

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

Before : **Shri Mahavir Singh, Judicial Member, and**
 Shri M. Balaganesh, Accountant Member

ITA No. 325/Kol/2013 A.Y 2008-09

A.C.I.T Circle-30, Kolkata

Vs.

Pranab Chatterjee

PAN: ACQPC 3756K

(Appellant)

(Respondent)

For the Appellant/Department: Md. S.M.S Tauheed, JCIT, Id.Sr.DR
For the Respondent/Assessee: Shri Soumitra Choudhury, Advocate, Id.AR

Date of Hearing: 14-03-2016

Date of Pronouncement: 16-03 -2016

ORDER

SHRI M.BALAGANESH, AM

This appeal of the revenue is arising out of the separate orders of the Learned CIT(A)-XIV, Kolkata in Appeal No. 336/CIT(A)-XIV/10-11 dated 30-11-2012 for the assessment year 2008-09 against the order of assessment framed by the Id.AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The first ground to be decided in this appeal of revenue is as to whether, the disallowance of Rs.15,60,000/- could be made towards obligatory expenses u/s 40A(3) of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee debited a sum of Rs.15,60,000/- in his P & L account towards obligatory expenses which were admittedly incurred in cash. The Id. AO observed that no details in this regard were filed by the assessee and accordingly, disallowed the same by invoking the provisions

of section 40A(3) of the Act. On 1st appeal, before the ld. CIT(A), the assessee filed a ledger account, wherein it was argued that there was no violation of provisions of section 40A(3) of the Act as no single payment was made by the assessee exceeding Rs. 20,000/- on a particular day. The ld. CIT(A) called for the remand report from the ld.AO as the same was admitted as additional evidence in terms of Rule 46A of the I.T Rules 1962. The ld.AO did not make any adverse comments in the remand report, but simply stated that no evidences were filed by the assessee in support of his claim. The ld. CIT(A) agreed with the assessee's contentions and gave a finding that individual item did not exceed Rs. 20,000/- and hence there was no violation of provisions of section 40A(3) of the Act. Accordingly, he deleted the disallowance as made by the ld.AO on this issue. Aggrieved, the revenue is in appeal before us on the following ground:-

“1) On the facts and in the circumstances of the case, the ld. CIT(A) erred in law as well as on facts in deleting the addition of Rs.15,60,000/- disallowed by the AO u/s. 40A(3) after due diligence. “

4. The ld.DR vehemently supported the order of the ld.AO. In response to this, the ld.AR argued that no adverse comments were given by the ld.AO in his remand report and relied on the order of the ld. CITA. In support of his arguments, he filed the copy of the remand report.

5. We have heard the rival submissions and perused the material available on record. We find from the ledger account of obligatory expenses, which are enclosed in pages 300-302 of the paper book that the assessee has not made any payment in cash exceeding Rs. 20,000/- in a single day. Hence, there is no violation of provisions of section 40A(3) of the Act. We do not find any infirmity in the impugned order of the ld. CIT(A). We uphold the same. Accordingly, the ground no.1 raised by the revenue is dismissed.

6. Next ground to be decided in this appeal of revenue is as to whether an addition of Rs.4,23,61,673/- could be made towards unexplained introduction of capital in the facts and circumstances of the case.

7. The brief facts of this issue are that the assessee is an architect by profession having two proprietorship concerns, viz. 'M/s. Pranab Chatterjee & Associates' engaged in the business of consultants, architects and interior decorator and another concern styled as 'M/s. Module', which is engaged in the business of real estate development and promotion. It was contended that the assessee was not aware of the accounts as well as with taxation matters and has relied upon his Id.CA, who has tried to explain the queries as raised by the Id.AO in assessment proceedings. It was argued that the hearing was mostly conducted in the month of December without giving proper opportunity to the assessee. The Id.AO noticed that the assessee has introduced capital of Rs.3,86,56,500/- in M/s. Module and Rs. 45 lakhs in M/s. Pranab Chatterjee & Associates. It was argued by the assessee that he transferred the assets like residential building, jewellery and investments from his personal balance sheet to his proprietary concerns after revaluing the assets. There was no element of income arising out of such revaluation and arising out of transfer of assets from his personal balance sheet to business balance sheet. The Id.AO not satisfied with the replies resorted to make an addition of Rs.4,31,56,500/- as introduction of capital treating the same as unexplained by the assessee. Before the Id.CIT(A), the assessee has filed revised balance sheet, which was duly audited on 29-12-2010, wherein it was argued that the sum of Rs.1,72,61,673/- was introduced as capital in M/s. Module as below:-

On account of jewellery after revaluation	Rs.18,28,164/-	
On account of investment	Rs. 79,33,504/-	and
On account of residential building	<u>Rs.75,00,000/-</u>	
TOTAL	<u>Rs.1,72,61,673/-</u>	

7.1 The evidences in respect of the aforesaid transfer from personal balance sheet to business balance sheet was also produced by the assessee. It was further contended

that the cost of two lands purchased by the assessee was also reflected in the proprietary balance sheet of M/s. Module for Rs.78,00,000/-. These lands were subjected to revaluation and value of lands were shown at Rs.2,84,00,000/-. The copy of purchase deed of said two lands were also filed by the assessee before the authorities. It was further argued that the revaluation of lands and transfer of certain assets from personal balance sheet to business balance sheet was done only in order to make business balance sheet healthier for the purpose of obtaining bank loans to be used in the business. It was argued that the revaluation of two lands by Rs.2,06,00,000/- (Rs.2,84,00,000 – Rs.78,00,000) has no impact on the profit disclosed by the assessee. The registered purchase deed dated 27-02-2008 for Rs.50,00,000/- was produced before the authorities. Thus, there is no question of any unaccounted money being paid in cash for purchasing the said property.

7.2 Similarly, in respect of second property purchased at Rs. 28 lakhs on 14-03-2008 for which the registered value by the registering authority was at Rs. 30,84,000/-. Therefore, there is no question of any unaccounted money being paid in cash for the purchase of said property. Accordingly, it was argued by the Id.AR that no addition could be made on account of revaluation of the lands amounting to Rs. 2,06,00,000/-.

8. In respect of introduction of capital amounting to Rs.1,72,61,673/- comprising of jewellery, investments and building transferred from personal balance sheet to business balance sheet, the same were duly reflected in the balance sheet of the assessee and assessment u/s. 143(3) of the Act was completed for the immediately preceding assessment year 2007-08. Therefore, there was no new introduction of capital by way of any undisclosed or unexplained income and, no addition could be made thereon.

9. Apropos the introduction of capital in M/s. Pranab Chatterjee & Associates to the tune of Rs. 45,00,000/-, it was argued that the personal assets of the assessee like

NSC, KVP, Shares etc. were transferred from personal balance sheet of the assessee to the balance sheet of proprietary concern M/s. Pranab Chatterjee & Associates in order to make the business balance sheet healthy. Accordingly, it was argued that there was no income element in the subject mentioned transfer and no addition needs to be made on this count. It was also argued that the assessee has revised his balance sheet for the A.Y 2009-10, wherein opening and closing work in progress has been reduced to the extent of Rs.2,06,00,000/-, which was the revaluation of two lands. This revised balance sheet has been accepted by the Id.AO in the scrutiny assessment proceedings framed for the A.Y 2009-10. Accordingly, it was argued that the Id.AO himself has agreed that the said two lands were actually purchased only for Rs. 78,00,000/- in the earlier year and not at Rs.2,84,00,000/-, which was valued on the basis of revaluation. Based on this submission, the Id.CIT(A) observed that the assessee had duly explained the amount of Rs.3,78,61, 673 (Rs. 2,06,00,000 + Rs1,72,61,673) and confirmed the addition of Rs. 7,94,827 (Rs.3,86,56,500 – Rs.3,78,61,673). Aggrieved, the revenue is in appeal before us on the following ground :-

“2. On the facts and in the circumstances of the case the Id. CIT(A) erred in law as well as on facts in allowing the relief of Rs.4,23,61,673/- out of the addition made by the AO on account of unexplained introduction of capital after due diligence. “

10. The Id.DR vehemently supported the order of the Id.AO. In response to this, the Id.AR reiterated the same submissions as made before the Id. CIT(A), which was also supported by the remand report and argued that the Id. CIT(A) had duly considered the submissions of the assessee after obtaining the remand report from the Id.AO and no interference needs to be made.

11. We have heard the rival submissions and perused the material available on record including the detailed paper book as filed by the Id.AR before us. The facts stated herein above remain undisputed, hence the same are not reproduced for the sake of brevity. We find that in respect of value of two lands, which were purchased

for Rs. 78,00,000/-, the same were duly disclosed by the assessee in the balance sheet of the assessee. The Registering authority valued the said lands at Rs.80,84,000/- . Thus, the contention of the assessee is correct. Therefore, we hold that the revaluation made by the assessee only increased the work-in-progress as well as capital introduction to give a healthier position, but actually there was no capital introduction to the tune of Rs.2,06,00,000/- made by the assessee. We hold that this addition made by the Id.AO was only on merely suspicion and conjecture and without appreciating the bonafide explanation of the assessee. Hence, there is no scope of treating the sum of Rs.2,06,00,000/- towards introduction of capital as unexplained.

12. Apropos the transfer of certain assets comprising of jewellery (Rs.18,28,164): investments (Rs.79,33,509) and residential building (Rs.75,00,000/-) from personal balance sheet to the business balance sheet of M/s. Module, we hold that the said transfer does not involve any income element. Accordingly, we are in agreement with the arguments of the Id.AR that the same is done only in order to project healthier business balance sheet for obtaining bank loan. Hence, we hold that sum of Rs.1,72,61,673/- towards capital introduction in M/s. Module stands explained. Accordingly, there is no scope for making any addition in this regard. Accordingly, this ground raised by the revenue is dismissed.

13. The last ground to be decided in this appeal with regard to the disallowance towards site maintenance charges of Rs.10,73,795; Advertisement charges of Rs.2,08,537; Equipment hire charges of Rs.18,90,641; and brokerage of Rs.11,67,951 by invoking the provisions of section 40a(ia) of the Act.

14. The brief facts of this issue are that the assessee has claimed the aforesaid expenditure as deduction and details of the same are listed in pages 4-5 of the assessment order. The Id.AO felt that the assessee has not complied with the provisions of section 194C/194H of the Act. Accordingly, he invoked the provisions

of section 40a(ia) of the Act for making the said disallowance. On 1st appeal, the Id.CIT(A) applied the decision of Special Bench of the ITAT, Vishakhapatnam in the case of M/s. Merilyn Shipping and Transports Vs. ACIT and held that all these amounts were duly paid before the end of the previous year and hence disallowance u/s. 40a(ia) of the Act could not be made. Aggrieved, the revenue is in appeal before us on the following ground:-

“3. On the facts and in the circumstances of the case the Id.CIT(A) erred in law as well as on facts in allowing the relief of Rs.43,24,924/- from disallowances made by the AO u/s. 40a(ia) relying on the ratio of judgement of the Hon’ble ITAT, Vishakhapatnam in the case of M/s. Merilyn Shipping and Transports Vs. ACIT.”

15. The Id.DR stated before us that the reliance as placed by the Id. CIT(A) on the decision of the Hon’ble Special Bench, ITAT Vishakhapatnam in the case of M/s. Merilyn Shipping & Transports Vs. ACIT reported in 136 ITD 23 is no longer applicable in view of the decision of the Hon’ble Jurisdictional Calcutta High Court in the case of Crescent Exports Syndicate . In response to this, the Id.AR pleaded before us that this issue may be set aside to the file of the Id.AO to verify whether the payee(s) have considered these receipts in their respective returns in view of the second proviso to section 40a(ia) of the Act by relying on the decision of the Hon’ble Delhi High Court in the case of M/s. Ansal Landmark Township Pvt. Ltd reported in 377 ITR 635 (Del). The Id. DR has fairly conceded for setting aside this issue to the file of the Id. AO to verify the same.

16. We have heard the rival submissions and perused the material available on record. We find that the issue needs to be restored back to the file of the Id. AO to verify whether the payee(s) have duly considered the subject mentioned receipts in their respective returns of income and if so in the light of second proviso to section 40a(ia) of the Act, which has been held to be retrospective in operation by the decision of the Hon’ble Delhi High Court in the case of M/s. Ansal Landmark

Township Pvt. Ltd (supra) and if it is so, the assessee should not be treated as an assessee in default and therefore, no disallowance u/s. 40a(ia) of the Act could be made in the hands of the assessee. The assessee is directed to file the requisite documents/evidences before the Id.AO in this regard to substantiate his claim. Accordingly, ground no.3 as raised by the revenue is allowed for statistical purpose.

17. In the result, the appeal of the revenue is partly allowed for statistical purpose as stated above.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 16 - 03 - 2016

Sd/-
(Mahavir Singh, Judicial Member)

Sd/-
(M. Balaganesh, Accountant Member)

Date 16 -03-2016

Copy of the order forwarded to:-

- 1.. The Appellant/Department: The ACIT, Cir-30 2 Gariahat Road (S), Kol-68.
- 2 The Respondent/Assessee- Shri Pranab Chatterjee P-240 Lake Road, Kol-29.
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

**PRADIP SPS