

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH, BANGALORE**

Before Shri Chandra Poojari, Accountant Member

ITA No.94/Bang/2020 : Asst.Year 2007-2008

ITA No.95/Bang/2020 : Asst.Year 2008-2009

ITA No.96/Bang/2020 : Asst.Year 2009-2010

ITA No.97/Bang/2020 : Asst.Year 2010-2011

Sri.Amjad Pasha Proprietor : M/s.Hassan Timbers Double Tank Circle Hosaline Road Hassan – 573 201. PAN : AHMPA4670R.	Vs.	The Income Tax Officer Ward 1 Hassan.
(Appellant)		(Respondent)

Appellant by : Sri.Ravi Shankar

Respondent by : Dr.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 27.02.2020	Date of Pronouncement : 28.02.2020
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ORDER

These appeals filed by the assessee are directed against different orders of the CIT(A), all dated 25th October.2019. The relevant assessment years 2007-2008 to 2010-2011.

2. Since common issues are raised in these appeals, they were heard together and are being disposed of by this consolidated order.

3. Identical grounds are raised in these appeals, except variance in figures, hence, for the sake of convenience, we reproduce grounds of appeal raised in ITA No.94/Bang/2020 for assessment year 2007-2008, as under:-

“1. The order of the learned Commissioner of Income-tax [Appeals] passed under Section 250. of the Act dated

25/10/2019, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant case.

2. The Appellant denies himself liable to be taxed on a total income of Rs. 4,71,800/- as determined by the learned assessing officer and confirmed by the learned Commissioner of Income-tax [Appeals], on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax [Appeals] is not justified in confirming the additions made by the learned assessing officer of Rs.2,73,900/- as peak credit in the bank account of the appellant on the facts and circumstances of the case.

4. Without prejudice the learned commissioner of Income-tax [Appeals] failed to appreciate that the learned assessing officer has not worked out the peak credit in the bank account of the appellant properly and the method adopted is not correct and consequently resulting in a higher addition on the facts and circumstances of the case.

5. Without prejudice, the learned Commissioner of Income-tax [Appeals] as well as the learned assessing officer, ought to have appreciated that the total credits in the bank account of the appellant are sales and ought to have considered only a percentage of profit and not the peak credits in the bank account of the appellant on the facts and circumstances of the case.

6. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies himself liable to be charged to interest under section 234A, 234B and 234 C of the Income Tax Act on the facts and circumstances of the case. Further the levy of interest under section 234A, 234B & 234C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest levied are all not discernible and are wrong on the facts of the case.

7. The Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

8. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

4. The assessee is a timber merchant filed the return of income for the A.Y 2007-08 on 18-02-2008 declaring a total income of Rs. 1,97,900/-. In this case while completing of the assessment for the A.Y 2009-10 it was noticed by the A.O that the assessee has two unaccounted bank accounts at Karnataka Bank and Axis Bank. During the scrutiny proceedings for the A.Y 2009-10, it was noticed that transactions in these bank accounts were not accounted by the assessee for the purpose of arriving at the total income. Thus accordingly notice u/s 148 dated 15/03/2012 was issued, re-opening the assessment u/s 147 of the Act for the A.Y 2007-08. The Assessee filed a return of income of 02/05/2012 in response to notice u/s 148 and declared an income of Rs.1,97,900/- which is same as of the original return. Notice u/s 143(2) dt. 05/09/2012 was issued and served on the assessee. A letter dated 16/01/2012 along with a notice u/s 142(1) was served calling for various details. In response to the said notice the assessee and his AR Sri. Nagaraju appeared and furnished the details called for. The Assessing Officer in his assessment order said that the assessee has prepared the books of account again for the A.Y 2007-08 after receipt of notice u/s 148. After making the all the due adjustments to the books of accounts the assessee has kept the profit at the same figure as in the original return. The Assessing Officer had rejected the books of accounts prepared by the assessee. The Assessing Officer made the addition on the basis of peak method of addition and amount of Rs. 2,73,900/- was brought to tax. The order U/s

143(3) was passed on 28-03-2013 resulting a demand of Rs.1,20,580/-. Aggrieved by the said order of assessment, the assessee preferred appeal on ten grounds of appeal. In response to the hearing notice issued u/s 250 of the Act, the AR of the assessee appeared and furnished certain details during the course of appellate proceedings. The details furnished were placed on record. Thereafter, a remand report was called for vide letter dated 13.06.2018 from the Assessing Officer enclosing the written submissions filed by the assessee. Accordingly, the A.O. vide his report dated 12.07.2018 has submitted his comments, which are given as under:-

The CIT(A), Mysuru has called for the report in above mentioned case. It has been observed from the records that assessment u/s 143(3) for the A.Y 2009-010 was completed on 26.12.2011 by making an addition of Rs.16,08,000/-. The Peak cash credits worked out to Rs.16,08,000/-. The assessee claimed that the credits in the bank account was due to hand loan taken from his friends and relatives, the same was asked to prove. The assessee has accepted by his submission (copy enclosed for kind perusal that he was unable to prove the loan creditors and the same was agreed to be added to total income under the head "income from other sources". It is seen that the assessee has made unaccounted payments to the trade creditors through the unaccounted bank account.

The assessee in his submissions before CIT(A), Mysore has stated that the Assessing Officer has calculated the Peak Credits wrongly. It is observed that the Assessing Officer has made the addition considering the Peak cash credits

and not peak credits. The Peak cash credits in the bank accounts were utilized in making unaccounted payments to the parties. Unaccounted cash payments made to these parties are also covered in cash withdrawals made from the undisclosed bank accounts. The peak cash credits in this account have been brought to tax and as such no separate addition is made in respect of unaccounted payments made.

The same method is adopted for the A.Y 2007-08, 2008-09 & 2010-11, since there is a consistency in the method adopted by this office and also because this method was accepted by the assessee for the A. Y 2009-10.

It is therefore suggested that it is a fit case for the additions made under the head "income from other sources" u/s 69 of the Act.

4.1 The remand report has been forwarded to the assessee for his comments / rebuttal. The assessee during the course of appellate proceedings submitted his reply to the remand report. After considering the same, the CIT(A) observed as under:-

“6. I have considered the submission made by the appellant, the remand report submitted by the A.O and the rejoinder to the remand report filed by the appellant. It is seen from the remand report dated 12.07.2018 that the assessing officer had made the addition considering the peak cash credits and not peak credits. The peak cash credits in the bank account were utilized in making unaccounted payments to the parties and the same were covered in cash withdrawals made from the undisclosed bank accounts. Therefore peak cash credits in these accounts were brought to tax. Further the same method were adopted for all the other Assessment Years. Whereas the appellant in his rejoinder dated 16.08.2018 has submitted that peak credits is principally applicable where there are several credits and

entries are found in one to avoid multiple counting for the same sums only highest are peak of amounts in that account should be taken as unexplained investment. Further submitted that selective cash credits from unaccounted bank accounts were taken to make addition which is against the principle of natural justice. In supports of his contention he relied on ITAT Delhi bench decisions In case of Shri. Madho Prashad Gupta wherein it was held that that peak credits principle is applicable where there are several credits and entries are found in one account. The funds operated from such account should be taken to be one and hence to avoid multiple counting for the same sums only highest peak of amounts in that account should be taken as unexplained investment. However the A.O having considered the transactions to two unaccounted bank accounts had made addition based on the peak method since there are cash transactions appearing in the accounts purported to be made towards purchases and also receipt of sales. Therefore, I hereby uphold the method of adopting the peak cash credits and sustain the addition made u/s 69 of the Act. The grounds hereby dismissed.”

5. Aggrieved by the orders of the Income Tax Authorities, the assessee is in appeal before the Tribunal.

6. I have heard the rival submissions and perused the material on record. In this case, the Assessing Officer considered the peak cash credit of unaccounted bank accounts and peak cash credits to make the additions. The contention of the learned AR is that the entire amount deposited in the bank account is nothing but business receipts and the entire amount cannot be considered as unexplained income of the assessee, but only the percentage of net profit on the said cash deposits made in to the bank account may be considered as income of the assessee. In my opinion, there cannot be any dispute regarding the fact that the deposit made in the bank account as receipts from business of the assessee. Then, it is appropriate to consider the net profit rate to arrive at the

income from such sale receipts. Being so, I consider it appropriate to adopt the regular rate of net profit declared by the assessee in the return of income filed by the assessee to determine the income from these deposits in bank accounts. Hence, I remit the issue to the files of the Assessing Officer for the limited purpose of quantification of income from these deposits into bank accounts.

7. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 28th day of February, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 28th February, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Mysore.
4. The Pr.CIT-Mysore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore