

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 276/KOL/ 2014
Assessment Year: 2006-2007**

Md. Naimuddin,.....Appellant
9, Mitra Lane,
Kolkata-700 009
[PAN: AEUPM 7154 L]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-8, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee square,
Kolkata-700 069

Appearances by:

Shri A.K. Tibrewal, FCA, for the assessee
Shri A.K. Singh, JCIT, D.R., for the Department

Date of concluding the hearing : August 10, 2016
Date of pronouncing the order : October 21, 2016

O R D E R

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-XXX, Kolkata dated 04.11.2013 and the solitary issue involved therein relates to the addition of Rs.8,05,689/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 68 of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who is engaged in the business of trading of Tin Sheets under the name and style of his proprietary concern M/s. Indo Teen Company. The return of income for the year under consideration was filed by him on 26.03.2007 declaring total income of Rs.1,72,888/-. Subsequently a letter dated 20.11.2007 was filed by the assessee along with re-computation of his income, wherein additional income of Rs.35,300/- was offered by him to tax on account of service charges/commission. Keeping in view the said re-computation

filed by the assessee, notice under section 148 was issued by the Assessing Officer. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has maintained a Bank account with Jammu & Kashmir Bank Limited, Kolkata, wherein total deposits of Rs.22,81,459/- were made during the year under consideration. Since the said Bank account was not reflected in the accounts of the assessee, the assessee was called upon by the Assessing Officer to explain the deposits found to be made in the said Bank account. The assessee, however, could not offer any satisfactory explanation in this regard. The Assessing Officer, therefore, treated the entire deposits found to be made in the undisclosed Bank account of the assessee with Jammu & Kashmir Bank Limited, Kolkata Branch aggregating to Rs.22,81,459/- as undisclosed income of the assessee and the same along with interest of Rs.220/- credited in the said bank account was added by him to the total income of the assessee in the assessment completed under section 143(3)/147 of the Act vide order dated 28.11.2008.

3. Against the order passed by the Assessing Officer under section 143(3)/147, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the additions of Rs.22,81,459/- and Rs.220/- made by the Assessing Officer on account of transactions appearing in his undisclosed Bank account with Jammu & Kashmir Bank Limited, Kolkata Branch. During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted by the assessee that the deposits found to be made in his Bank account with Jammu & Kashmir Bank Limited were related to his transactions of purchase and sale of iron and steel sheets made on behalf of the different customers as agent and since the commission/service charges received in respect of the said transactions amounting to Rs.35,300/- was already offered to tax in the revised computation, there was no justification on the part of the Assessing Officer to add the entire amount of deposits to the tune of Rs.22,81,459/-. After considering this submission of the assessee as well as the material

available on record, the Id. CIT(Appeals) decided the issue vide paragraph no. 1.2 of his impugned order, which reads as under:-

"In Jammu & Kashmir Bank Ltd. A/c. No.0325SB3444 deposits of about RS.22.81 lacs have been made in Financial Year 2005-06 mostly in cheque. One cash deposit of Rs.5 lacs has been made on 30.05.2005. Cash withdrawal of Rs.6 lacs has been made on 19.04.2005. Thus considering the cash deposit of Rs.5 lacs out of withdrawal of Rs.6 lacs, the credits of Rs.17,81,500/- [Rs.22,81,500/- - Rs.5,00,000/-] needed to be explained by the Appellant.

The Appellant claimed to have earned service charges/commission on transactions of Rs.17,65,000/- appearing as deposits in Jammu & Kashmir Bank A/c. The income from such activities was offered as Rs.35,300/- and was rejected by the A.O., who treated all the deposits as income.

The Appellant is a tin sheet retailer and has some turnover under concern of M/s. Indo Teen Co. The Appellant offered the receipt as sales receipt and claimed to have earned commission at the rate of 2.5-3%. The Appellant failed to fully explain to A.O., how the income in said transactions was about 2.5%. In P&L A/c. of M/s. Indo Teen Co. Gross Profit margin of about 6% has. been shown. One option may be to assess the income contained in the undisclosed receipts/deposits as 10% of the deposits. This gives an income of Rs.1,76,500/-. Alternatively peak value of deposit balance in the said bank account may be taken as income. In the said A/c. first peak is of Rs.6 lacs on 18.04.2005 and second peak of Rs.8,05,689/- is on 30.05.2005. In earlier year [A.Y.2002-03] cash of Rs.10 lacs was found available with the Appellant. The claim of Appellant that the cash deposit in Assessment Year 2002-03 should be adjusted against cash deposits in the current Assessment Year 2006-07 is not acceptable as the period relevant to Assessment Year 2002-03 and that relevant to Assessment Year 2006-07 are far apart. As a result, the income associated with the undisclosed deposits is taken as Rs.8,05,689/- being higher of -Rs.8,05,689/- or Rs.1,76,500/-. Thus, the addition is restricted to Rs.8,05,689/- and the balance amount is deleted".

The Id. CIT(Appeals) thus sustained the addition of Rs.22,81,459/- made by the Assessing Officer on account of the transactions of the assessee appearing in his undisclosed Bank account of Jammu & Kashmir Bank Limited to the extent of Rs.8,05,689/- being the peak credit appearing in

the said account. Still aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. counsel for the assessee has invited our attention to the copy of the Bank account of the assessee maintained with Jammu & Kashmir Bank Limited as placed at page nos. 1 to 7 of his paper book to point out that a sum of Rs.10,00,000/- received by the assessee in cash as advance against sale of property was deposited in the said account in February, 2002 and the same was subsequently withdrawn in the month of March, 2002. He has contended that this amount was available to the assessee to explain the peak credit appearing in the said Bank account for the year under consideration and, therefore, the addition as confirmed by the Id. CIT(Appeals) to the extent of peak credit is not sustainable. I am unable to accept this contention of the Id. counsel for the assessee. As rightly observed by the Id. CIT(Appeals) in this regard, the amount withdrawn in the financial year 2001-02 cannot be considered as available to the assessee in financial year 2005-06 due to considerable time lapse, especially when there is nothing brought on record by the assessee to show that the amount withdrawn in March, 2002 was still available with him to explain the deposits found to be made in his Bank account in the financial year 2004-05. The Id. counsel for the assessee has also contended that the transactions reflected in the undisclosed Bank account of the assessee with Jammu & Kashmir Bank Limited were related to his business of dealing in iron and steel sheets as agent and the assessee having offered the commission/service charges amounting to Rs.35,300/- received in respect of such transactions, no further addition is required to be made. I am unable to accept this contention of the Id. counsel for the assessee also. There is nothing either reflected in the Bank account of the assessee with Jammu & Kashmir Bank Limited or even brought on record on behalf of the assessee to support and substantiate his claim that the transactions reflected in his undisclosed Bank account with Jammu & Kashmir Bank Limited are

related to his business of dealing in iron and steel sheets and in the absence of the same, it cannot be said that the said transactions were related to the business of the assessee. In any case, as rightly contended by the Id. D.R., the peak credit reflected in the undisclosed Bank account of the assessee with Jammu & Kashmir Bank Limited represents investment of the assessee and in the absence of any satisfactory explanation offered by the assessee regarding the source thereof, the same is liable to be added in his hands as unexplained investment. I, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) sustaining the addition made by the Assessing Officer on account of transactions appearing in the undisclosed Bank account of the assessee to the extent of peak credit appearing in the said account and upholding the same, I dismiss this appeal filed by the assessee.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on October 21, 2016.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 21st day of October, 2016

Copies to : (1) ***Md. Naimuddin,
9, Mitra Lane,
Kolkata-700 009***

(2) ***Deputy Commissioner of Income Tax,
Circle-8, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee square,
Kolkata-700 069***

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

By order

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