuine as confirmed by National Multi Commodity Exchange of India, Ahmadabad. Copy of the same was also given to the authorized representative for his comments. The authorized representative furnished a written reply which is as reproduced below:

To
 The Income Tax Officer,
 Ward-34(1)/Kol, Aayakar Bhawan Poorva,
 Kolkata-700107

Sub: In the matter of scrutiny assessment proceeding for the A.Y.2011-12.

Dear Sir,

With reference to the ongoing scrutiny assessment proceeding for the assessment year 2011-12 I want to submit before your honour that I am a small income tax assessee earning income mainly from house property a sum of Rs.20,000/- p.m. and also have small other source of income. My returned total income for the assessment year 2011-12 amount to Rs.1,94,530/- after claiming deduction u/s 80C of Rs.27066/-.

As I am a low earning person during the financial year 2010-11 corresponding to the assessment year 2011-12, **I tried to do providing loans to other parties in books** against which I used to earn 1.5% to 2% against sums advanced to parties in the books. However during F.Y. 2010-11, A.Y. 2011-12 I have advanced a sum of Rs.38-40 lacs in the books and earned 2% thereon. However I have disclosed the same under commodity profit a sum of Rs.72,200/-.

Since, the advance sums as loan in books through book entry is done by me during F.Y. 2010-11. I offer a sum of Rs.6,59,900/- as maximum peak of cash reached on 21.03.2011, the cash rotation statement is enclosed herewith to show the said peak of Rs.6,59,900/- reached on 21.03.2011.

Please accept my above disclosure of peak of Rs.6,59,900/- and assess accordingly the income for the assessment year 2011-12.

Your kind co-operation in the matter will be highly appreciated.

Thanking you,
 Yours faithfully,

(Binita Bubna)

Hence, none of the explanations of the assessee is found to be genuine. All the cash deposited are nothing but assessee's own undisclosed cash which have been deposited into

the bank. As stated in the assessee's submission reproduced above, the peak as stated in the submission cannot be taken as it is not possible to advance loans with such a small amount. Therefore, I treat all the cash shown to have allegedly received from commodity profits, amounting to Rs.49,80,000/-, reflected in the cash flow statement furnished by the assessee, as the undisclosed money of the assessee. The same is treated as income from unexplained sources and included into assessee's total income."

During the **appellate proceeding**, the A.R. of the appellant has submitted a written submission which is as under:

"Ground No.-2 relates the mistakes done by ITO Ward 34(1), Kolkata in facts and in law in making addition of Rs.49,80,000/- allegedly received from commodity profit and ignoring the commodity loss which was to be set off as per set off provision of section 70 of I.T. Act 1961. The AO took out consideration of only credit aspect of the appellant amounting to Rs.49,80,000/- and fully ignored the debit side representing the commodity loss made by the appellant during the financial year 2010-11 corresponding to the assessment year 2011-12.

The AO treated entire credit allegedly received from commodity profit amounting to Rs.49,80,000/- during the financial year 2010-11 and ignored the debit side of the commodity loss made during the same financial year 2010-11, which is totally against the accounting policy as well as set off provision of section 70 of I.T. Act 1961.

It is an established law that you cannot take unilateral view or only one side of any transaction even in the case of illegal income earned by the assessee the debit side of the same transaction being loss or expenses incidental to earning that very illegal income are to be set off against the illegal income earned by the assessee.

In the instant case the AO had treated only the credit side of the transaction reflected in cash flow statement amounting to Rs. 49,80,000/- as the undisclosed money of the assessee. The AO did not allow the set off of losses made by the appellant under the same head, which is contrary and against the provision of the Income Tax Act 1961.

The AO treated the entire transaction of commodity profit appearing in the credit side amounting to Rs. 4980000/- as income of the appellant during the financial year 2010-11 and ignored the debit side of the same transaction which is against law and is purely unilateral view of any transaction which is not permissible as per law as well as against the accounting policy.

The Assessing Officer has taken only credit side that is amounts which were allegedly received from commodity profit and deposited in cash in Bank account.

*The Assessing Officer has observed,
 "Therefore I treat all cash shown to have allegedly received from commodity profits amounting to Rs. 4980000/- reflected in cash flow statement furnished by the assessee as the undisclosed money of the assessee. The same is treated as income from undisclosed sources and included into assessee's total income."*

In doing so he has completely neglected and overlooked the debit side of the same head of transaction coming under the same head of income from undisclosed sources. The cash deposited were in fact utilized for paying the sums to parties in cheques from whom sums were received and deposited in bank a/c .

If one's income is established to be received from undisclosed source, then the net income should come and form part of his income from that very undisclosed source of income that is total of credit (income) less total of debit(loss).

So if the total income of assessee is taken as per view of assessing officer, even then only taking unilateral view of only one side(credit) can never be accepted. Total of credit less total of debit will be one's income.

Hence the view of the Assessing officer can never be accepted and the same is not legally acceptable and tenable."

DECISION: I have gone through the facts of the case as available in the assessment record. I have also perused the order of assessment, and the reasons given by the Assessing Officer while making the addition of Rs.49,80,000/-- on account of "unexplained sources". The details of the written submissions made by the Ld. A.R before the AO and in this forum have also been analyzed. From the assessment record, it appears that the facts relating to the case are as under:

1. The assessee, a 48 year old lady filed electronic return of income for the A.Y. 2011-12 on 18.02.2012, well beyond the due date of filing the return for the said year. The only income disclosed was income from "Other Sources". And amount of Rs.2,21,597/-. After claiming Chapter VI A deductions of Rs.27,066/-, the aggregate income was arrived at Ra.1,94,531/-. A dividend income of Rs.831/- was also disclosed. The total taxes paid were Rs.495/- only. No income from House Property was disclosed in the return of income filed by the assessee.
2. It is observed that the Return Form used as ITR-2, which is meant for individuals and HUFs not having income from "Business" or "Profession." The AO issued the notice under Sec 143(2) on 13.09.2012, requiring compliance on 24.09.2012. The said notice was served on 14.09.2012.

However, there was no compliance to the notice. It is important to narrate the events during scrutiny, as they throw light on the conduct of the assessee-appellant.

No	Date of issue of notice by AO	Notice u/s	Date fixed for hearing	Remarks
1	13.09.2012	143(2)	24.09.2012	Served on 14.09.2012. No compliance or adjournment petition on record
2	15.11.2012	142(1)	27.11.2012	Served on 16.11.2012. No compliance or adjournment petition on record
3	15.10.2013	142(1)	4.11.2013	Served on 27.10.2013. No compliance or adjournment petition on record
4	08.11.2013	142(1)	18.11.2013	Sent by post, date of service not on record. No compliance or adjournment petition on record. AO also issued show cause for sec 271(b) penalty.
5	25.11.2013	142(1)	29.11.2013	Served on 26.11.2013. AO intimated about the bank account with cash deposits, and sought explanation.

3. From the records, it appears that there was certain compliance in between, as the Order Sheet records the appearance of the Ld A.R before the AO on 14.11.2013. During the course of the hearing, the AO required the assessee/ A.R to offer explanation about why the HP income had not been disclosed in the return, though the computation reflects the same. The AR was also required to explain certain other items as per the Order Sheet entries. The AO also required the Ld. AR to explain the cash flow statement submitted during hearing, whereas the SEBI Regulations do not permit the cash transactions. This was so as the AR has submitted, as part of the explanation about cash deposits in the bank as that the assessee received cash against sale/ trading in the commodity exchange. Earlier the AO had received information by a letter dated 05.12.2013, from a colleague Assessing Officer, the ITO, Ward, 34(2), that during the course of the simultaneous scrutiny proceedings of Shri Ashok Kumar Bubna (Husband of Smt Binita Bubna), it had come to light that the couple were maintaining a savings bank account with M/s Axis Bank Ltd, PB Branch, Lansdowne Towers, Sarat Bose Road, Kolkata - 7000 07, (Account No : 411010100009041) and there were cash deposits of

Rs. 51,35,000/- the said account for the relevant assessment year. It had been explained by the A.R in the case of Shri Ashok Bubna, that even though the account was jointly held, all the transactions were explained to be transactions of Smt. Binita Bubna.

4. That being so, the AO sent a show –cause letter to the assessee requiring an explanation of the entries in the aforementioned bank account and allowed an opportunity for the assessee on 27.12.2013. On that date the A.R for the assessee-individual has appeared and submitted a letter from the assessee, which is reproduced as under:

To
The Income Tax Officer,
Ward -34(1), Kolkata, Aayakar Bhavan Poorva
110, Shantipally, Kolkata- 700107,

Please refer to your letter dated 20th December, 2013, wherein your honor has asked me to furnish the source of cash receipt for deposits made in my bank account from where the cheques were issued for payment of loss made to parties were passed. You have further asked me to furnish the source of cash within 27th December, 2013, failing which you will pass an order as per materials on record, without further reference to us.

In this regard, I want to submit before your honor that by receiving and depositing cash from parties with whom I made profit on commodity trading, I have not made any violation of any provisions of the Income Tax Act, 1961. I have not violated any provisions of the Income Tax Act by accepting cash from commodity broker. Hence I have explained the source of cash and details of all deposits and receipts are already given to you which are not violating any provisions of the Income Tax Act.

Furthermore since I have made profit from all these transactions, and against this profit, loss of some nature, i.e., commodity loss has been adjusted, no unilateral view of the same transaction can be taken by your honor. Please treat my above reply in compliance to your notice dated 20th December, 2013. I shall be glad to submit further details, if any required by you in this case.

Thanking you,
 Sd/-
Binita Bubna.

5. On the said date, it appears that the assessee/ AR has also submitted certain copies of contract notes signed by the assessee, by way of authentication. These relate to the claim of having carried out business on behalf of other clients, and benefitted from being a registered member of the National Multi Commodity Exchange of India Ltd (NMCE.) A certain

client code was also appearing in the contract notes submitted by the assessee before the AO. Accordingly, in order to verify the claim of the assessee that she has transacted in commodities through various brokers in the National Multi Commodity Exchange of India Ltd (NMCE), the AO has sought confirmation from the Exchange, by his letter dated 2nd January, 2014, as under:

No ITO, W 34(1)/ Kol/ U/s 133(6) / SC-10 / 2013-14 dated 2nd January, 2014

To
The Principal Officer
National Multi Commodity Exchange of India
4th Floor, H K House, Behind Jivabhai Chambers
Ashram Road, Admedabad- 380009

Sir,

Sub: Assessment proceedings in the case of Smt. Binita Bubna -

The above named assessee has claimed to have transacted in commodities through various brokers in your Exchange during the period from 01.04.2010 to 31.03.2011. The client code of the assessee as mentioned in the contract notes issued by the broker is as mentioned below.

The date-wise details of loss claimed by the assessee are given below:

Name of the broker	Membership Code	Client Code	Contract Note Number	Date of transaction	Loss (Rs.)
A K B Towers (P) Ltd	Not mentioned	B007	00776/00776	13.03.2011	5,00,000
A K B Towers (P) Ltd	Not mentioned	B007	00641/00732	03.09.2010	4,00,000
Bhaves Bubna	Not mentioned	B001	00093/0171	25.03.2011	2,80,000
Ramdevbaba Commodities Broking P Ltd	CL 0417	B00101	000783/0750	24.06.2010	9,51,000
Ramdevbaba Commodities Broking P Ltd	CL 0417	B00101	000679/0745	17.06.2010	2,90,000
Ramdevbaba Commodities Broking P Ltd	CL 0417	B00101	000679/0745	12.06.2010	6,50,000

In this connection, you are hereby required under Sec 133(6) of the It Act, 1961 to furnish the following information / documents in the interest of Revenue:

1. Whether the above transactions were carried out under the client code mentioned above.
2. Copies of documents evidencing the above transactions as per your record.
3. Whether the Exchange allows the brokers the facility of modifying the

- client code for substituting the trades with that of another client.
4. Whether the broker had modified client code in respect of above transactions. If yes, the details of the original client code and modified client code.
 5. Whether the brokers are allowed to pay the proceeds in cash or it compulsory to make the payments through the banking channels / RTGS.....

Yours faithfully,

Sd/-

ITO, Ward-34(1), Kol

6. The NMCE has written back to the Assessing Officer by their letter in F.No. NMCE/IT/2013-14 /2067 as under:

Ref No. NMCE /IT/ 2013 / 2085 dated January 06, 2014

To
The Income Tax Officer, ward-34(1),
Room No 709, 7th Floor, 110 Shantipally
Aayakar Bhavan, Poorva
Kolkata- 700107.

Dear Sir,

Sub: Information requisitioned u/s 133(6) of the Income Tax Act, 1961- Assessment proceedings U/s 143(2) of the Income Tax Act, 1961- in the case of Smt BINITA BUBNA- PAN - AHMPB8566F-A.Y 2011-12- matter regarding-

This has reference to your e mail dated January 03, 2014, and your letter under reference no. ITO, Ward-34(1) / Kol/ u/s 133(6) / SC-10/2013-14/2122 dated January 02. 2014 on the captioned subject.

We have verified the trade data of Binita Bubna (Client Code B00101) under our trading-cum-clearing member M/s Ramdevbaba Commodities Broking (P) Ltd (CL 0417) whose contract notes have been forwarded by you to us for verification. WE have found that no such client is registered as a client under the member M/d Ramdevbaba Commodities Broking P Ltd (CL 0417) or with any other member of the Exchange and all the Contract notes are fraudulent and no such trades have been executed on the Exchange Trading Platform.

M/s Ramdevbaba Commodities Broking (P) Ltd (CL 0417) having a FMC Registration NMCE/ TCM/ CORP/ 0339 was expelled from the membership of the Exchange on May 08, 2013 on grounds of misconduct and the notice in this

- client code for substituting the trades with that of another client.
4. Whether the broker had modified client code in respect of above transactions. If yes, the details of the original client code and modified client code.
 5. Whether the brokers are allowed to pay the proceeds in cash or it compulsory to make the payments through the banking channels / RTGS.....

Yours faithfully,

Sd/-

ITO, Ward-34(1), Kol

6. The NMCE has written back to the Assessing Officer by their letter in F.No. NMCE/IT/2013-14 /2067 as under:

Ref No. NMCE /IT/ 2013 / 2085 dated

January 06, 2014

To
 The Income Tax Officer, ward-34(1),
 Room No 709, 7th Floor, 110 Shantipally
 Aayakar Bhavan, Poorva
 Kolkata- 700107.

Dear Sir,

Sub: Information requisitioned u/s 133(6) of the Income Tax Act, 1961- Assessment proceedings U/s 143(2) of the Income Tax Act, 1951- in the case of Smt BINITA BUBNA- PAN - AHMPB8566F-A.Y 2011-12- matter regarding-

This has reference to your e mail dated January 03, 2014, and your letter under reference no. ITO, Ward-34(1) / Kol/ u/s 133(6) / SC-10/2013-14/2122 dated January 02. 2014 on the captioned subject.

We have verified the trade data of Binita Bubna (Client Code B00101) under our trading-cum-clearing member M/s Ramdevbaba Commodities Broking (P) Ltd (CL 0417) whose contract notes have been forwarded by you to us for verification. WE have found that no such client is registered as a client under the member M/d Ramdevbaba Commodities Broking P Ltd (CL 0417) or with any other member of the Exchange and all the Contract notes are fraudulent and no such trades have been executed on the Exchange Trading Platform.

M/s Ramdevbaba Commodities Broking (P) Ltd (CL 0417) having a FMC Registration NMCE/ TCM/ CORP/ 0339 was expelled from the membership of the Exchange on May 08, 2013 on grounds of misconduct.

regard has been disseminated on the website of the Exchange.

M/s A K B Towers(P) Ltd and Bhaves Bubna are neither the Trading cum Clearing Members (Broker) nor trading Members and nor any Authorized Persons of any of the members of this Exchange. Thus no details of trades relate to Binita Bubna under the client code B0007 and B001 respectively are available with us. Further, the Contract Notes which have been forwarded by you, and might have been issued by them are fraudulent, and no such trades have been executed on the Exchange Trading Platform.

Further, as per the directives of the Forward Markets Commission and guidelines of the Exchange and in terms of the Bye-laws, Rules and regulations of the Exchange, the Members of the Exchange should not accept cash from any clients whether against any obligation or as margin money. Also all the payments should be received / made by the Members from/ to the clients strictly by account payee cheque/ demand drafts or by way of direct credit into the bank account through EFT or any other mode allowed by the Reserve bank of India, for trading in commodity markets.

We hope you will find the above details in order.

Yours faithfully,

Sd/-

Dinesh Shukla

Vice President- Markey Watch & Surveillance

7. It is only when the assessee / A.R was confronted about the findings received by the Assessing Officer that on 20th March, 2014, during hearing before the AO, a written submission has been filed, taking an altogether different stand from what had been taken earlier. On that date the husband of the assessee (Shri Ashok Bubna) had appeared along with the A.R. before the Assessing Officer. The entire letter is a very relevant document, and is reproduced below:

To
The Income Tax Officer,
Ward -34(1), Kolkata, Aayakar Bhavan Poorva
110, Shantipally, Kolkata- 700107,

Sub: In the matter of scrutiny proceedings for the A.Y 2011-12

Dear Sir,

With reference to the ongoing scrutiny assessment proceedings for the A.Y 2011-12 I want to submit before your honor that I am a small income tax assessee, earning income mainly from house property, a sum of Rs.20,000/- p.m. and also have small other sources of income. MY returned total income for the A.Y 2011-12 is around Rs. 1,95,530/- after claiming deduction u/s 80C of Rs.27,066/- .

As I am a low earning person during the financial year 2010-11 corresponding to the assessment year 2011-12, I tried to do providing loans to other parties in books and against which I used to earn 1.5 % to 2% against sums advanced to parties in the books. However, during the F.Y 2010-11, 2011-12, I have advances a sum of Rs.38.40 lacs in the books and earned 2% thereon. However, I have disclosed the same under commodity profits, a sum of 72,200/-.

Since, the advance sums as loan in books through book entry is done by me during F.Y 2-10-11, I offer a sum of Rs.6,59,900/- as maximum of peak of cash reached on 21.03.2011, the cash rotation statement is enclosed herewith to show the said peak was reached on 21.03.2011.

Please accept my above disclosure of peak of Rs.6,59,000/- and assess accordingly the income for the A.Y 20-11-12. Your kind cooperation in the matter will be highly appreciated.

Thanking you,
 Sd/-
Binita Bubna.

8. Along with the above Written submission the assessee has also submitted a **Cash Rotation Statement** in her hands, relevant for the period 01.04.2010 to 31.03.2011. As per the same, the assessee would have the A.O believe that the peak value was **Rs. 6,59,901.19** (or Rs.6,59,000) on 22.03.2011. This amount the assessee was now offering as a "disclosure", requesting the AO to accept the same. It is also to be noticed that the Cash Rotation Statement filed before the AO was a completely **bald one** with no documents or evidences supporting the

various entries claimed in the Statement. No evidence in the matter was presented before the Appellate Forum either. In any case, during the assessment stage, the AO considered the Statement; he however reasoned that peak offered cannot be accepted, as it would not be possible to advance loans with such a meager amount. The AO therefore treated the entire cash shown to have been allegedly received from commodity trading as the undisclosed receipts of the assessee, and added the same back to the returned income.

9. The entire factual matrix relating to the ground taken by the appellant has been narrated in order to examine the merit in the claim of the assessee-appellant that only the peak value as arrived in the "Cash Rotation Statement" ought to be taken for in terms of the addition. The behavior of the assessee in displaying compliance to the statutory notices has also to be taken into consideration. There was a deliberate and willful delay in giving any compliance for about a year, and the first compliance was made only after the bank statement was confronted to the assessee. Thereafter certain details were submitted, and it was tried to explain that the cash deposits in the bank were from the proceeds of commodity trading, for and behalf of certain other people. It is only after the AO had made the necessary verification of the claims of the appellant with the National Multi Commodity Exchange of India (NMCE), that the assessee-appellant completely reversed its stand about being a broker and took a stand of carrying out money lending business. However, even for this aversion, not a single document has been submitted before the AO or in this forum. No list of names of the persons to whom money was allegedly lent, copies of agreements, rates of interest etc., has been submitted in support of this position. Therefore, it can only be concluded that this submission relating to money lending business is away from the truth, and the actual source for the undisclosed amounts of monies in the bank account remain unexplained as such. Overall, it is clear that the assessee is "**shifting her stand**" whenever confronted with documents contrary to the stand taken. Given the circumstances, the rules of "**suspicious transactions**" apply to the facts of the matter, and it has to be decided with the elements of "human probability" and "surrounding circumstances."
10. I also find that at no point in time has the assessee-appellant admitted that the money in the bank account was her own, or was being handled on behalf of somebody else. Multiple attempts were made to pass them

away as income from "business", firstly by stating that they were the proceeds from commodity trading as a broker and on behalf of other brokers. When confronted with stark evidence to the contrary, a stand has been taken that the assessee indulges in the business of money lending. Even then not a single client (customer to whom loan were alleged to have been advanced) has been named, much less to offer the address, PAN etc to enable verification by the AO. The assessee has not been able to **discharge the primary onus** at all in the case at hand. When the primary onus of establishing that the money was her own, and that the deposits had been made into the account from out of any portion of the withdrawals has not been brought on record with any document / evidence, I find that there is no scope of applying the principle of peak credit to the assessee-appellant. Long back, in the case of **Kale Khan Mohammad Hanif Vs CIT (1963) (SC) 50 ITR 1**, the exposition of the Hon'ble Supreme Court is as follows: *"It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income : see A. Govindarajulu Mudaliar v. Commissioner of Income-tax"*

- 11.** Similarly, in the case of **Roshan Di Hatti Vs CIT 101 ITR 985 (SC)**, the Hon'ble Apex Court has expounded as follows: *"Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Revenue is entitled to treat it as taxable income..... To put it differently, where the nature and source of a receipt, whether it be of money or of other property, cannot be satisfactorily explained by the assessee, it is open to the Revenue to hold that it is the income of the assessee and no further burden lies on the Revenue to show that that income is from any particular source.*
- 12.** Similarly, in the case of **M. Sundaram Vs Assistant Commissioner of Income Tax, 287 ITR 145 (Mad)(2006)**, the Hon'ble Madras High Court has, on a similar set of facts when the assessee was a small tax payer adjudicated as follows: *"The assessee is receiving a small amount as salary. The assessee was not disclosing the true picture of how he came into possession of such huge amount. Since the entire amount was*

deposited in the assessee's accounts and the assessee was not prepared to disclose the source of its receipt, the natural presumption would be that the assessee was the owner of the entire money. It was for the assessee to prove that the money did not belong to him. The assessee failed to prove that the money does not belong to him and hence, the authorities were right in assessing under s. 69A of the IT Act."

13. In the case of **ITO Vs Shri Muralidhar G Pillai**, the Hon'ble ITAT, A - Bench, Ahmadabad (ITA NO 2258/Ahd/ 2010 & CO No.258/Ahd/ 2010) in their order dated 16th December, 2010, have in a similar set of circumstances, adjudicated that the benefit of a peak credit cannot be had since the assessee was unable to give adequate evidence or proof about either the source of the money in the bank account, or the real destination of the withdrawals^{so} made from the account. I find that similar are the circumstances in this case.

14. I also find a judgment of the of the Hon'ble jurisdictional ITAT, A-Bench, Kolkata in the case of ITO, Ward-51(3), Kolkata Vs Shri Piyush Poddar, in ITA NO 1050/Kol/ 2011 dated 7th August, 2014, wherein the Hon'ble Tribunal has upheld the decision of the AO to add the entire cash deposits in a similar set of facts and circumstances. In that case also, the assessee-individual had not initially disclosed the bank account, and had not adequately or correctly divulged the details relating to his business. There also the stand of the assessee was "shifting" and quite contradictory at times. I find the facts of the case similar and find that the *ratio* emanating from the aforementioned judgment directly applicable to the case at hand.

Taking an overview of the entire factual matrix, and the probability in the matter, the surrounding circumstances, and the various judicial pronouncements as enumerated above, I hold that the Assessing Officer was justified in making the addition of **Rs.49,80,000/-**, as undisclosed income, and therefore this ground is adjudicated **against the appellant.**

4. We have given our thoughtful consideration to the rival contentions. There is hardly any dispute about the assessee having made the impugned deposits in her bank account in the two assessment years. Ld. Counsel for the assessee invites our attention to the assessee's detailed paper book comprising of income tax filing acknowledgement, revised computation, balance sheet as well as P&L account for the two Assessment Years, copy of contract notes, bank statements, cash retention statements, copy of original assessment order, the Assessing Officer's notice u/s 133(6), copy of section 263 order with record, Assessing Officer's showcause notice as well as the exchange's report dt. 27/01/2016 and her ledger account with broker relating to commodity profit/loss followed by compliance letter submitted by the broker in response to section 133(6) notice. The assessee's case is accordingly that all the said evidence sufficiently proves her to have derived income from commodity exchange transactions only. She vehemently contends therefore that both the lower authorities have erred in law as well as in facts in treating the impugned cash deposits to be unexplained u/s 68 of the Act.

The Revenue strongly supports both the lower authorities action making the impugned addition.

5. We have given our thoughtful consideration to the rival contentions.

6. It transpires from a perusal of the case files that the assessee has failed to prove from the stock exchange record that she had derived any income in commodity transactions. The relevant stock exchange M/s. NMCE filed its response dt. 27/01/2016 before the department making it clear that the assessee's PAN No. nowhere forms part of its database with any of its members. This clinching finding has gone unrebutted before us during the course of hearing. The assessee has tried her level best to rely upon the broker's ledger (supra) other documents on record in support of her arguments. We find no force in all these averments since the commodity exchange in issue has failed to support her case by way of all relevant details. Hon'ble apex court's landmark decisions in *Sumita Dayal vs. CIT in Civil Appeal No. 1344-45 of 1977* and *CIT vs. Durga Prasad More 81 ITR 540*, settle the law that any evidence filed during the course of proceedings under the Act have to be appreciated in the light of human probabilities by removing all blinkers. We draw support therefrom to conclude that both the lower authorities have rightly assessed the impugned cash deposits to be unexplained in the two assessment years in principle.

7. Next comes the assessee's latter argument that both the lower authorities have added the entire credit side of her deposits in these two assessment years. She seeks to place reliance on her bank statement to this effect forming part of the case records in the two Assessment Years. The Revenue is fair enough in contending that this latter issue requires a detailed examination of assessee's bank statements comprising of both credit as well as debit side. We therefore deem it proper in larger interest of justice that the assessing officer needs to redo the entire exercise of arriving at the peak figure along with the credit side of closing as well as opening balance in the two Assessment Years. We therefore remit this computation issue back to the Assessing Officer to be decided in view of the assessee's corresponding bank statements as per law. Ordered accordingly.

8. These two assessee's appeal are partly allowed for statistical purposes in above terms.

Kolkata, the 16th day of April, 2019.

Sd/-
[A.L. Saini]
Accountant Member
Dated : 16.04.2019
{SC SPS}

Sd/-
[S.S. Godara]
Judicial Member

Copy of the order forwarded to:

1. Binita Bubna
125, N.S. Road
3rd Floor
Kolkata - 700 001

2. Income Tax Officer, Ward-34(1), Kolkata

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches