

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

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

**I.T.A. No. 2239/KOL/ 2013
Assessment Year : 2005-2006**

Shri Ratan Pal Singh,.....Appellant
30/31, Bellilious Road, Ghusuri,
Howrah-711 101
[PAN : ATZPS 6772 M]

-Vs.-

Income Tax Officer,.....Respondent
Ward-48(2), Kolkata,
3, Government Place (West),
Kolkata-700 001

&

**I.T.A. No. 2183/KOL/ 2013
Assessment Year : 2005-2006**

Income Tax Officer,.....Appellant
Ward-48(2), Kolkata,
3, Government Place (West),
Kolkata-700 001

-Vs.-

Shri Ratan Pal Singh,.....Respondent
30/31, Bellilious Road, Ghusuri,
Howrah-711 101
[PAN : ATZPS 6772 M]

Appearances by:

Shri Anikesh Banerjee, Advocate, for the assessee
Shri Rajt Kumar Kureel, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : May 27, 2016
Date of pronouncing the order : June 03, 2016

O R D E R

Per Shri P.M. Jagtap:-

These two appeals, one filed by the assessee being ITA No. 2239/KOL/2013 and the other filed by the Revenue being ITA No.

2183/KOL/2013, are cross appeals, which are directed against the order of the Id. Commissioner of Income Tax-(Appeals)-XXX, Kolkata dated 26.03.2013.

2. At the outset, it is observed that there is a delay of 36 days on the part of the assessee in filing his appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of 36 days on the part of the assessee in filing his appeal before the Tribunal. Even the Id. D.R. has not raised any serious objection in this regard. The said delay is, therefore, condoned and the appeal is being disposed of on merit.

3. The assessee in the present case is an individual, who is engaged in the business of trading of iron and steel under the name and style of his proprietary concern M/s. Ratan Trading Corporation. As per the AIR information received by the Assessing Officer, the assessee had deposited substantial amounts in the Bank account maintained with HSBC Bank, Howrah Maidan Branch. Since the said Bank account was not disclosed by the assessee, a notice under section 148 was issued by the Assessing Officer on 04.02.2009. In response to the said notice, the return of income for the year under consideration was filed by the assessee on 19.05.2009 declaring total income of Rs.3,98,756/-. During the course of assessment proceedings, the particulars of deposits and withdrawals made from the account maintained with HSBC Bank were furnished by the assessee. On the basis of the said particulars, the plea taken by the assessee before the Assessing Officer was that only the peak credit of the undisclosed Bank account maintained with HSBC Bank could be treated as his income. This plea of the assessee was not found acceptable by the Assessing Officer as he found that the entire credits appearing in the Bank account of the assessee with HSBC Bank were added to the total

income of the assessee in the assessment completed for A.Y. 2006-07 and the addition so made was confirmed even by the Id. CIT(Appeals). Following the stand taken in the assessment year 2006-07, the Assessing Officer rejected the claim of the assessee for making addition on peak credit basis and added the entire credits appearing in the undisclosed Bank account of the assessee aggregating to Rs.76,38,500/- to the total income of the assessee in the assessment completed under section 143(3) read with section 147 vide an order dated 30.12.2010.

4. Against the order passed by the Assessing Officer under section 143(3) read with section 147, an appeal was preferred by the assessee before the Id. CIT(Appeals) disputing the addition of Rs.76,38,500/- made on account of the entire credits appearing in his undisclosed Bank account. During the course of appellate proceedings before the Id. CIT(Appeals), reliance was placed by the assessee on the order of the Tribunal dated 15.02.2013 passed in his own case for A.Y. 2006-07 in ITA No. 1286/KOL/2009, wherein the plea of the assessee for addition on peak credit basis in respect of transactions appearing in the undisclosed Bank accounts was accepted by the Tribunal and the Assessing Officer was directed to restrict the addition after verifying the peak credit. Keeping in view the said decision of the Tribunal in assessee's own case for AY 2006-07 on the similar issue, the matter involved in the year under consideration was remanded by the Id. CIT(Appeals) to the Assessing Officer for his verification and comments. In the remand report dated 21.03.2013 submitted to the Id. CIT(Appeals), the Assessing Officer offered his comments as under:-

"In the assessment year 2005-06 regarding working of peak credit of the assessee as under:

In the Bank account in question the assessee had a peak credit of Rs.5,57,235/- before purchasing land for Rs.9,90,000/-. After the transfer made for acquisition of land the assessee had maintained a peak of

Rs.4,52,235/- . It is interpreted that he used Rs.5,57,235 - Rs.4,52,235/- = Rs.1,05,000/- for purchasing land the amount of which could not further be reinvested. Under these circumstances, Rs.5,57,235/- + Rs.(9,90,000 - 1,05,000)= Rs.14,42,235/- has been considered as his peak credit in the undisclosed account”.

5. When the remand report submitted by the Assessing Officer was confronted to the assessee by the Id. CIT(Appeals), the assessee accepted the peak credit as worked out by the Assessing Officer at Rs.5,57,235/-. He, however, objected to the addition of Rs.8,85,000/- suggested by the Assessing Officer on account of payment of land by submitting that the payment to DRT-II alone did not denote there was purchase of land and the Draft in favour of DRT-III was drawn on behalf of others. This objection of the assessee was not found sustainable by the Id. CIT(Appeals) and overruling the same, he proceeded to sustain the addition on account of transactions appearing in the undisclosed Bank account of the assessee with HSBC Bank to the extent of Rs.14,42,235/- as worked out by the Assessing Officer in the remand report for the following reasons given in paragraph no. 3 of his impugned order:-

“3. The submissions of the Appellant as above and the Remand Report of the A.O. in this case has been considered and it is seen that the issue is regarding taxation of undisclosed deposits in the Appellant's bank account in HSBC of Rs.76,38,500/-. It is seen that the Appellant has relied upon the decision of Hon'ble ITAT in its own case for A. Y.2006-07 in ITA No.1286/Kol./2009, dated 15.02.2013 in which the Hon'ble ITAT had held that-

“In view of the above, we direct the A. O. to adopt the peak credit of these two amounts after examining the same”.

Therefore, considering the facts of the case in the current year which are identical to the Appellant's own case in A.Y.2006-07 except that there was only one bank account in HSBC in the current year. Therefore, the principle of peak credit is adopted following the decision of the ITAT as above in the Appellant's

own case. However the peak credit submitted by the Appellant at Rs.5,57,235/- is not accepted as it has not given any satisfactory explanation in respect of the amount of Rs.8,85,000/- referred to by the A.O. as not available for further investment in his Remand Report. Therefore, the peak credit in respect of the deposits in the bank account of the Appellant is taken at Rs.14,42,235/- and the addition is confirmed to this extent. (Relief Rs.61,96,265/-“.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue and assessee both are in appeals before the Tribunal.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the Id. representatives of both the sides, the issue involved in the appeal of the Revenue relating to the restriction by the Id. CIT(Appeals) of the addition on account of the relevant transactions reflected in the undisclosed Bank account of the assessee only to the extent of peak credit of Rs.5,57,235/- is squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for AY 2006-07 rendered vide its order dated 15.02.2013 (supra), which has been subsequently upheld by the Hon'ble Calcutta High Court vide its order dated 12.08.2013 in ITAT No. 128 of 2013, wherein the peak credit theory was accepted by the Tribunal and the Assessing Officer was directed to restrict the addition on account of the transactions reflected in the undisclosed Bank account of the assessee only to the extent of peak credit on verification. In the year under consideration, the matter was remanded by the Id. CIT(Appeals) to the Assessing Officer to verify such peak credit and since the Assessing Officer on verification had worked out the peak credit of Rs.5,57,235/-, we find no infirmity in the impugned order of the Id. CIT(Appeals) restricting the addition to such peak credit. The appeal of the Revenue thus has no merit and the same is dismissed accordingly.

7. As regards the issue involved in the appeal of the assessee relating to the addition of Rs.8,85,000/- on account of payment made by the assessee from his undisclosed bank account towards land, it is observed that the payment to that extent was made by the assessee separately by Draft from his undisclosed Bank account and this position has not been disputed by the assessee either before the Id. CIT(Appeals) or before us. The only contention raised on behalf of the assessee before the Id. CIT(Appeals) was that the said Draft was made on behalf of others and the same did not denote there was purchase of land. However, as rightly held by the Id. CIT(Appeals) in this regard, the amount of Rs.8,85,000/- had gone out of the undisclosed Bank account of the assessee and since the same was not available to the assessee for further investment, it was liable to be added separately to the total income of the assessee over and above the peak credit of Rs.5,57,235/- worked out by the Assessing Officer. At the time of hearing before us, the Id. counsel for the assessee also has not raised any contention to dispute this position. We, therefore, find no merit in the appeal of the assessee and dismiss the same.

8. In the result, the appeal of the assessee and that of the Revenue both are dismissed.

Order pronounced in the open Court on June 3, 2016.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 3rd day of June, 2016

Copies to : (1) **Shri Ratan Pal Singh,**
30/31, Bellilious Road, Ghusuri,
Howrah-711 101

(2) **Income Tax Officer,**
Ward-48(2), Kolkata,
3, Government Place (West),
Kolkata-700 001

- (3) Commissioner of Income-tax (Appeals)-XXX, Kolkata*
- (4) Commissioner of Income Tax, Kolkata*
- (5) The Departmental Representative*
- (6) Guard File*

By order

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

Laha/Sr. P.S.