

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK 'SMC' BENCH,  
CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No. 53/CTK/2016**  
Assessment Year : 2011-12

Samir Kumar Paikray, At: Sriram Nagar, Khurda,	Vs.	ITO, Khurda Ward, Khurda
PAN/GIR No. AHCPP 4275 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : S/Shri S.D.Nayak/K.K.Bal, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 03 /01/ 2017**  
**Date of Pronouncement : 03/01/ 2017**

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 9.11.2015, for the assessment year 2011-12 on the following grounds:

1. For that the order of the forum below is arbitrary and unjust in the facts and circumstances of the case hence liable to be quashed.
2. For that when there is no investment and the nature and source of deposit and withdrawals has been explained the addition on the ground of unexplained investment is arbitrary and liable to be quashed.

3. For that the Id CIT(A) rightly not disallowed the addition made by Id AO on the ground that the addition cannot be made as unexplained investment. This fact explains the assessment is non-application of mind and liable to be quashed.

4. For that the Id CIT(A) erred in enhancing the assessment on the ground of bogus expenditure without issuing show cause against such enhancement and without granting opportunity. Therefore, the enhancement is illegal and liable to be reduced."

2. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the assessee derives income from retail trading in petrol, diesel & lubricants. The assessee filed his return of income on 30.9.2011 showing total income of Rs.6,51,880/-. The Assessing Officer found from the AIR information that the assessee had made cash deposits of Rs.43,83,920/- on different dates in his SB Account No.046401503027 with ICICI Bank, Khurda during the year under consideration. The Assessing Officer asked the assessee to explain the sources of cash deposits in the bank account and after considering the explanation of the assessee and examining the relevant facts/details, concluded that the cash deposits are out of sale proceeds of the assessee. However, he observed that there were withdrawals on four dates amounting to Rs.10,00,719/-, the utilization of which could not be explained satisfactorily by the assessee. The assessee claimed that all the withdrawals were through RTGS and the transfers were by way of payment to Indian Oil Corporation (IOC). From the details furnished by the IOC, the Assessing Officer found that

the withdrawals were not reflected in the ledger account of IOC as payments received from the assessee. For this reason, he made an addition of Rs.10,00,719/- as unexplained investments.

3. On appeal, Id CIT(A) confirmed the action of the Assessing Officer.

4. Before me, Id A.R. of the assessee argued that the Assessing Officer made an addition of Rs.10,00,719/- as unexplained investments only because the destination/utilization of certain withdrawals from the SB account could not be satisfactorily explained and addition on account of unexplained investments can be made only when the source of such investment is not explained satisfactorily. In the case of the assessee, the source of the impugned withdrawals is the SB account with ICICI Bank itself and all the deposits in that account have been accepted as out of the disclosed sale proceeds by the Assessing officer. This being so, the addition cannot be made as unexplained investments.

5. On the other hand, Id D.R. supported the orders of lower authorities.

6. I find force in the arguments of Id A.R. of the assessee. As per the provisions of section 69 of the Income Tax Act, 1961, where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about

the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year. In the instant case, the Assessing Officer himself after verification and investigation was satisfied about the source of deposits in the SB Account No. 046401503027 of the assessee with ICICI Bank being out of the sale proceeds of the assessee. From these explained deposits, the assessee made payment to IOC, which was found to be not reflected in the ledger account of IOC. Therefore, the addition was made for Rs.10,00,719/- as unexplained investments by the Assessing Officer and confirmed in appeal by the Id CIT(A).

7. I find that the addition as made by the Assessing Officer cannot be sustained in law. The reason being that the source of deposit in SB Account No. 046401503027 of the assessee with ICICI Bank has been explained satisfactorily by the assessee to the Assessing Officer, which is accepted as the sale proceeds of the assessee. Thus, the deposits in the bank account of the assessee was duly explained by the assessee and accepted by the Assessing Officer. Thereafter, the payments made to IOC of Rs.10,00,719/- which was not found to be reflected in the ledger account of IOC, the addition was made in the hands of the assessee as unexplained investments. The utilization of the funds from the explained funds of the assessee in his SB Account No. 046401503027 with ICICI Bank cannot be treated as unexplained

deposits or investments of the assessee. The source is explained by the assessee and accepted by the Assessing Officer being the sale proceeds of the assessee. Therefore, I set aside the orders of lower authorities and deleted the disallowance of Rs.10,00,719/- and allow the grounds of appeal of the assessee.

8 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 03/01/2017 in the presence of parties.

Sd/-

(N.S Saini)

**ACCOUNTANT MEMBER**

Cuttack; Dated 03/01 /2017

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Samir Kumar Paikray, At:  
Sriram Nagar, Khurda,
  2. The Respondent. ITO, Khurda Ward, Khurda
  3. The CIT(A)-1, Bhubaneswar
  4. CIT, Bhubaneswar.
  5. DR, ITAT, Cuttack
  6. Guard file.
- //True Copy//

BY ORDER,

ASST.REGISTRAR,  
**ITAT, Cuttack**