

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 1481/Kol/2015
Assessment Year: 2010-11

Sri Login Das (PAN: AKPPD8730P) Vs. Income-tax Officer, Wd-3(4), Balurghat
(Appellant) (Respondent)

Date of hearing: 07.11.2016

Date of pronouncement: 25.11.2016

For the Appellant: Shri Soumitra Choudhury, Advocate

For the Respondent: Shri Debasish Banerjee, JCIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A), Jalpaiguri vide Appeal No. 301/Jal/CIT(A)/JAL/2013-14 dated 12.10.2015. Assessment was framed by ITO, Ward-1, Balurghat u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2010-11 vide his order dated 28.01.2014.

2. The assessee had raised the following grounds of appeal :-

“1. For that on the facts of the case, the order of the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.31,30,891/- on account of undisclosed investment in Bank u/s. 69 of the I. T. Act which is completely arbitrary unjustified and illegal and should be deleted.

3. For that on the facts of the case, the source of credit in ICICI Bank were out of regular bank account and received donation for rendering service to the ailing people and the peak credit arrived at Rs.28,09,391/- was explained as above, therefore, the finding of the Ld. C.I.T.(A) is based on presumption and conjecture and should be deleted.

4. For that on the facts of the case the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.3,21,500/-, @ 8% of total transaction of Rs.3,21,500/- therefore, estimated being taxed once again u/s. 44AD which is completely arbitrary unjustified and illegal.

5. For that on the facts of the case the Ld. CIT(A) was wrong in enhancing the assessment without giving reasonable and proper opportunity of hearing which is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case the Ld. CIT(A) was wrong in enhancing the assessment by adding Rs.40,18,760/- as undisclosed investment u/s.69 of the I.T. Act which is completely arbitrary unjustified and illegal and should be deleted.

7. For that on the facts of the case the Ld. CIT(A) was wrong in enhancing the assessment by adding Rs.15,999/- on account of bank interest which is completely arbitrary unjustified and illegal.

8. For that the interest u/s. 234A & 234B charged mechanically is wrong & illegal.”

3. The brief facts of this appeal are that the assessee is a petty contractor and also an elected member (pradhan) of Vatpara Gram Panchayat, Vill, Vatpara P.O, Balurghat District, Dakshin Dinajpur. The Id AO observed that the assessee was maintaining a bank account with ICICI Bank, Balurghat Branch, Balurghat, Dakshin Dinajpur vide SB Account No. 089601501526. Notice u/s 133(6) of the Act was issued on the said bank and bank had submitted the bank statement of the assessee before the Id AO. From the same, the Id AO observed the total deposits in the said bank account worked out to Rs. 40,18,760/-. The Id AO found that had this bank account been considered by the assessee, then his income would have increased by Rs. 3,21,500/- i.e at 8% of Rs. 40,18,760/- u/s 44AD of the Act. Apart from this, the Id AO observed that there was a bank interest credited in the said bank account to the tune of Rs. 15,999/- which was also to be brought to tax separately in the hands of the assessee. The Id AO show caused the assessee as to why the peak credit of Rs. 28,09,391/- should not be added to his total income in respect of the said bank account.

3.1. The assessee replied that he is a political person and a village representative of a recognized political party and as an elected village representative, he had to look after legion of voters who live below the poverty line. In that process, certain amounts were collected from the friends and relatives and known persons for rendering services to the ailing people. It was categorically stated that these amounts were not used by the assessee for his own business purposes or for his personal benefit and were banked in a separate bank account opened for this purpose. The assessee stated that these funds were never part of his regular business and hence the addition towards peak credit could not be made. The Id AO also noticed from the said bank account that payments were made to the tune of Rs. 1,09,260/- for purchase of pure gold from ICICI Bank . If the transactions in the said bank account belong to a political party, then where is the need to buy pure gold which would any way not be relevant for any political party. Besides, the Id AO observed from the said bank

statement, the names of three persons viz Rana Talukdar, Surajit Mallick and Amit Kumar Dutta , who had made withdrawals in cash from the said bank account. On examination on oath by the Id AO, those three persons had stated that the cash was withdrawn from the said bank account and handed over to the cashier of TMC party in reply to Question No. 5 and in reply to Question No.6, they responded that the cash was handed over to the assessee. Based on these observations, the Id AO observed that the assessee was not able to prove the source of cash deposits in the said bank account and accordingly brought the peak credit of the balance to tax as undisclosed income of the assessee.

4. Before the Id CITA , the assessee stated that the Id AO had not appreciated the submissions of the assessee that he had collected donations from several persons for rendering service to the ailing people and he had kept the money in ICICI Bank for safeguard and had never used the funds for his personal / business purposes. He filed the details of donations received before the Id CITA to substantiate the contention. The assessee also submitted copy of resolutions dated 10.11.2010 by the elected member of the Block Committee to the effect that the amount so collected be kept in the personal bank account of the assessee maintained in the ICICI Bank, Balurghat till the time of opening a bank account of Block Committee of its own exclusively for the purpose of safety and security. The assessee also produced the account of Balurghat Block Trinamool Congress for the period under appeal where all the details of donation and bank accounts were duly reflected. Accordingly, it was pleaded that there is no question of adding peak credits (Rs.28,09,391/-) on the monies belonging to a political party and profit thereon @ 8% of the total credits (Rs. 3,21,500/-) treating the same as business transactions of the assessee and by disbelieving the political status of the assessee together with the documents available on record in support thereof.

4.1. The Id CITA called for a remand report from the Id AO in respect of these evidences filed by the assessee. The Id AO furnished the remand report dated 15.7.2015 wherein he stated as under :-

"The A/R of the assessee has stated that funds which are lying in ICICI Bank, Balurghat actually belongs to "Balurghat Block Trinamool Congress" and in support of his claim he has produced the following documents In original which were produced before you first time at the time of appellate proceedings.

1. Resolutions dated 05/11/2010,10/11/2010,25/03/2012 & 15/05/2013.
2. Donation Receipts,
3. Accounts of Balurghat Block Trinamool Congress and
4. Statement of ICICI Bank Account.
5. Identity Card of Loin Das as The Pradhan of No.5, Bhatpara Gram Panchayat which issued by the District Magistrate, Dakshin Dinajpur.

It may be mentioned here that all the above documents were never produced at the time of assessment proceedings. But, however, all the documents and evidences were produced before you.

As regard cash withdrawal from time to time, the A/R of the assessee had produce the followings 3 persons on 14.07.2015 to record their statement.

1. Surajit Mallok, Saheb Kacharipara, Balurghat, Dakhin Dinajpur, I
2. Rana Talukdar, Congress para, Balurghat, Dakhin Dinajpur and
3. Arnit kumar Dutta, Saheb Kacharipara, Balurghat, Dakhin Dinajpur.

The statements of the aforesaid three persons have duly been recorded and the copies of which are enclosed herewith for favour of your kind perusal.

Furthermore, the assessee is a political person and a designated member of the party. The A/R. of the assessee has also produced before me the original donation receipts and the ledger account of the Baturghat Block Trinamool Congress for the period under consideration where all the deposits of donations have duly been reflected in the Bank statement. On query about the reasons for the cash deposits in Savings Bank account of the assessee on behalf of the Balurghat Block Trinamool Congress party, the A/R of the assessee produced the Resolution passed on 10.11.2010 by the elected members of the Block Committee in this matter.

As per the resolution, it is seen that the assessee who was also General Secretary of Trinamool Congress Committee, Balurghat Block had been self-authorized to deposits the funds of Balurghat Block Trinamool Congress in his Savings account bearing No.089601501526 maintained at ICICI Bank, Balurghat.

This is for your kind information.”

4.2. The Id CITA observed that the assessee had during the course of assessment proceedings had stated that he being an elected village representative collected small subscription from his friends, relatives and known persons for rendering services to the ailing people. In the second submission dated 12.3.2015, he stated that a resolution was passed by the elected members of the Block Committee on 10.11.2010 , in which it was decided that the amount so collected by assessee would be kept in his personal bank account with the ICICI Bank ‘ till the time of opening a bank account of Block Committee’. He questioned the veracity of the said resolution as to why the same was not produced by the assessee during the original assessment proceedings . He stated that the so called resolution

was passed stating that the donation would be kept in assessee's personal bank account until opening of a bank account by the Block Committee. He stated that how a resolution could be passed by the Block Committee anticipating future receipts of cash donations and even the same was passed then why a bank account was not opened in the name of Block Committee immediately after the date of passing the resolution. Accordingly, the Id CITA concluded that he does not find any iota of merit in the two submissions of the assessee discussed hereinabove.

4.2.1. Further he observed that the remand report sent by the Id AO suffers from many deficiencies. The Id CITA felt that the Id AO had not made any enquiries with regard to the cash deposits and to ascertain the facts of the case in proper perspective and had recorded the statement from three persons (party workers) in slipshod and perfunctory manner. Accordingly, he concluded that the remand report sent by the Id AO cannot be taken into cognizance. The Id CITA accordingly proceeded to treat the entire credits in the subject mentioned bank account as undisclosed income of the assessee as against the peak credit added by the Id AO thereon. For this purpose, he issued an enhancement notice to the assessee to this effect. The assessee replied before the Id CITA stating that the transactions in the said ICICI Bank account only belong to the TMC party and the donations collected in cash from 467 donors ranging from Rs. 2000 to Rs 9500 were pertaining to the said party only and the monies collected were only deposited in the bank account of the assessee as a custodian as a responsible office bearer of the political party. It was also objected that the transactions in the said bank account belongs only to the political party and hence even the interest income thereon purported to have been added cannot be considered in the assessee's hands. As regards collection of donations, it was submitted that at the time of collection of donations, no association, club or political party had insisted for their address or for their identity as per the prevailing practice. As regards the authenticated document from the Secretary /Chairman of All India Trinamool Congress that such donations were accounted for and also included in the income tax return filed by the party, the assessee replied that he cannot ask the Secretary / Chairman of the party directly regarding the same and stated that a copy of the letter of the Id CITA had been duly forwarded to the party through proper channel for assistance from their side. Since the reply from the party would take some

considerable time, the assessee pleaded for adjournment for a longer duration. The Id CITA however concluded that no proper replies were filed by the assessee and accordingly proceeded to enhance the addition towards cash deposits to Rs. 40,18,760/- in terms of section 69 of the Act. He further stated that since the entire cash deposits have been added, no further addition towards profit thereon @ 8% is required. Aggrieved, the assessee is in appeal before us.

5. The Id AR argued that the remand report has been obtained by the Id CITA from the Id AO. The Id AO had not given adverse remarks about the evidences submitted by the assessee. In the absence of adverse inferences drawn by the Id AO, the fact of the bank accounts belonging to TMC party is also proved beyond doubt and the Id AO was thoroughly convinced with the replies and evidences filed by the assessee in the remand proceedings. He further placed reliance on the questions 5, 6 & 7 in the sworn statements recorded from Mr Surajit Mallick, Mr Amit Kumar Dutta and Rana Talukdar who had stated that the cash was withdrawn and handed over either to the cashier of the TMC party or to the assessee for meeting day to day expenditure of the party. Admittedly these three persons were party workers which has not been disputed by the revenue and admittedly the day to day party expenditure is only for the benefit of the objects of the political party i.e serving the ailing people and not for the purpose of the business of the assessee. He argued that there is no scope for any enhancement of income in the hands of the assessee

6. In response to this, the Id DR argued that the Id AR had placed copy of resolutions dated 15.11.2010 and 31.3.2011 authorising assessee to spend the monies on behalf of the political party. These resolutions were not filed before the Id AO and the assessee had not mentioned about his authorization by the party to spend monies on behalf of the party. He argued that replies to Question Nos.5 & 6 given by those three party workers were contradictory in as much as in Question No. 5, they said that the cash was withdrawn and handed over to the cashier of the party and in Question No. 6, they replied that the cash was handed over to the assessee. He accordingly relied on the order of the Id CITA.

7. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee comprising of pages 1 to 72. We find from the evidences available on record including the resolution copies of the political party, that the transactions in the said bank account with ICICI Bank , Balurghat in the name of the assessee is only meant for transacting the activities of the political party. Assessee being a pradhan of the party had undertaken to handle the affairs of the party through his bank account as there was no bank account opened in the name of the party at that point of time. With regard to the fact as to why the political party had chosen not to open the bank account in its name is to be put to the said party and failure by the party thereon would not automatically make the assessee responsible for its transactions when the evidences in the form of resolutions, donation receipts, ledger account of Balurghat Block Trinamool Congress accepting the donations to be part of their records, depositions from the three workers of the political party that they had withdrawn the cash and handed over either to the cashier of the party or to the assessee for meeting day to day expenditure of the party. These facts have been duly considered by the Id AO in his remand report and no adverse remarks were made by him on the same. In this scenario, there is no rhyme or reason for the Id CITA to ignore the same and resort to enhancement of income in the facts and circumstances of the case. We also find that the assessee had maintained double entry cash book containing both cash as well as bank transactions (both receipts and payments) wherein the donations received in cash from various parties together with their names were duly recorded by the assessee including the contra entries such as cash withdrawals from bank and cash deposited into bank and this was submitted before the revenue. The faithful manner in which the such double entry cash book has been maintained goes to prove that the assessee had acted only in representative capacity and acting as a custodian of the funds of the party. It is not in dispute that the said funds of the party reflected in the said bank account was never utilized by the assessee either for his personal/ business purposes. We find that the assessee had duly rebutted the bank transactions as belonging to the political party with cogent evidences on record. The assessee had also forwarded the papers to the higher ups of the political party through proper channel for meeting with the requirements of the Id CITA on the queries raised by him. This proves the bonafide conduct of the assessee with regard to the dealing of the subject mentioned bank transactions. Hence we

hold that there is no case made out by the revenue to frame an addition by either making addition towards peak credit in the sum of Rs. 28,09,391/- or adding the total deposits in the sum of Rs. 40,18,760/-. In view of this, another addition made in the sum of Rs. 3,21,500/- being 8% of Rs. 40,18,760/- u/s 44AD of the Act also stands deleted. Accordingly, the ground nos. 2, 3, 4, 5 & 6 raised by the assessee are allowed.

8. The Ground No.1 & 9 raised by the assessee are general in nature and does not require any adjudication.

9. During the course of hearing, the Id AR stated that the Ground no. 7 raised by the assessee is not pressed by him for which necessary endorsement has been made by him in the file. Accordingly, the Ground No. 7 raised by the assessee is dismissed as not pressed.

10. The Ground no. 8 is with regard to chargeability of interest u/s 234A & 234 B of the Act which is only consequential in nature and does not require any adjudication.

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

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

Sd/-

(M. Balaganesh)
Accountant Member

Dated : 25th November, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Login Das, Khadimpur, Master Para, Balurghat, Dakshin Dinajpur-733101
- 2 Respondent –ITO, Ward-3(4), Balurghat
3. The CIT(A), Jalpaiguri
4. CIT , Jalpaiguri
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.