

आयकर अपीलिय अधीकरण, न्यायपीठ – “सी ”, कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “C”, KOLKATA

[(समक्ष) श्री एन.एस.सैनी, लेखा सदस्य, एवं श्री महावीर सिंह, न्यायीक सदस्य]
[Before Hon’ble Sri N.S.Saini AM & Hon’ble Sri Mahavir Singh, JM]

आयकर अपील संख्या /ITA No.263/Kol/2012

निर्धारण वर्ष/Assessment Year : 2008-09

(अपीलार्थी/APPELLANT)	-वनाम-	(प्रत्यर्थी/RESPONDENT)
I.T.O., Ward-51(4) Kolkata	-versus-	Deb Kumar Jana Kolkata (PAN:AHCPJ 5974 D)

अपीलार्थी की ओर से/ For the Appellant:

Shri Amitabha Roy,
Sr.DR

प्रत्यर्थी की ओर से/For the Respondent:

Shri Subash Agarwal,
Advocate

सुनवाई की तारीख/Date of Hearing : 12.06.2013

घोषणा की तारीख/Date of Pronouncement : 18.06.2013.

आदेश/ORDER

Per Shri N.S.Saini, AM

This is an appeal filed by the Revenue against the order of Id. CIT(A)-XXXII, Kolkata dated 28.09.2011.

2. The sole issue involved in this appeal is that the Id. CIT(A) erred in deleting the addition of Rs.24,44,772/- made by the AO on account of unexplained money.

3. The brief facts of the case are that the AO found that the assessee during the year under consideration had deposited cash of Rs.29,26,000/ in the bank account maintained with Standard Chartered Bank, Howrah. On examination of the bank statement he found that the assessee had deposited cash totaling to Rs.29,26,000/- during the period 01.04.2007 to 31.03.2008. On a show cause notice from the AO the assessee filed an explanation on 21.12.2010 which reads follows :-

“The amount was withdrawn from bank for purchase of goods & for business expenses. If the withdrawal was not fully used then the same was deposited again with the bank.”

The AO rejected the explanation of the assessee holding that the withdrawal from the bank account did not tally with the deposit and purchases made by the assessee and made addition of the entire deposit of rs.29,26,000/- to the income of the assessee as unexplained investment u/s 69 of the Act.

3.1. The assessee filed appeal before the Id. CIT(A) and reiterated the submissions made before the AO. In the alternative it was also submitted that the addition of entire cash deposits by the AO was against the principles laid by the courts and the Tribunal. It was submitted that if the entries in the bank account are not properly explained to the satisfaction of the revenue authorities the AO can, at the most, make addition of the peak amount only. The assessee placed reliance on the following decisions :-

- i) ITO vs Md Asraf Ali, ITA NO.169/K/2009 the C Bench of ITAT Kolkata dated 02/07/2010
- ii) Tanmoy Chatterjee Vs ITO, ITA No.1434/K/2009 the A Bench of ITAT Kolkata dated 30/07/2010
- iii) Asit Baran Uttasane Vs ITO, ITA No.1327/K/2008 the C Bench of ITAT Kolkata dated 30/04/2010
- iv) Uday Shankar Mahawar Vs ITO, ITA No.1903/K/2008 the C Bench of ITAT Kolkata dated 16/06/2010
- v) Bijan Saha Vs ITO, ITA No.1319/K/2010 the A Bench of ITAT Kolkata dated 18/08/2011

3.2. After considering the submissions of the assessee the Id.CIT(A) observed that on going through the assessment order passed by the AO and material on record he was of the opinion that the assessee has failed to substantiate the deposits in the undisclosed bank account. Therefore, the AO was justified in treating the deposits in the bank account as unexplained. However, he also observed that there was enough merit in the contention of the assessee that the entire deposits cannot be added back. He relied on the decision of the Kolkata Bench of the Tribunal in the case of ITO vs Md.Asraf Ali (supra) wherein it was held as under :-

“We have carefully considered the rival submissions of the learned Representatives of the parties and perused the impugned orders of the authorities below. The said amount aggregating to Rs.26,57,618/- deposited in the Standard Chartered Bank, Salt Lake Branch, Kolkata was admittedly not disclosed in the books of account. The assessee has also admittedly failed to disclose the source of the deposits. Therefore, we are of the considered view that the learned CIT(A) is not justified in treating the entire deposits in the said Bank account as trading receipts in absence of any corroborative materials

furnished by the assessee. In such view of the matter, we find substance in the contention of the learned DR that net profit of 5% of the said cash deposits and cheques deposits could not be considered for estimating the undisclosed income of the assessee. However, we find that the facts undisputed are that there were deposits as well as withdrawals from time to time from the said Bank account. Therefore, we are of the considered view that the peak of the amount deposited in the said undisclosed bank account in the Financial year relevant to the Assessment Year under consideration should be considered as undisclosed income of the assessee. Accordingly, we modify the impugned orders of the authorities below and direct the Assessing Officer to assess the undisclosed income of the assessee by considering the peak amount of deposit in the said undisclosed Bank account. We order accordingly.”

3.3. The Id.CIT(A) further observed that in the case of Tanmoy Chatterjee vs ITO(supra) there were huge amounts deposited and/or withdrawn from the bank account. The AO considering the total withdrawals from the bank account as expenditure and treated the same as unexplained expenditure u/s 69C of the Act. The Tribunal observed that the bank account was undisclosed and the entries in the said bank account were not entered in the books of accounts of the assessee and the Tribunal also considered the fact that assessee has made cash deposits as well as cash withdrawals from time to time from the bank account. The assessee had also not been able to explain the source of deposits in the bank account. The Tribunal thereafter was of the view that only the peak of the balance in the bank account should be considered as unexplained investment u/s 69 of the IT Act. Therefore the Id. CIT(A) following the above orders of the Tribunal directed the AO to restrict the addition to the peak balance of Rs.4,81,228/- and delete the balance addition of Rs.24,44,772/-.

3.4. Being aggrieved by the said order of the Id. CIT(A) the Revenue is in appeal before us.

4. The Id. DR for the Revenue simply relied on the order of the AO. On the other hand the Id. AR of the assessee supported the order of the Id. CIT(A).

5. We have considered the rival submissions, perused the orders of the lower authorities and materials available on record. The undisputed facts of the case are that during the course of assessment proceedings the AO found that the assessee has deposited Rs.29,26,000/- in Standard Chartered Bank, Howrah Branch during the year under consideration which was an undisclosed bank account of the assessee. The AO therefore made addition of the entire deposits of Rs.29,26,000/- to the income of the assessee u/s 69 of the Act. On appeal the Id. CIT(A) following the orders of the

Kolkata Bench of the Tribunal held that the entire deposits in the bank account cannot be treated as unexplained investment of the assessee. He held that the only peak balance can be treated as unexplained investment of the assessee. Accordingly he directed the AO to restrict the addition to the peak balance of Rs.4,81,228/- and deleted the balance amount of addition of Rs.24,44,772/-. The Id.DR before us has relied on the order of the AO. He could not point out any specific error in the order of the Id. CIT(A). He also could not bring any material to show that the peak balance determined by the Id. CIT(A) of Rs.4,81,228/- was not correct. In absence of any such material being brought on record we find no good and justifiable reason to interfere with the order of the Id. CIT(A) which is confirmed and the grounds of appeal of the revenue are dismissed.

6. In the result the appeal of the Revenue is dismissed.

Order pronounced in the open court on 18.06.2013.

Sd/-

[श्री.महावीर सिंह, न्यायीक सदस्य]
[Mahavir Singh]
Judicial Member

Sd/-

[श्री एन.एस.सैनी, लेखा सदस्य]
[N.S.Saini]
Accountant Member

(तारीख)Date: 18.06.2013.

R.G.(.P.S.)

आदेश की प्रतिलिपि अग्रेषित:-

Copy of the order forwarded to:

1. Deb Kumar Jana, 42, Netaji Colony (High Land), Tobin Road, Baranagar, Kolkata-700101
- 2 I.T.O., Ward-51(4), Kolkata
3. CIT Kolkata
4. CIT (A)-XXXII, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

