

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.293/Kol/2013
Assessment Year:2008-09

Sri Biswajit Saha C-12, Purbachal Co- operative Society, Baguihati, Kolkta-700 059 [PAN No.ATQPS 0847 J]	<u>बनाम</u> / V/s.	ITO Ward-49(4), Maniktala Civic Center, Uttarapan Complex, 2 nd Floor, Kolkata-54
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Rajat Kr. Kureel, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	22-06-2016
घोषणा की तारीख/Date of Pronouncement	24-08-2016

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-XXXII, Kolkata dated 03.12.2012. Assessment was framed by ITO Ward-49(4), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 30.12.2010 for assessment year 2008-09. In this appeal various grounds have been raised out of which ground No.1 and 10 are of general nature and do not require separate adjudications. The other grounds raised are as under:-

"2. For that the closing balance with Bank of India Rs.102,699/- has been fully explained in Written Submission, as it consist of opening balance Rs.90,127/-

and deposit in cash Rs.20,000/- out of withdrawal from disclosed bank account with UBI, as such the Ld. CIT(A) was wrong in upholding he said addition.

3. For that on the facts of the case, the ld. CIT(A) has failed to consider the Written Submission explaining deposits with AXIS Bank tallied with UBI account and opening balance required consideration Rs.253,287/- as such the finding in appellate order confirming the addition of Rs.2,76,150/- is wrong, arbitrary, and illegal.

4. For that on the facts of the 275000/-case, the source of investment in F.D's with AXIS Bank Rs.27,500/- were deposits out of withdrawal from same bank, as such the Ld. CIT(A)'s action in confirming the said addition is erroneous, perverse and illegal.

5. For that on the facts of the case, the additions, Rs.276,150/- and Rs.275,000/- have wrongly been upheld by the Ld. CIT, although the source of deposits are explained, therefore, his finding is arbitrary, unwarranted, and illegal.

6. For that on the facts of the case, the evidence produced, the Ld. CIT(A) should not confirm the disallowance u/s. 40A(3) Rs.19,62,575/-, although the appellant claimed immunity under Rule 6DD(k) the I.T Rule, 1962 and all the relevant evidences were produced to justify the claim.

7. For that on the facts of the case, payee is raising Service Tax on bills, therefore, services were rendered services agent M/s Active Advertising & Marketing who in turn, making cash payment exceeding Rs.20,000/- to Newspapers and supporting evidences were submitted in appeal.

8. For that proviso to sec. 40A(3) although find place in Written Submission but ignored in appellate order, so the Ld. CIT(A)'s finding in confirming the disallowance in appeal is totally unjustified and illegal.

9. For that the interest charges mechanically u/s. 234A & 234B Rs.25,557/- and R.281,127/- is wrong and illegal.

Shri Saumitra Choudhury, Ld. Authorized Representative appeared on behalf of assessee and Shri Rajat Kumar Kureel, Ld. Departmental Representative appeared on behalf of Revenue.

2. The facts in brief as have been brought on record are that the assessee is an individual engaged in the business of advertising agency. The return of income was

filed declaring income from “business and interest” for Rs.1,35,762/-. Thereafter the case was selected for scrutiny assessment through CASS module and assessment was framed u/s 143(1) of the Act at Rs. 27,81,470/-.

3. The issues raised in ground no. 2 to 5 are interconnected so they are being clubbed together and disposed by passing consolidate order. The issues relate to the money deposited in the bank accounts which were not disclosed in the return of income. The assessee was maintaining its bank accounts as detailed under:-

<u>S.No.</u>	<u>Bank name</u>	<u>Bank Branch</u>	<u>Account No.</u>	<u>Remarks</u>
1.	Axis Bank	Lake Town	19010100024143	Not disclosed
2.	Bank of India	Mission Row	401410100021954	Not disclosed
3.	UBI	Kestopur	3249	Disclosed
4.	HDFC	Raghunahpur	5151000009168	Disclosed

There was debit balance of Rs.1,02,699/- in the Bank of India account as on 31.03.2008 and this account was not disclosed by the assessee in his return of income. Accordingly, the Assessing Officer proposed to add the same to the total income as from the undisclosed source. In rebuttal, the assessee submitted that all the transactions of this bank account are of personal nature and therefore it was not disclosed. However, the AO disregarded the plea of the assessee by treating the same as undisclosed income for Rs. 1,02,699/- and accordingly added to the total income of the assessee.

Similarly, the assessee made investment of Rs. 2.75 lakhs during the year in Term Deposit and Birla Sunlife from the AXIS Bank but the same was not disclosed. Accordingly, the AO treated the same as investment from undisclosed sources for Rs. 2.75 lakhs and accordingly added to the total income of the assessee.

Similarly, there was debit balance of Rs. 2,76,150/- in the bank account of AXIS Bank as on 31.03.2008 and this account was not disclosed by the assessee in his return of income. Accordingly, the AO proposed to add the same to the total income as from the undisclosed source. In rebuttal, assessee submitted that all the transactions of this

bank account are of personal nature and therefore it was not disclosed. However the AO disregarded the plea of the assessee by treating the same as undisclosed income for Rs. 2,76,150/- and accordingly added to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal to Id. CIT(A) who has upheld the order of the AO.

Being aggrieved by the order of the Id. CIT(A), the assessee came in second appeal before us.

5. The Id. AR before us filed a paper book comprising of pages from 1 to 71 and submitted that all the credit entries reflecting in the bank statement of the undisclosed bank accounts are coming from the disclosed bank account. Therefore there is no undisclosed income reflecting in the bank account. The Ld. AR in support of its claim has submitted the bank statement of all the undisclosed bank account which are placed on pages from 5 to 18 of the paper book.

On the other hand, Ld. DR submitted that it is difficult to ascertain whether the credit entries reflecting in the undisclosed bank account are income from undisclosed sources. These undisclosed bank accounts were found by the AO on the basis of Annual Information Report. The assessee has not disclosed the same to escape from the tax liability from the undisclosed sources. Ld. DR vehemently relied on the order of authorities below.

6. We have heard rival contentions and perused the materials available on record. From the foregoing discussion, we find that it is beyond doubt that the aforesaid bank statements were not disclosed at the time of filing of assessee's return. These bank statements were discovered by AO on the basis of AIR. The AO accordingly treated the opening balances and the credit entries reflecting in the bank statement as income / investment from the undisclosed sources. Now the question before us arises whether the credit entries reflecting in the bank statements represent the undisclosed income / investment. At the outset, we disagree with the view taken by the lower authorities

that the credit entries reflecting in the undisclosed bank statement are representing the income from undisclosed sources. It is because that it is the duty of the lower authorities to establish the exact nature and character of such receipts. The argument placed by Ld AR that these credit entries are reflecting from the disclosed bank account has not been considered by the lower authorities. Ld. AR before us has filed the reconciliation statement of all the entries reflecting in the disclosed and undisclosed bank account. We find that all the credit entries reflecting in the undisclosed bank account are coming from the disclosed bank account of assessee. In support of this, Ld. AR has filed bank statement along with reconciliation which are placed on record. Ld. DR has not brought any defect in the details filed by assessee. In view of above, we find no undisclosed income / investment has escaped assessment. Therefore, we reverse the order of Authorities Below. AO is directed accordingly. Hence, inter-connected ground of assessee is allowed.

7. Next inter-connected issue raised by the assessee in ground no. 6 to 8 in this appeal is that ld. CIT(A) erred in confirming the order of the AO by sustaining the disallowance of Rs. 19,62,575/- u/s 40A(3) read with rule 6DD(k) of Income tax Rules 1962.

8. The assessee during the year has made payment of Rs.19,62,575/- through cash to M/s Active Advertising and Marketing. Accordingly, AO invoked the provision of Sec.40A(3) of the Act and disallowed the same.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the action of AO.

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

10. Before us Ld. AR submitted that all the transactions are genuine and it was paid through disclosed bank account. The AO has not doubted the transaction as well

as the party to whom the payment was made. The payment was made to payee in cash as the party denied to receive the same in cheque. As such, assessee would not have been able to carry on the business without making the cash payment to the party concern. Ld. AR pleaded that expenditure should be allowed on account of business expediency.

On the other hand, Ld. DR submitted that payment made by assessee is against the provision of Sec. 40A(3) of the Act. The payment made by assessee also does not fall in any of the exception as specified under Rule 6DD(k) of the IT Rules. Ld. DR also vehemently relied on the order of authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the aforesaid discussion, we find that the genuineness of the transaction and identification of the parties have not been doubted by the lower authorities. In the identical case having aforesaid facts and circumstances the Hon'ble jurisdictional High Court in the case of *CIT vs. Crescent Export Syndicate* in ITA No. 202 of 2008 dated 30.07.2008 has granted relief to assessee. The relevant extracted is reproduced below:-

“Therefore, the genuineness of the purchase has been accepted by the ld. CIT (Appeal) which has also not been disputed by the department as it appears from the order so passed by the learned Tribunal. It further appears from the assessment order that neither the Assessing Officer nor the CIT ((Appeal) has disbelieved the genuineness of the transaction. Therefore was no dispute that the purchase were genuine.

Accordingly, in our opinion, the learned Tribunal has correctly come to the conclusion by deleting the addition of Rs.15,69,116/- under section 40A(3) of the Act. On the other ground as it appears that the CIT (Appeal) has been directed to reconsider the matter. In view of that we do not think that any substantial question of law is involved in this matter. Hence, the appeal being ITA No. 202 of 2008 is dismissed.”

Respectfully following the judgment of Hon'ble jurisdictional High Court in the case of *Crescent Export Syndicate* (supra) we reverse the order of authorities below and the ground raised by assessee is allowed. AO is directed accordingly.

12. Last issue raised by assessee in ground No.9 is that charges mechanically framed u/s. 234A/2324B which is consequential in nature and does not require any adjudication.

13. **In the result, assessee's appeal stands allowed.**

Order pronounced in open court on 24/08/2016

Sd/-

(S.S.Viswanethra Ravi)
Judicial Member

Sd/-

(Waseem Ahmed)
Accountant Member

*Dkp

दिनांक:- 24/08/2016 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Sri Biswajit Saha, C-12, Purbachal Co-Operative Society, Baguihati, Kolkata-700 059
2. प्रत्यर्थी/Respondent-ITO Ward-49(4), Maniktala Civic Center, Uttarapan Complex 2nd Floor, Kolkata-700 054
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता