

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

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos.228 & 229/Kol/2020
Assessment Year: 2012-13 & 2013-14**

Tapas Das Bairagya S/o. Late Dharma Das Bairagya, Sagarputul, Nrisinghapur, Purba Burdwan-713 126. PAN: AZTPB 7897 A (Appellant)	Vs.	ITO, Ward-1(1), Burdwan (Respondent)
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Present for:

Appellant by : None
Respondent by : Shri Pradip Biswas, ACIT

Date of Hearing : 26.05.2022
Date of Pronouncement : 28.07.2022

ORDER

PER SONJOY SARMA, JM:

The captioned appeals preferred by the assessee for the A.Y. 2012-13 & 2013-14 respectively are directed against the separate orders passed u/s 250(6) of the Income-tax Act, 1961 passed by the Id. CIT(A), Burdwan both dated 01.08.2019. The assessee has taken the following grounds of appeal for A.Y. 2012-13 & 2013-14 as under:

Assessment Year 2012-13:

"1. FOR THAT on the facts, the Id. CIT(A) erred in confirming the determination of income of Rs. 82,93,904/- made by the ITO by applying the G.P. rate of 8% on the entire deposit made by the assessee for Rs. 10,28,10,144/-. The said determination of income was made on the basis of surmises and conjectures and without applying the peak credit theory. The said determination of income is absolutely unwarranted and stands to no reason at all.

2. FOR THAT on the facts both the authorities below erred both in points in law and on facts.

3. *FOR THAT the appellant craves leave to take further and/or additional grounds at the time or before hearing of this appeal petition if necessary.*”

Assessment Year 2013-14:

“1. FOR THAT on the facts, the ld. CIT(A) erred in confirming the determination of income of Rs. 19,02,214/- made by the ITO by applying the G.P. rate of 8% on the entire deposit made by the assessee for Rs. 2,35,51,338/-. The said determination of income was made on the basis of surmises and conjectures and without applying the peak credit theory. The said determination of income is absolutely unwarranted and stands to no reason at all.

2. FOR THAT on the facts both the authorities below erred both in points in law and on facts.

3. FOR THAT the appellant craves leave to take further and/or additional grounds at the time or before hearing of this appeal petition if necessary.”

2. When the case was called for, none appeared on behalf of the assessee. On perusal of the records shows that a number of opportunities have been given to the assessee but there is no compliance. It seems that the assessee is not interested to pursue the appeal and, therefore, we decide to adjudicate the appeals with the assistance of Id. DR and the available records.

3. The assessee is an individual and did not file any return of income for A.Y. 2012-13 and 2013-14 respectively. The Assessing Officer received information that the appellant had deposited Rs. 10,28,10,144/- and Rs. 2,35,68,641/- during F.Y. 2011-12 and 2012-13 relevant to A.Y. 2012-13 and 2013-14. Notice u/s 148 of the I.T. Act was issued to the assessee in pursuance to the same, the assessee filed its return of income declaring total income of Rs. 6,72,780/- & Rs. 1,38,640/-. Immediately after it, the Assessing Officer issued notice u/s 143(2) and 142(1) of the I.T. Act, 1961 and directed the assessee to produce the books of accounts and other documents. In response to the said notice, the AR of the assessee appeared and produced the supporting evidences and explained the returns. However, the AO did not satisfied about the correctness and completeness of the audited accounts submitted by the assessee during the course of hearing and he rejected the books of accounts produced by the assessee and assessment was completed by invoking the provisions of section 147/143(3) of the I.T. Act and

added amount of Rs. 75,52,033/- & Rs. 17,45,463/- respectively for the assessment year in question.

4. Aggrieved by the order of the AO, assessee carried the matter before the Id. CIT(A) and the Id. CIT(A) dismissed the appeal of the assessee by observing as follows:

Assessment Year 2012-13:

“5.5 I have carefully gone through the assessment order, the observations of the A.O. and the contentions and arguments of the appellant.

In the case of CIT vs. M/s JRD Stock Brokers Pvt. Ltd. in ITA No.544/2005, the Hon’ble Delhi High Court pronounced on 12/09/2018 that the peak credit worked out by the assessee was on the basis that the principle of peak credit would apply, notwithstanding the failure of the assessee to explain each of the sources of the deposits and the corresponding destination of the payment without squaring them off, which is not permissible in law.

The Hon’ble Delhi High Court held that ITAT cannot proceed merely on the basis of accountancy, overlooking the settled legal position that peak credit is not applicable where deposits remain unexplained under section 68 of the Act.

The plea of the appellant that he should be taxed only on a composite ‘peak credit’ is based entirely on principles of accountancy.

The premise underlying the concept of peak credit is the squaring up of the deposits in the account with the corresponding payments out of the account to the same person.

5.6 In the case of Bhaiyalal Shyam Behari vs. CIT (2005) 276 ITR 38 (All.), the Allahabad High Court explained that benefit of peak can be given only when the assessee owns up all the cash credits in the books of accounts. It was further held:

“For adjudicating upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the ‘books of account and only thereafter can the question of peak credit can be raised.”

5.7 Therefore, in order to avail the benefit of the ‘peak credit’, the appellant has to explain all the pertinent facts within his knowledge concerning the credit entries in the accounts.

The appellant has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destinations of all payment from the accounts.

The appellant should be able to show that the money has been transferred through Banking Channels from the bank account of creditors to the bank account of the appellant the identity of the creditors and that the money paid from the 1 accounts of the appellant has returned to the bank accounts of the creditors. The appellant has to discharge the primary onus of discharge in this regard.

*The claim of the appellant that the peak credit would apply notwithstanding the fact that the appellant has not explained the source of each of the sources of the deposits and the corresponding destination of the payment without squaring them off is not permissible in law as explained by the Allahabad High Court in the case of **Bhaiyalal Shyam Behari vs. CIT (2005) 276 ITR38 (AIL)**.*

5.8 Thus, the question whether only the peak could be added or not is ultimately not one of theory or a question of law, but one of fact in each case.

During the course of assessment proceedings as well as appellate proceedings, in spite of repeated opportunities, no bills/vouchers relating to sales and purchases, purchase and sale ledgers etc. have been produced by the appellant.

The A.O. has in the present facts and circumstances has estimated the income by adopting net profit of 8% on the total deposits of Rs. 4,74,81,969/- and estimated the business income of Rs. 82,24,812/-.

5.9 As the appellant has failed to give any satisfactory reply about the proof of the nature of his business, the addition of Rs. 75,52,033/- made by the A.O. is confirmed, the Ground of Appeal is dismissed.

*In the result, **the appeal is dismissed.***

Assessment Year 2013-14

“5.5 I have carefully gone through the assessment order, the observations of the A.O. and the contentions and arguments of the appellant.

*In the case of **CIT vs. M/s JRD Stock Brokers Pvt. Ltd. in ITA No. 544/2005**, the **Hon'ble Delhi High Court** pronounced on 12/09/2018 that the peak credit worked out by the assessee was on the basis that the principle of peak credit would apply, notwithstanding the failure of the assessee to explain each of the*

sources of the deposits and the corresponding destination of the payment without squaring them off, which is not permissible in law.

The Hon'ble Delhi High Court held that ITAT cannot proceed merely on the basis of accountancy, overlooking the settled legal position that peak credit is not applicable where deposits remain unexplained under section 68 of the Act.

The plea of the appellant that he should be taxed only on a composite 'peak credit' is based entirely on principles of accountancy.

The premise underlying the concept of peak credit is the squaring up of the deposits in the account with the corresponding payments out of the account to the same person.

5.6 In the case of Bhaiyalal Shyam Behari vs. CIT (2005) 276 ITR 38 (All.), the Allahabad High Court explained that benefit of peak can be given only when the assessee owns up all the cash credits in the books of accounts. It was further held:

"For adjudicating upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the books of account and only thereafter can the question of peak credit can be raised."

5.7 Therefore, in order to avail the benefit of the 'peak credit', the appellant has to explain all the pertinent facts within his knowledge concerning the credit entries in the accounts.

The appellant has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destinations of all payments from the accounts.

The appellant should be able to show that the money has been transferred through Banking Channels from the bank account of creditors to the bank account of the appellant the identity of the creditors and that the money paid from the accounts of the appellant has returned to the bank accounts of the creditors. The appellant has to discharge the primary onus of discharge in this regard.

*The claim of the appellant that the peak credit would apply notwithstanding the fact that the appellant has not explained the source of each of the sources of the deposits and the corresponding destination of the payment without squaring them off is not permissible in law as explained by the Allahabad High Court in the case of **Bhaiyalal Shyam Behari vs. CIT (2005) 276 ITR 38 (All.)**.*

5.8 Thus, the question whether only the peak could be added or not is ultimately not one of theory or a question of law, but one of fact in each case.

During the course of assessment proceedings as well as appellate proceedings, inspite of repeated opportunities, no bills/vouchers relating to sales and purchases, purchase and sale ledgers etc. have been produced by the appellant.

The A.O. has in the present facts and circumstances has estimated the income by adopting net profit of 8% on the total deposits of Rs. 2,35,51,338/- and estimated the business income of Rs. 18,84,107/-.

5.9 As the appellant has failed to give any satisfactory reply about the proof of the nature of his business, the addition of Rs. 17,45,463/- made by the A.O. is confirmed, the Ground of Appeal is dismissed.

5.10 In the result, the appeal is dismissed.”

5. However, on perusal of impugned orders, we find that the assessee was unable to furnish any necessary details in support of its grounds of appeals raised before the Id. CIT(A) and in absence of the details, the Id. CIT(A) decided the appeal against the assessee. Aggrieved by the impugned orders, the assessee is in appeal before us.

6. Ld. DR vehemently argued supporting the orders of both the lower authorities.

7. We have heard Id. DR and perused the records placed before us.

8. Now looking to the issues involved, we shall take ground no. 1 raised by the assessee in both the appeals. Since ground no. 2 and 3 raised by the assessee are general in nature, therefore, does not require any specific adjudication. We after perusal of material available on record including the orders of Id. CIT(A), we note that there is a clear cut findings given by the Id. CIT(A) that the assessee during the course of assessment proceedings as well as appellate proceedings inspite of repeated request he did not produce bills/vouchers relating to sales and purchase, purchase and sales ledger etc. and accordingly, the AO has no other option but to assessed the income of assessee by adopting gross profit of 8% on total deposits of Rs. 4,74,81,969/- & Rs.

2,35,51,338/- and estimated the business income of assessee at Rs. 82,24,812/- and Rs. 18,84,107/- respectively for assessment years in question. As the appellant has completely failed to give any satisfactory reply about the proof of the nature of his business, therefore, AO had no other option but made an addition of Rs. 75,52,033/- and Rs. 17,45,463/- respectively and the same was confirmed by the ld. CIT(A) also. In the light of the above facts and circumstances, we note that conclusion arrived by the ld. CIT(A) does not require any interference therefore, we confirmed the orders of ld. CIT(A) and accordingly dismiss the grounds raised by the appellant.

9. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 28.07.2022.

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

**Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 28.07.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Tapas Das Bairagya.
2. The Respondent: ITO, Ward-1(1), Burdwan.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata