

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

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

**I.T.A. No. 899/KOL/ 2013
Assessment Year: 2008-2009**

Himangshu Das,.....Appellant
C/o. P.K. Himmatsinghka,
AA-4, Salt Lake,
Kolkata-700 064
[PAN : ADOPD 0854 E]

-Vs.-

Income Tax Officer,.....Respondent
Ward-51(1), Kolkata,
Uttarapan Building,
Maniktala Civic Centre,
Ultadanga,
Kolkata-700 054

Appearances by:

Shri P.K. Himmatsinghka, A.R., for the assessee
Shri Debasish Roy, JCIT, for the Department

Date of concluding the hearing : April 25, 2016
Date of pronouncing the order : April 29, 2016

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)-XXXII, Kolkata dated 12.03.2013 and the solitary issue involved therein relates to the addition made by the Assessing Officer on account of credits appearing in the undisclosed Bank accounts of the assessee as sustained by the Id. CIT(Appeals) to the extent of Rs.35,89,725/-.

2. The assessee in the present case is an individual, who is engaged in the business of manufacturing and dealing of readymade garments under the name and style of his proprietary concern M/s. Impex India. The

return of income for the year under consideration was filed by him on 30.09.2008 declaring total income of Rs.1,53,977/-. As per the information received by the Assessing Officer, the assessee during the year under consideration had paid Rs.11,16,000/- against Credit Card bills through ABN AMRO Bank and had also entered into the share transactions of Rs.15,04,894/-. During the course of assessment proceedings, the assessee was called upon by the Assessing Officer to explain the source of payments made on account of Credit Card bills and also the investment made in shares. The assessee, however, could not offer any satisfactory explanation in this regard. The information received by the Assessing Officer from the ABN AMRO Bank revealed that the assessee during the year under consideration was maintaining three Bank accounts, two Savings Bank Accounts and one Loan Account, with the said Bank. It was also revealed that the assessee during the year under consideration had deposited by way of cash and cheques amounts of Rs.33,98,569/- and Rs.7,34,977/- in his two Savings Bank Accounts, while the Loan Account taken from the Bank was repaid by the assessee to the extent of Rs.1,12,543/-. Since the assessee could not offer any explanation as regards these deposits found to be made in his Savings Bank Accounts as well as the repayment of loan, the entire amount of deposits made in the Savings Bank Accounts as well as the repayment of loan aggregating to Rs.42,46,089/- was added by the Assessing Officer to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 21.12.2010.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) decided the issue by recording the following observations/findings in his impugned order:-

"I have carefully considered the submission of the appellant, assessment order of the Assessing Officer, additional evidences filed by the appellant, remand report of the Assessing Officer and its rejoinder of the appellant. I found that this is a fact that the appellant had not shown Saving Accounts No.927278 and 1362617. The argument of the appellant is that he made the deposit in the saving accounts out of sales of ready made garments. The appellant failed to give any single purchase bill and sales bills to whom he made the 'transaction.

The appellant also did not disclosed these two bank accounts at the time of Notice u/s.142(1) of the LT. Act during the course of assessment proceedings. The A/R argued that there was no column in the return to show the bank account is not tenable because this is the duty of the appellant to show the true picture of his personal assets and liabilities. The appellant had not shown his real picture before the Department. The appellant did not filed any evidence which established that he is having Rs. 10,03,276/- opening cash balance as on 01.04.2007.

Firstly, I deal the SB Account No.927278 wherein total deposit made of Rs.33,98,569/-. The first argument of the appellant is that all the deposit made in this undisclosed bank account is out of sales receipt of the appellant which is totally incorrect because the appellant did not filed any evidence which established that he made the purchases and sales of these items. He did not provide any single purchases bills and sales bills also. He also failed to file any single evidence regarding this. On going through the copy of cash book filed during the course of appellate proceeding, it is noticed that he did mentioned on any date to deposit the cash in the said bank account. So the contention of the appellant is that he deposited cash in this account from sales is not correct. The Alternative plea of the appellant is that the AR taken the alternative argument that the peak theory may be applied in his case. In the Account No.927278 the peak was Rs.6,56,945/- on 05/05/2007. The appellant did not filed any detail of deposit of cheque also. The A.O. gave the finding in the assessment order that the appellant had made payment of Rs.1,16,000/- against credit card bills and he entered into share transaction of Rs.15,04,894/- during the F.Y. 2007-08. The AIR vide his letter dated 16/12/2010 clearly stated the source of investment in the shares of Rs. 15,04,894/- and repayment of credit card bills of Rs.11,16,000- was made from the withdrawal of Saving Bank A/c No.92727 & 1362617 with ABN AMRO Bank (presently renamed as RBS Bank). The appellant has also made the withdrawal for household expenses and other matter also he issued cheque. He made repayment of credit card bill of Rs.11,16,000/- and share investment of Rs.15,04,894/- and cheque issued to third parties cannot be ruled out. Hence, the question of the peak credit cannot arise in this account. So the

contention of this appellant is not acceptable because the money was not rotated through. The appellant failed to establish the money to rotated through.

I dealt another undisclosed Bank Account No. 1362617. I, thoroughly analysis this account. In this account the total deposit Rs.7,34,977.52 which includes Rs.5,43,821/- which the A/R explained that this deposit of the loans amount of Rs.5,50,000/- granted by the ABN AMRO Bank after deducting the processing charges. There are two entry of Interest of Rs.157/- and balance are the cash deposited on various dates. The appellant did not withdraw single paisa in cash from this account. So the question of the peak does not arise. The money is not routed through in this account. So how did the appellant claimed the credit for peak. The appellant explained that the source of deposit of Rs.5,43,821/- is from the loan account of the appellant. I treated Rs.5,43,821/- as explained and Rs.1,91,156/- is treated as unexplained.

Considering the above findings and facts of the case I am of the view that the total deposits of Rs.33,98,569/- in the Account No.9272278 treated as unexplained and in another account No.1362617 the deposit of Rs.5,43,821/- is treated as explained and balance Rs.1,91,156/- treated as unexplained. Therefore, the addition of Rs.(33,98,569 + 1,91,156) = Rs.35,89,725/- is confirmed and Rs.5,43,821/- is deleted. This ground is partly allowed”.

The Id. CIT(Appeals) thus sustained the addition of Rs.42,46,089/- made by the Assessing Officer on account of unexplained deposits found in the Savings Bank Account of the assessee as well as repayment of loan to the extent of Rs.35,89,725/-. Still 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 outset, has reiterated before us the submissions made before the Id. CIT(Appeals) that all the deposits found to be made in the two Savings Bank Accounts of the assessee were relating to his regular business of manufacturing and dealing of readymade garments and the addition, if any, on account of transactions reflected in the said accounts should be made by applying the normal gross profit rate to the deposits found to be

made in the said Bank Accounts. We are unable to accept this contention of the ld. counsel for the assessee. It is observed that regular books of account were maintained by the assessee in respect of his business of manufacturing and dealing of readymade garments and neither the Savings Bank Accounts maintained with ABN AMRO Bank nor even the transactions reflected therein were found recorded in the books of account of the assessee regularly maintained. Moreover, as rightly observed by the ld. CIT(Appeals) in his impugned order, the transactions reflected in the Savings Bank Accounts of the assessee with ABN AMRO Bank were not supported by any purchase or sale bills relating to the business of the assessee so as to say that this represented regular business transaction of the assessee.

5. At the time of hearing before us, the ld. counsel for the assessee has filed the ledger account extract of the assessee in the books of account of his proprietary concern to show that various cash payments were made to the assessee by his proprietary concern during the year under consideration which could be correlated with the deposits found to be made in his two Savings Bank Accounts with ABN AMRO Bank. A perusal of the said ledger account, however, shows that the cash withdrawals were made by the assessee from his proprietary concern mainly against cloth purchases and it, therefore, cannot be said that all these cash withdrawals were available with the assessee for making deposits in his Savings Bank Account with ABN AMRO Bank. No doubt, there are certain cash withdrawals appearing in the individual account of the assessee in the books of M/s. Impex India, which apparently are not against any cloth purchase and coincide with the deposits found to be made by the assessee in his two Bank accounts with ABN AMRO Bank. Similarly as pointed out by the ld. counsel for the assessee, a sum of Rs.2,00,000/- credited in one Bank account of the assessee with ABN AMRO Bank as on 10.07.2007 was transferred from another Bank account maintained with the same Bank.

6. It is also observed that there is a mention in the assessment order that Credit Card bills amounting to Rs.11,16,000/- were paid by the

assessee from his Bank accounts with ABN AMRO Bank. A perusal of the Bank accounts of the assessee as placed on record before us, however, shows that there are no payments against Credit Card bills to that extent and even the transactions of investment in shares amounting to Rs.15,04,894/- are not fully reflected in the said accounts. In this regard, the Id. counsel for the assessee has submitted before us that the amount of Rs.15,04,894/- represents the total share transactions entered into by the assessee including purchase and sale of shares and it is not the total amount of investment made by the assessee as presumed by the Assessing Officer. He has also submitted that there being cash deposits and cash withdrawals reflected in the Savings Bank accounts of the assessee, the withdrawals made for making corresponding deposits should be taken into consideration. Keeping in view these submissions made by the Id. counsel for the assessee as well as having regard to the nature of entries appearing in the relevant Bank accounts of the assessee, we are of the view that a detailed analysis of all the transactions reflected in the Bank accounts of the assessee is required to be done after taking into consideration the nature of each and every entry and on the basis of such analysis, the exact addition to be made to the total income of the assessee needs to be worked out. We, therefore, restore this issue to the file of the Assessing Officer with a direction to the assessee to make a detailed analysis of all the entries appearing in the two Bank accounts of the assessee. The Assessing Officer shall verify the said analysis and re-compute the addition to be made on this issue after giving the assessee proper and sufficient opportunity of being heard.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on April 29, 2016.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 29th day of April, 2016

- Copies to : (1) **Shri Himangshu Das,**
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- (2) **Income Tax Officer,**
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Uttarapan Building,
Maniktala Civic Centre,
Ultadanga,
Kolkata-700 054
- (3) *Commissioner of Income-tax, Kolkata;*
(4) *CIT(Appeals)-XXXII, Kolkata;* ,
(4) *The Departmental Representative*
(5) *Guard File*

By order

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

Laha/Sr. P.S.