

आयकर अपीलीय अधिकरण, न्यायपीठ –“A(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए.टी. वर्की, न्यायिक सदस्य)
 [Before Shri A. T. Varkey, JM]

ITA No.2062/Kol/2019
Assessment Year: 2016-17

Smt. LaxmiYadav (PAN: ABMPY0553D)	Vs.	Income-tax Officer, Wd-23(4), Kolkata
Appellant		Respondent
Date of Hearing	02.07.2020	
Date of Pronouncement	08 .07.2020	
For the Appellant	Shri Miraj D. Shah, Id.AR	
For the Respondent	Shri Supriyo Pal, Addl. CIT, Id. Sr. DR	

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-6, Kolkata dated 27-06-2019 for the assessment year 2016-17.

2. Though the assessee has raised as many as 11 grounds of appeal, has only pressed ground number 7& 8 wherein the assessee has raised the issue of addition of Rs.21,92,100/- made u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. The facts of the case as noted by the AO are that the assessee filed her return declaring total income of Rs.5,79,480/-. The case was taken up for scrutiny through CASS, which was later selected for complete scrutiny. According to AO, on perusal of the records (ITR 4) it reveals that the assessee had disclosed only one bank account i.e. ICICI Bank Ltd. in savings bank A/c. No. 100301503381. The AO noted that as per the AIR information transaction details reveals that the assessee had maintained another two bank accounts in Allahabad Bank, Rishra Branch, Hooghly where she had deposited Rs.10,16,600/- and in Axis Bank Ltd., Serampore Branch, Hooghly where she had deposited Rs.11,75,500/- during the relevant assessment year. According to AO, during the course of e-proceeding the assessee had filed the trading and P&L Account where she had disclosed net profit of Rs.6,25,670/- and had also filed computation of total income and she disclosed commission

earned of Rs.15,813.44 and interest earned from the savings bank account of Rs.127/-. According to AO, the assessee had not mentioned about these two bank accounts in Allahabad Bank and Axis Bank whereas she has deposited Rs.10,16,500/- and Rs.11,75,500 respectively totaling Rs. 21,92,000/-. According to AO, despite giving several opportunities assessee failed to explain the cash transaction in the undisclosed bank accounts and did not file any supporting evidence for cash deposit of Rs.21,92,000/-. Therefore, the AO made the addition of Rs.21,92,100/- as unexplained cash credit u/s. 68 of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the addition. Aggrieved, assessee is before this Tribunal.

4. The Ld. AR Shri Miraj D. Shah submitted that since the assessee is into the business of running a grocery shop and in these two bank accounts, the assessee used to deposit the sale consideration and used to withdraw the amounts for purchases and, therefore, these two bank accounts were used for the very same trading business and, therefore, the entire deposit should not have been added which action of AO is wrong and only the GP/NP or peak credit from the two bank accounts can be made and for that proposition he relied on the order of this Tribunal in the case of Ashok Kr. Paul Vs. ITO, ITA No. 647/Kol/2014 dated 02.09.2016 and Ghanshyam Agarwal Vs. ITO, ITA No. 112/Kol/2011 dated 30.12.2011 and contended that in the case of Ashok Kumar Paul the Tribunal relying on the order of the Hon'ble Calcutta High Court in the case of CIT Vs. M/s. Royal Security Guarding Pvt. Ltd. whereby the Hon'ble High Court upheld the action of the Tribunal in holding that only 10% of the undisclosed receipt which were deposited in the bank account of the assessee should be added as income. The Ld. AR drew my attention to the Tribunal's finding in the said case which is as under:

“10. Aggrieved by the order of CIT(A) the assessee has raised ground Nos. 2 and 3 before the Tribunal. At the time of hearing of the appeal the ld. Counsel for the assessee brought to our notice the decision of the Hon'ble Calcutta High Court in the case of CIT vs M/s. Royal Security Guarding (P) Ltd. On G.A.No.3488 of 2013 judgment dated 20.07.2014. In the aforesaid decision the question before the Hon'ble Calcutta High Court was the correctness of the order of Tribunal whereby the Tribunal held that only 10% of the undisclosed receipts which were deposited in the bank account of the assessee should be added as income. The Tribunal had given the following findings in its order :-

“We observe from page-7 of Id. C.I.T.(A)'s order that as per bank statement there were regular month-wise cash withdrawals totalling to Rs.22,82,716/- against deposit of amounts in the undisclosed bank account aggregating to Rs.22,89,910/- and, therefore, it can be said that the said withdrawals were utilized towards assessee's direct and indirect expenses in running of its security guard services, more so when the AO. could not bring on record anything contrary about utilization of such withdrawals. In our considered opinion, therefore, the AO. was not justified in adding back the entire receipts of Rs.23,28,601/- as unexplained investment u/s. 69A of the Act. We further observe that the entire deposit made in the undisclosed bank account was received by cheques from the clients and the expenditure claimed to have been incurred by the assessee for its business purposes has been described on page-8 of Id. C.I.T.(A)'s order. As rightly pointed out by Id. C.I.T.(A), if the action of AO. in treating the entire receipts in undisclosed bank account as income of the assessee is considered to be correct, the rate of net profit of the disclosed and undisclosed portion taken together would be more than 50% of the gross receipts, which is unlikely in the line of business the assessee is carrying on, more so when the AO. himself for AY. 2007-08 has taken the net profit of the assessee at 6%. Therefore, considering the totality of the facts and circumstances of the case, we find no infirmity in the order of Id. C.I.T.(A) in estimating the net profit @ 10% on the aggregate receipts of both the disclosed and undisclosed portion. We, therefore, uphold the same and direct the AO. accordingly. The ground of appeal of the department, therefore, fails.”

5. The Hon'ble Calcutta High Court in the appeal by the revenue against the order of the Tribunal, held as follows :-

“From the bank account of the assessee maintained with HDFC Bank, it appears that the opening credit balance as on 1st April, 2005 was Rs.60,854.88p. and the closing balance as on 30th March, 2006 was Rs..491.97p. It is possible that during the financial year 2005-06 an aggregate sum of Rs.48,15,614/- was deposited, but it is also a fact that during the aforesaid financial year from time to time various payments were made. There is no finding recorded anywhere that this expenditures were not on account of business expenditure. Therefore, the position which emerges is that the assessee has undisclosed income as well as undisclosed expenditure. Therefore, doing the best, which could be done in the facts and circumstances of the case, CIT (Appeal) held that 10% of the receipts are to be treated as the net profit of the assessee. The aforesaid view has been affirmed by the learned Tribunal. This was wholly an enquiry into the facts of the case. After going into the facts of the case, the aforesaid view was taken. Ms. Bhargava, appearing for the appellant has not drawn our attention to any infirmity in the view taken by them. We are, as such, of the opinion that this appeal is altogether unmeritorious. No question of law is involved in this appeal. The appeal is, therefore, dismissed. We, therefore, need not answer to any questions proposed by the revenue.”

6. Thereafter, the Tribunal in the case of Ashoke Kumar paul held as under:

11. It was submitted by him that the disclosed gross profit from the assessee's contract business was 31.75% and only this gross profit rate should be applied to the undisclosed sales, as held by the Hon'ble Calcutta High Court. In this regard the Id. Counsel for the assessee pointed out that the undisclosed receipts were from the assessee's business of executing the contract job work has not been disputed by the

revenue authorities and in such circumstances the entire turn over cannot be added as income and only the gross profit should be added as income.

12. The ld. DR pointed out that the Hon'ble Calcutta High Court in its decision has specifically observed that various payments were made from the deposits in the bank account. Such facts are not present in the case of the assessee and therefore the decision of the Hon'ble Calcutta High Court should not be deleted.

13. I have given a very careful consideration to the rival submissions. The plea put forth by the ld. Counsel for the assessee has to be accepted. As rightly contended by the ld. Counsel for the assessee the entire contract receipts cannot be added as income. The assessee derives income from executing the contract job work and in doing so is bound to incur expenses. It is not the case of the revenue that all expenses including the expenses relatable to the undisclosed receipts from execution of contract job work has already been taken into consideration while arriving at the total income of the assessee declared in the return of income by the assessee. In such circumstances I am of the view that the belief of taxing 31.75% which is the disclosed gross profit of the assessee on the undisclosed contract receipts is just and fair and the plea of the Assessee in this regard is directed to be accepted. Ground nos. 2, 3 and 5 of the assessee are partly allowed."

7. As well as the Ld. AR drew my attention to the Tribunal's order in Ghanshyam Agarwal (supra) wherein the Tribunal has directed the AO to restrict the addition to the extent of the peak credit and the observation of the Tribunal is as under:

"Both the revenue authorities below have added the entire proceeds on the ground that the assessee failed to establish its business activity. However, no other unexplained investments had been found and, therefore, normal presumption would be that the withdrawals from the Bank account were utilized for making various payment and deposits were from sale proceeds since Assessing Officer has not brought on record any other purpose for utilization of withdrawals. The assessee has filed a statement of peak credit contained at pages 5-7 of the paper book and the amount shown dated 02.10.2005 in the statement of Rs.3,07,727.17 has not been examined by the Assessing Officer. We, therefore, restore the matter to the file of Assessing officer for examining the peak credit statement and if the same is found to be correct, then to restrict the addition to the extent of peak credit."

8. Therefore, according to Ld. AR, action of the Ld. CIT(A)/AO was erroneous since they have made the entire addition of the deposits in the bank accounts without the AO bringing any materials to suggest that the amount withdrawn from the bank accounts were utilized elsewhere other than the business of grocery and so according to Ld. AR either peak credit or G.P/N.P % of the deposit can be taxed. Per Contra, the Ld. DR vehemently supported the action of AO & Ld. CIT(A). According to him, the assessee failed to prove that she was only engaged in the business of grocery and therefore, the Ld. CIT(A) confirmed the action of AO and so, I should not interfere with the order of the Ld. CIT(A).

9. Heard both the parties and have carefully gone through the records and case laws. Before me the Id. AR has submitted a table, which will give bird's eye view about the facts pertaining to the deposit in the undisclosed bank accounts as well as turnover from grocery business etc. The table is reproduced hereunder:

SN	DESCRIPTION	AY 2016-17
1	Turnover	13,451,378
2	Gross Profit %	8.81%
3	Net Profit %	4.65%
4	Opening Stock	4,88,320
5.	Closing Stock	1,027,580
6	Average stock	5,13,793
7.	Rotation Times (1/6)	26.18
8.	Allahabad Bank (50174758203) (31/03/2015)	9,599
9	Allahabad Bank (50174758203) (31/03/2016)	5,740
10.	Allahabad Bank (50174758203) Peak Credit	1,76,281
11.	Axis Bank (443010100043500) 31/03/2015)	3,264
12	Axis Bank (443010100043500) 31/03/2016)	1,154
13	Axis Bank (443010100043500) Peak	2,06,690
14	Combined Peak of both Accounts	2,06,690
15	Total Deposits in both Accounts	2,192,100
16	GP% applied to Total Deposits (15*2)	1,93,124
17	Undisclosed Turnover Stock Rotation (15/7)	83,730.13
18	GP% applied to Total Deposits (15*2)	193,124
19	Seed Capital Undisclosed Turnover Stock Rotation (15/7)	83,730
20	Total (18+9)	276,854
21	Combined Peak of both Accounts	206,690

10. From perusal of the above data, it can be discerned that the assessee had two undisclosed bank accounts i.e i) Allahabad Bank A/c (5017758203) opening balance as on 31-03-2015 is of Rs. 9,599/- and closing balance as on 31-03-2016 is Rs. 5,740/- and (ii) Axis Bank A/c (443010004350) opening balance as on 31-03-2015 is of Rs. 3,264/- and closing balance as on 31-03-2016 is Rs.1,154/- . There has been regular deposits and withdrawal of the amounts in both bank accounts. The peak credit in the Allahabad Bank is Rs. 1,76,281/- and Axis Bank is Rs. 2,06,690/-. According to the Id.AR, the cash flow statement would indicate that the assessee had withdrawn money from one bank and has at

times deposited in other bank (Axis Bank) and vice-versa. Therefore, there are cross-deposits and withdrawals. And since the withdrawal from the banks have not been found to have been spent for any other purpose or has been invested in any immovable/movable property and having regard to the cash flow statement of both the undisclosed bank, I am of the considered opinion that combined peak credit of both bank accounts need to be taken to work out the element of undisclosed investments made by the assessee for the undisclosed transactions. From the opening balances in both the banks, it is understood that this is not the initial year, wherein, the assessee has made the undisclosed transaction. However, since, this is the assessment year in which the fact of undisclosed bank accounts were discovered, the undisclosed investment needs to be taxed separately. Therefore, the combined peak credit in respect of both the banks need to be taken to find out the undisclosed investments made by the assessee for the undisclosed transaction in both banks which is Rs. 2,06,690/-, which needs to be added in the hands of the assessee. Since the AO failed to bring on record any material to show that the assessee was doing any other business other than the grocery business, the inference that can be drawn is that the assessee was doing undisclosed transaction in respect of grocery from grey market without any bills etc.. Therefore, I am of the opinion that assessee was engaged in the business of grocery through these undisclosed bank accounts. Next, coming to the trade profit, which the assessee could have made from the undisclosed transaction, I note that the assessee had disclosed Gross Profit of 8.81% and Net Profit of 4.65% of the turnover from the regular grocery business. Therefore, trade profit of the regular business i.e. G.P rate of 8.81% would be justified. In the light of the aforesaid discussion, the entire addition made by AO/Ld. CIT(A) of the total amount deposited in the two undisclosed bank accounts to the tune of Rs.21,92,100/- is erroneous. Therefore, in the light of the discussions, I direct the AO to restrict the addition to two items (i) combined peak credit of two bank accounts, which would take care of the undisclosed investment of the assessee, which is Rs. 2,06,690/- and (ii) trading profit from the undisclosed transaction needs to be added in the hands of the assessee. For that, I direct the AO to apply/adopt the GP rate @ 8.81% of the total deposits of Rs. 21,92,100/-, which comes to Rs. 1,93,124/-. Therefore, I sustain the amount of Rs.2,06,690/- towards combined peak credit for investment made by the assessee and GP rate of 8.81% of total deposits at

Rs. 1,93,124/-, which comes to Rs.3,99,814/-and balance of addition of (Rs. 21,92,100 – Rs. 3,99,814)= Rs.17,92,286/- is directed to be deleted.

11. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 08 July, 2020.

Sd/-
(Aby. T. Varkey)
JudicialMember

Dated : 08 July, 2020

PP.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Smt. Laxmi Yadav, 1/10, Bama Charan Mukherjee Lane, Rishra, Hooghly, Pin-712248.
2. Respondent – ITO, Ward-23(4), Kolkata.
3. CIT(A)-6, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar