

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA Nos.6239 TO 6243/M/2014 (AYs 2002-03 to AY 2006-07)
AND
ITA Nos. 6172 to 6176/M/2013 (AYs 2002-03 to AY 2006-07)**

Shri Jitendra M. Doshi, 401/403, 4 th Floor, Express Tower, Opp. Diamond Cinema, L.T. Road, Borivali (W), Mumbai – 400 092.	बनाम/ Vs.	ACIT Circle-9, Mumbai.
स्थायी लेखा सं./PAN : AABPD9971A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Shri R.N. Vasani
प्रत्यर्थी की ओर से/ Revenue by :	Shir Yashwant Chavan, CIT-DR

सुनवाई की तारीख /Date of Hearing : 28.9.2015

घोषणा की तारीख /Date of Pronouncement : 16.10.2015

आदेश / O R D E R

PER BENCH:

There are **ten** appeals under consideration. All these appeals are filed by the assessee involving the assessment years 2002-03 to 2006-07 against the common order of the CIT (A)-37, Mumbai dated 31.7.2014. Since, the issues raised by the assessee in all these appeals are inter-connected and therefore, for the sake of convenience, they are clubbed, heard combinedly and disposed of in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

2. Since, the grounds raised in all the 5 quantum appeals are identical, therefore, for the sake of reference and for the purpose of adjudication, we shall take the appeal **ITA No.6239/M/2014 (AY 2002-03) as a lead appeal** and our decision on this appeal squarely applies to the rest of the 4 quantum appeals.

ITA No.6239/M/2014 (AY 2002-03)

3. This appeal filed by the assessee on 5.10.2014 is against the said order of the CIT (A)-37, Mumbai dated 31.7.2014 and the grounds raised by the assessee in this appeal read as under:

- "1. *On the facts and circumstances of the case and in law, the Ld AO as well as CIT (A) has erred in not appreciating the peak working as submitted by the appellant, without giving any reasons for the same.*
2. *On the facts and circumstances of the case and in law, the Ld AO as well as CIT (A) has erred in working out peak balance by not giving credit of income offered by the assessee in the return of income emerging out of the same bank statements.*
3. *On the facts and circumstances of the case and in law, the Ld AO as well as CIT (A) has erred in working out peak balance by not giving credit of Khotari group bank transactions on which Assessing Officer has separately considered commission income, as returned by the appellant."*

4. Briefly stated relevant facts of the case are that the assessee is an individual engaged in the business of bill discounting, commission & income from other sources. A search and seizure action u/s 132 of the Act was conducted in this case on 26.7.2007. Accordingly, a notice u/s 153A of the Act was issued and served on the assessee on 19.12.2008. In response to the said notice, assessee filed the return of income originally declaring the total income of Rs. 7,79,486/- which was revised declaring the total income of Rs. 6,18,980/- including the agricultural income of Rs. 2,93,540/-. AO completed the assessment u/s 143(3) r.w.s 153A of the Act and the assessed income was determined at Rs. 85,12,270/- after making an addition of Rs. 81,28,732/- u/s 69 of the Act and disallowing the claim of expenses of Rs. 58,099/-. Aggrieved, assessee filed an appeal before the first appellate authority. After considering the submissions of the assessee, CIT (A) partly allowed the appeal vide his order dated 8.2.2011. Accordingly, AO, giving effect to the said order of the CIT (A), passed order dated 14.3.2011, wherein the assessed income was determined at Rs. 88,41,388/- including the agricultural income of Rs. 3,90,083/-. Again aggrieved, assessee filed an appeal before the Tribunal. In the first round of proceedings, ITAT vide its order in appeal ITA No.3310 to 3316/Mum/2011 dated 29.8.2012 directed the AO to make additions of unaccounted bank account on the basis of the '**peak credit**' of all the bank accounts after considering the '**unexplained investment**' sourced from these bank accounts to

the extent of peak credit available in bank accounts for that particular assessment year. In the remand proceedings, AO did not accept the working of the assessee and worked out the peak credit of Rs. 69,30,609/- after reducing the closing balance in bank account of Rs. 8,97,248/-. Accordingly, in the process, AO passed the assessment order u/s 143(3) r.w.s 254 of the Act on 24.10.2013 and determined the total income of Rs. 76,43,256/-. Again aggrieved, assessee preferred an appeal before the first appellate authority.

5. During the proceedings before the first appellate authority, before disposing of the assessee's appeal, CIT (A) examined the relevant record and found that mainly the grievance was on account of the credit to be given for the peak credit computed as taxable in a preceding year while computing the peak credit for the subsequent assessment year. In this regard, CIT (A) observed that the AO computed the peak credit for each assessment year on standalone basis. For that purpose, AO reduced the closing balance at the end of the relevant previous year to arrive at the net peak balance for the assessment year. Before the CIT (A), assessee contended that the method followed by the AO is not correct. According to the assessee, the correct working would be to compute the peak credit for each subsequent assessment year and to reduce from this, the peak credit computed as taxable in the earlier assessment year. In that event, the peak credit computed in the earlier year was more than peak amount computed in the subsequent assessment year, and no addition on account of peak credit was to be made for that assessment year. In other words, it was the contention of the assessee that only incremental peak can be considered as taxable unexplained investment for that subsequent year. In this regard, after considering the submissions of the assessee, CIT (A) observed that in the earlier round, the AO has considered each bank account independently despite the directions of the ITAT to consider all the bank accounts together and only the cumulative position of the transactions in these bank accounts should be considered. It is the opinion of the CIT (A) that once the concept of peak credit has been directed to be applied, it is presumed that the previous unexplained investment explains the subsequent investment. Accordingly, he came to a conclusion that the computation of the unexplained peak investment by the AO while giving effect to order of the ITAT is erroneous. Vide para 5.5 of his order, CIT (A) held that the

unaccounted investments can be considered to be accounted for by the peak cumulative of all bank accounts closing balance only, if the daily balance of the two ie bank balances and the unexplained investments are considered together each day. Further, CIT (A) held that the action of the Assessing Officer in actually taking balance at the end of the year, in any case, is totally incorrect. Accordingly, he directed the AO to consider the computation of incremental peak for the respective assessment years computed and produced before him and worked out the peak balance. He further directed the AO that the income considered is inclusive of agricultural income. Further, the assessee's argument that in respect of Kothari Group, the amount assessed as commission should be excluded since the transactions are covered in the peak based on closing balances as per bank accounts, was rejected by the assessee. Thus, CIT (A) **partly allowed** the assessee's appeal. Assessee is aggrieved against the inclusion of the regular income in the assessed income in addition to the regular peak credit related additions. Aggrieved and dissatisfied with the said decision of the CIT (A), assessee is in further appeal before the Tribunal by raising the above mentioned grounds.

6. During the proceedings before us, Ld Counsel for the assessee reiterated the submissions made before the lower authorities. It is the contention of the assessee that the regular additions need not be made in the cases where peak credits were ordered to be added by the Tribunal in the first round of the proceedings. He further contended that the Revenue Authorities have not appreciated the peak working submitted by the assessee as well as not given credit of income offered him in return of income.

7. On the other hand, Ld DR for the Revenue heavily relied on the orders of the Revenue Authorities.

8. We have heard both the parties and perused the orders of the Revenue Authorities as well as the decision of the Tribunal in the first round of the proceedings and also the relevant material placed before us. On perusal of the said decision of the Tribunal (supra) in the first round, we find the Tribunal's directions are only on the peak credits and there is no reference to the normal steams of income. It is obvious that no separate direction is uncalled for as the normal steams of income has to be taxed separately. Further, in our opinion, the income receipts

credited to P & L Account or bank account earned out of business are outside the exercise of peak credit analysis and they are separately taxed ie in addition to the peak credits in any year. The income credited to the books of account of the assessee or the bank should be considered exclusive of the peak credit of additions in the assessment. Therefore, we approve the views of the CIT (A). Considering the same, the decision of the CIT (A) vide paras 5 to 5.8 of his order is an order. Thus, the order of the CIT (A) on these issues is fair and reasonable and it does not call for any interference. Accordingly, the grounds raised by the assessee are **dismissed**.

9. In the result, appeal of the assessee is **dismissed**.

ITA No.6240/M/2014 (AY 2003-04)
ITA No.6241/M/2014 (AY 2004-05)
ITA No.6242/M/2014 (AY 2005-06)
ITA No.6243/M/2014 (AY 2006-07)

10. These appeals are filed by the assessee against the said common order of the CIT (A)-37, Mumbai dated 31.7.2014. In all these appeals, assessee raised the identical issues to that of the ones raised by it in its appeal for the AY 2002-2003 vide appeal ITA No.6239/M/2014, which is adjudicated by us in the above paragraphs of this order, wherein we upheld the decision of the CIT (A) and dismissed the assessee's appeal. Considering the commonality of the issues raised by the assessee in all the present appeals to that of the ones raised in its appeal for the AY 2002-2003, our decision given therein squarely applies to the present appeal too. Considering the same, we uphold the decision of CIT (A) and dismiss the appeal instant appeals of the assessee. Accordingly, all the grounds raised by the assessee in the appeals under consideration for the **AYs 2003-04 to 2006-07 are dismissed**.

11. In the result, all the four appeals filed by the assessee are **dismissed**.

ITA No. 6172/M/2013 (AY 2002-2003)
ITA No. 6173/M/2013 (AY 2003-2004)
ITA No. 6174/M/2013 (AY 2004-2005)
ITA No. 6175/M/2013 (AY 2005-2006)
ITA No. 6176/M/2013 (AY 2006-2007)

12. These **five** appeals are filed by the assessee against the common order of the CIT (A)-37, Mumbai dated 23.8.2013. In these appeals, assessee raised the common grounds in all the AYs under consideration. Considering the commonality of the grounds raised by the assessee, for the sake of reference and adjudication

purpose, the grounds raised by the assessee for the AY 2002-2003 are reproduced as under:

- “1. *On the facts and circumstances of the case and as well as in law, the Ld CIT (A) has erred in confirming the action of the AO in levying penalty u/s 271(1)(c) of the Act which was worked out @ 200% of the tax sought to be evaded on the assessed income, without considering the facts and circumstances of the case.*
2. *On the facts and circumstances of the case as well as in law, the Ld CIT (A) erred in wrongly interpreting the decision of Hon'ble ITAT for quantum while deciding the penalty appeal and not considering the submission of the appellant.*
3. *On the facts and circumstances of the case as well as in law, the Ld CIT (A) ought to have set aside the penalty proceedings to the AO and should not confirm penalty u/s 271(1)(c) of the Act without considering the facts and circumstances of the case.*
4. *On the facts and in the circumstances of the case as well as in law, the Ld CIT (A) has erred in confirming penalty u/s 271(1)(c) of the Act on the returned income, without considering the facts and circumstances of the case.”*

13. In these appeals, assessee raised the issue of levy of penalty in respect of the commission income shown in the return of income filed in response to notice u/s 153A on the ground that no returns of income have been filed as per the provisions of section 139 of the Act for the respective assessment years. Similarly, penalty proceedings were also initiated in respect of unexplained deposits in bank accounts as well as unexplained investments made by the assessee. While disposing of the quantum appeal, we have already discussed the facts of this case and they include during the assessment proceedings, AO did not accept the assessee's plea that only the peak credit should be treated as his income and not the entire amount found deposited in the bank account. On appeal, CIT (A) confirmed the AO's decision in respect of quantum appeals. On further appeal, ITAT vide its order dated 29.8.2012 gave certain directions and in principle confirmed the additions. Meanwhile, AO proceeded with the penalty proceedings and passed different orders u/s 271(1)(c) of the Act for the AYs under consideration commonly dated 28.3.2012, imposing penalty @ 200% of the tax sought to be evaded on the ground of concealment of income. Against the said penalty orders, assessee filed appeals before the first appellate authority.

14. During the proceedings before the first appellate authority, assessee contended that the Hon'ble ITAT set aside the assessment orders passed u/s 153A of the Act, and therefore, the quantum orders do not survive. In this regard, assessee

relied on the decision of the ITAT, Special Bench in the case of S. Manmohan Singh vs. IAC in support of his contention. After considering the submissions of the assessee and on perusal of the ITAT's order dated 29.8.2012 (supra) in the first round of the proceedings, CIT (A) came to the conclusion that vide the said order (supra), the Tribunal only directed the AO for the purpose of computation of amounts of additions and the assessments have not been set aside. Accordingly, vide paras 5.6 and 5.7 of his order, CIT (A) held as under:

"5.6. During the appellate proceedings, the AR did not offer any submission on merits in respect of penalty imposed in this case.

I have therefore, no hesitation in upholding the penalty orders passed by the AO for all these assessment years. At the same time, penalty should be computed with respect to undisclosed income to be determined in terms of the directions of the Hon'ble ITAT while giving effect to its order.

5.7. To clarify, the penalty orders passed by the Assessing Officer for AYs 2002-2003 to AY 2006-2007 are upheld in respect of the undisclosed income computed on the basis of the order of the Hon'ble ITAT, dated 29.8.2012."

15. Aggrieved with the above order of the CIT (A), assessee is in appeal before the Tribunal by raising the aforementioned grounds.

16. During the proceedings before us, Ld Counsel for the assessee reiterated the submissions made before the lower authorities.

17. On the other hand, Ld DR relied on the orders of the Revenue Authorities.

18. We have heard both the parties and perused the orders of the Revenue Authorities as well as the decision of the Tribunal in the first round of the proceedings dated 29.8.2012 (supra), as well as the relevant material placed before us. On perusal of the said order of the Tribunal (supra), wherein it is clearly mentioned that the AO is only required to follow the directions of the ITAT for computation of the amount of additions and the respective assessments were not set aside. Therefore, in this regard we agree with the view taken by the CIT (A) while upholding the penalty orders passed by the AO u/s 271(1)(c) of the Act in respect of all the assessment years under consideration. Accordingly, the decision taken by CIT (A) vide paras 5.6 and 5.7 of his order is fair and reasonable. However, as contended by the Ld Counsel for the assessee the penalty levied by the AO @ 200% of the tax to be evaded by reason of concealment of income is on higher side and therefore, considering the factual matrix of the present case, we direct the AO to **restrict the penalty to 100%** of the tax to be evaded instead of 200% levied by

him, which in our considered opinion would meet the ends of justice. Accordingly, grounds raised by the assessee are **partly allowed**.

19. In the result, all the appeals filed by the assessee are **partly allowed**.

20. Conclusively, five **quantum appeals** of the assessee are **dismissed** and five appeals filed by the assessee **u/s 271(1)(c)** are **partly allowed**.

Order pronounced in the open court on 16th October, 2015.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 16.10.2015
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**