

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]

[Through Virtual Court]

I.T.A. No. 331/Kol/2020
Assessment Year: 2011-12

Baidya Nath Dey.....**Appellant**
50, Ukhra Station Road, Ukhra,
West Burdwan - 713363.
[PAN: AHPPD 0247 E]

Vs

ITO, Ward 1(3), Durgapur.....**Respondent**
Aayakar Bhawan, Aayakar Bithi, City Centre,
Durgapur - 713216.

Appearances by:

Shri Suvo Chakraborty, Advocate appearing on behalf of the Assessee.
Smt. Ranu Biswas, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : July 21, 2020

Date of pronouncing the order : July 24, 2020

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - Durgapur dated 31.01.2020 and the solitary issue involved therein relates to the addition of Rs. 15,13,000/- made by the AO and confirmed by the Ld. CIT(A) on account of cash deposits found to be made by the assessee in his bank accounts by treating the same as unexplained.

2. The assessee in the present case is an individual who is employed with Eastern Coalfields Ltd. No return of income for the year under consideration was filed by him either within the time specified u/s 139(1) of the Income Tax Act, 1961 or section 139(4) of the Income Tax Act, 1961. On the basis of information received by him regarding the cash deposits of Rs. 13,81,000/- found to be made by the assessee in his savings bank account with Allhabad Bank, Ukhra

Branch during the year under consideration, a notice u/s 148 was issued by the AO to the assessee on 29.03.2018. No return in response to the said notice was initially filed by the assessee. The AO issued letters u/s 133(6) of the Act to M/s. Eastern Coalfields Ltd., the concerned banks where the assessee had maintained his accounts during the year under consideration and also to the assessee on 04.10.2018. Thereafter, the assessee filed his return of income for the year under consideration on 09.10.2018 declaring total income of Rs. 3,38,630/- which comprised of income from salary and income from other sources. The information received by the AO from the concerned banks revealed that the assessee had deposited cash aggregating to Rs. 1,32,000/- and Rs. 13,81,000/- during the year under consideration in his bank accounts maintained with State Bank of India, Khandra Branch and Allhabad Bank, Ukhra Branch respectively. When the assessee was called upon by the AO to explain the source of the said deposits, it was submitted by the assessee inter alia that all the deposits were from his past savings from salary income and the same were circuitous in nature being transfers from one bank account to another. It was also submitted that the assessee being a salaried employee of Eastern Coalfields Ltd., his only source of income was salary and there was no question of any undisclosed source of income. This explanation of the assessee was not found acceptable by the AO. According to him, there was no cogent and tangible explanation offered by the assessee as to why he had withdrawn cash from one of his bank accounts and deposited the same in another. The AO was also of the view that no person would make cash withdrawal from his bank account merely for the sake of accumulation and not for utilisation. He, therefore, held that the

explanation offered by the assessee was neither valid nor logical and treating the cash deposits aggregating to Rs. 15,13,000/- found to be made in the bank accounts of the assessee as unexplained, addition to that extent was made by him to the total income of the assessee in the assessment completed u/s 143(3)/147 of the Act vide an order dated 14.12.2018.

3. Against the order passed by the AO u/s 143(3)/147 of the Act, an appeal was preferred by the assessee before the Ld. CIT(A) and the explanation offered before the AO was reiterated on behalf of the assessee before the Ld. CIT(A) in support of his case that the addition made by the AO by treating the cash deposits found to be made in the bank accounts of the assessee by treating the same as unexplained was not sustainable. An alternative contention was also raised on behalf of the assessee before the Ld. CIT(A) to the effect that the transactions reflected in both the accounts of the assessee being circuitous in nature, addition made by the AO should to be restricted to the peak credits appearing in the relevant two accounts of the assessee.

4. The submissions made on behalf of the assessee did not find favour with the Ld. CIT(A) who proceeded to confirm the addition of Rs. 15,81,000/- made by the AO on the issue under consideration for the following reasons given in paragraph 7 to 8.4 of his impugned order:

"7. I have carefully considered the facts of the case and the arguments raised by the Id. AR. First of all, I must state that the Id. AR's argument that the Id. AO has accepted that the transactions in the two accounts are

circuitous, is factually incorrect. On the said page number 3 which the Id. AR has referred to, the Id. AO has simply quoted the appellant and the referred sentence has been written in italics. The sentences prior to and after the sentence in italics are a clear indication that the Id. AO has rejected the appellant's claims of the transactions being circuitous. As such, this argument put forth by the Id. AR is rejected.

8. Coming to the question whether indeed the deposits and withdrawals are circuitous, meaning thereby that an amount withdrawn from one account gets deposited in another, one may have to refer to the impugned bank accounts. The appellant has three bank accounts. Two of his bank accounts, one at SBI and the other at Allahabad Bank have already been highlighted above. The third account is with PNB in which his salary is credited. The Id. AO has not taken the said bank account for calculating the undisclosed income as the said bank account is disclosed and the sources of deposits in the same are also disclosed. Therefore, the entries and transactions recorded in PNB are not taken into consideration.

8.1 The transactions recorded in the appellant's accounts with SBI and Allahabad Bank have been examined. It is observed that there is no inter relation between the withdrawal from one bank account and deposit in the other. The amounts and the dates of withdrawal from one bank account is very different from the deposits made in the other account. Further, there is no evidence whatsoever in the possession of the appellant to show that cash withdrawn from one account was actually deposited in the other account. In order to make a successful claim one needs to furnish adequate evidences. In the present instance, the onus of furnishing evidence rests undischarged with the appellant.

8.2 To cite a few examples, it may be stated that the cash deposited in the bank account with SBI are transferred out to certain fixed destinations such as 'LSC,¹Transfer by cheques', Transfer by 'Sweep Trf. Dr.' etc. The amounts transferred out of this bank account do not reach the bank account held with the Allahabad Bank. In fact, none of the amounts withdrawn from this account have reached the appellant's account with the Allahabad Bank. If the amounts transferred out through cheques were deposited in Allahabad Bank, a credit to that extent would be visible within a reasonable period of time in that account, but this is not the case. Clearly, the deposits and withdrawals in the account held with the SBI have no relation with the account with the Allahabad Bank. Moreover, there is no apparent instance of any intra-bank withdrawal and deposit.

8.3 Similarly, in the account held with the Allahabad Bank, I find that deposits are primarily in cash or have (presumably) come from FDs. These deposits have certainly not come from the appellant's account with the SBI. The remittances also are towards repayment of loans and towards FDs. I find that there is no inter-bank transfer or deposits in this account as well. The remittances are to specified accounts or destinations and they have never reached the appellant's account with the SBI. In fact, there is no apparent instance of any intra-bank withdrawal and deposit.

8.4 in view of the above facts, I am of the view that this is not a case which merits determination of the peak of credits. The cases relied upon by the appellant are factually different from the present case in as much as in those cases there were instances of multiple withdrawal and redeposits and of inter-bank transfers but in the present case, such instances are missing. Hence, those judgments are not applicable to the facts of this case. Peak Credits are required to be determined only in those situations where there are multiple withdrawals and redeposits and also of intra-account and inter-account transactions as a result of which it becomes difficult to exactly ascertain the amount that has been deposited by the assessee. However, in the present case, cash is deposited and it is transferred out to some specified accounts such as 'LSC' or towards repayment of loans, or towards FDs. It is not a case of inter-bank or even intra-bank transactions. With these findings, it is held that this case does not call for determination of peak credits."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. The learned counsel for the assessee reiterated before me the submissions made on behalf of the assessee before the authorities below in support of the assessee's case on the issue under consideration. He invited my attention to the copies of both the bank accounts of the assessee as placed at page no. 6 to 10 and 12 to 17 of his Paper Book to show that there were several cash withdrawals made by the assessee from the said bank accounts during the year under consideration. He submitted that these cash withdrawals made

by the assessee along with the cash withdrawals made from his salary account maintained separately were available with the assessee for making deposits in the relevant two bank accounts, but this factual position was completely ignored by the Assessing Officer as well as by the Ld. CIT(A). He has contended that keeping in view all these cash withdrawals and deposits reflected in the relevant bank accounts, the addition should have been restricted by the authorities below to the extent of peak credits appearing in the said bank accounts and there was no justification in adding the entire amount of cash deposits found to be made in the bank accounts of the assessee thereby ignoring completely the cash withdrawals made from time to time which were available to the assessee to explain the source of corresponding cash deposits.

6. The Ld. DR, on the other hand, strongly relied on the orders of the authorities below in support of the revenue's case on the issue under consideration. She submitted that the similar claim as now being made on behalf of the assessee before the Tribunal was also made before the Ld. CIT(A) to restrict the addition to the extent of peak credits appearing in the relevant bank accounts. She contended that the same however was rejected by the Ld. CIT(A) by giving specific reasons. She invited my attention to the relevant portion of the impugned order of the Ld. CIT(A) to show that the claim of the assessee of circuitous transactions reflected in the relevant bank accounts was found to be factually incorrect by the Ld. CIT(A) and keeping in view the nature of transactions reflected in the said bank accounts, the contention of the assessee based on peak credits was rejected by the Ld. CIT(A).

7. I have considered the rival submissions and also perused the relevant material available on record. It is observed that in addition to the two bank accounts in question maintained with State Bank of India and Allhabad Bank, the assessee had also maintained a bank account with Pubjab National Bank wherein his salary income was credited. A perusal of all these three bank accounts placed in the Paper Book of the assessee shows that cash withdrawals of Rs. 5,05,000/-, Rs. 2,55,000/- and Rs. 3,15,000/- were made by the assessee during the year under consideration from the bank accounts maintained with Allhabad Bank, State Bank of India and Punjab National Bank respectively. At the same time, there were other transactions involving debits and credits to these three bank accounts of the assessee including the impugned cash deposits of Rs. 15,13,000/-. As far as the transactions involving debits and credits arising from bank transfers are concerned, neither the AO nor the Ld. CIT(A) has raised any dispute about the same. They have treated only the cash deposits aggregating to Rs. 15,13,000/- reflected in the bank accounts of the assessee as unexplained on the ground that the assessee failed to explain the source of the same. As rightly contended on behalf of the assessee before the authorities below as well as before the Tribunal, there were cash withdrawals made by the assessee from his bank accounts during the year under consideration aggregating to Rs. 10,75,000/- and since there was nothing to show that the said cash withdrawals were utilised by the assessee somewhere else, the same, in my opinion, can be treated as available to the assessee except to the extent that some of the said withdrawals were required to be used by the assessee for his personal and

households expenses. In this regard, it is noted that some of the payments made by the assessee by cheques as reflected in his bank accounts were towards the personal and households expenses and if the same are taken into consideration along with the other facts of the case including the quantum of salary income of the assessee, I consider it fair and proper to treat the cash withdrawals made by the assessee from his bank accounts as utilised for personal and households expenses to the extent of Rs. 3,00,000/- i.e. Rs. 25,000/- p.m. It thus follows that the cash withdrawals made by the assessee during the year under consideration from his bank accounts to the extent of Rs. 7,75,000/- can reasonably be treated as available with the assessee to explain the cash deposits made by him in the bank accounts during the year under consideration. I, therefore, sustain the addition of Rs. 15,13,000/- made by the AO and confirmed by the Ld. CIT(A) on account of unexplained cash deposits found to be made by the assessee in his bank accounts to the extent of Rs. 7,38,000/- and allow partly the assessee's appeal.

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

Order Pronounced in the Open Court on 24th July, 2020.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 24/07/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. Baidya Nath Dey, 50, Ukhra Station Road, P.O.: Ukhra, West Burdwan – 713363.
2. ITO, Ward – 1(3), Durgapur.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata