

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

Before **Shri N.V.Vasusdevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.146/Kol/2012 Assessment Year :2008-09
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ITO Ward-1(4) Amarabati, Keranitala, P.O. Midnapore, Paschim Medinapur 721101	V/s.	Sri Sukamal Sikdar Amlagora, Garhbeta, Dist. Paschim Medinipur, Pin-721121 [PAN No.AIXPS 9575 R]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Md. Ghayas Uddin, JCIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri S.S.Roy, Advocate
सुनवाई की तारीख/Date of Hearing	12-04-2016
घोषणा की तारीख/Date of Pronouncement	22-04-2016

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is arising out of order of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 09.11.2011. Assessment was framed by ITO Ward-1(4), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2010 for assessment year 2008-09.

2. First issue is as regards that Ld. CIT(A) erred in deleting the addition made by Assessing Officer of ₹40 lakhs as assessee failed to declare the same in the financial statements though these DDs were there in the hands of assessee at the end of the financial year. For this, Revenue has raised following effective ground:-

“1. The Ld. CIT(A) has erred in deleting the addition made on account of undisclosed credit balance of DDs amounting to Rs.40,00,000/- made by the AO. The DDs purchased from disclosed CC A/c, but not reflected in financial statement or bank A/c though these DDs were in the hands of the assessee.”

3. The facts in brief are that the assessee in the present case is an individual and engaged in the trading business of fertilizers, potatoes and other sources. The assessee is maintaining a CC account with the UCO bank vide account number 11034. The assessee got made 5 DD from his CC account for Rs.40 lakhs on dated 29.03.2008 in his own name and credited the same in his own SB (Saving Bank) account maintained with ICICI bank on dated 02.04.2008. During the assessment proceedings, the AO found that the DD of Rs. 40 lakhs were not reflected in the balance sheet of the assessee and accordingly the AO sought the clarification from the assessee by issuing the notice. In compliance to the notice the assessee submitted that the said sum of money was received as unsecured loan and advances from the dealer which was credited on 02.04.2008. These loans and advances were adjusted and repaid the FY 2008-09. However the AO disregarded the claim of the assessee on the ground of non-availability of documentary evidence in support of his claim. As these DD were made from the current account of the assessee and not from the loan and advance of the dealers. Finally, AO treated the amount of Rs.40 lakhs as undisclosed credit balance u/s 69A of the Act and the same was added to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal to Ld. CIT(A) where the assessee submitted that both the accounts- CC with UCO bank and SB account with ICICI bank were duly disclosed in the financial statements of the assessee and prayed for the deletion of the addition made by the AO. Accordingly the learned CIT(A) deleted the addition made by the AO by observing as under:-

“6.2 I have duly considered the submission of the AR of the appellant and seen the details filed. During the relevant year, the appellant was engaged in fertilizer business, having turnover at Rs.9.03 crores. The AO had not disputed that the appellant purchased Demand Drafts (DDs) worth of

Rs.40,00,000/- from his disclosed CC A/c with UCO Bank on 29/03/2008, which were subsequently deposited in his SB A/c. with ICICI Bank in the next financial year on 02/04/2008. The AO treated the said DDs as unexplained presumably because those DDs were not shown in the asset side of the balance sheet. Here is a case, where the appellant purchased DDs from his disclosed CC A/c on 29/03/2008, kept those DDs with him for three days for whatever reason and deposited the same in his disclosed SB Ac. In the beginning of the next financial year. These transactions could have been easily reconciled by drawing a personal Balance Sheet of the appellant. In any case, there is no dispute that the appellant had purchased those DDs from his disclosed bank account and source of the same has been duly recorded in the books of account. In view of such, the addition made by the AO in terms of section 69A of the Act is found ill-conceived and bad in law. The AO is therefore, directed to delete the addition of Rs.40,00,000/-."

Being aggrieved by this order of Ld CIT(A) Revenue is in appeal before us.

5. Before us DR relied on the order of AO and left the issue to the discretion of the Bench. On the contrary the Ld AR relied on the order of Ld CIT(A).

6. We have heard the contentions of the rival parties and perused the material available on record. From the aforesaid discussion we find that the assessee got made 5 DD worth of Rs. 40 lacs on dated 29.03.2008 from his CC account in his individual name which was deposited in his SB account on dated 02.04.2008. The AO observed that these DDs were not reflecting in the balance sheet of the assessee for the year ending 31.03.2008. So the AO made the addition u/s 69A of the Act as unexplained money of the assessee. Now the question before us is whether DDs made by the assessee for Rs.40 lacs from his CC account amounts to unexplained money. From the facts of the case, we find that these DDs were made from the disclosed bank account of the assessee and were transferred to his saving bank account. It is also nowhere mentioned that this account of the assessee wasn't disclosed in the return of income. We also observe from the finding of the AO that these DDs were made out of the CC account of the assessee. As per the provisions of Section 69A of the Act unexplained money can be brought to tax if it is not

recorded in the books of accounts and assessee offers no explanation about the nature and source of acquisition of money. In the present case, the sources of the DDs have not been doubted. Accordingly, in our considered view that there is no infirmity in the order of the Ld CIT(A) and we uphold the same. Hence this ground of appeal of Revenue is dismissed.

7. Next issue raised by Revenue in this appeal is that Ld CIT(A) erred in deleting the addition made by AO for Rs.7.13 lakhs on account of undisclosed the money. For this, Revenue has raised the following effective ground:-

“2. The Ld. CIT(A) has erred in deleting the addition of Rs.7,13,000/- made by the AO on account of undisclosed money in credit.”

8. During the year assessee has withdrawn a sum of Rs.15,63,200/- from his SB account during the period from 16th March 2008 to 31st March 2008. Out of the aforesaid sum Rs.8.50 lakhs was deposited with ICICI bank and the balance amount of Rs. 7.13 lakhs was refunded to the Potato Suppliers as per the claim of the assessee. However the AO disregarded the claim on the ground that assessee failed to produce sufficient documents in support of the payment of Rs. 7.13 lakhs to the potato suppliers. Therefore the AO held a sum of Rs.7.13 lakhs as unexplained money u/s 69A of the Act and added to the total income of the assessee.

9. Aggrieved, assessee preferred an appeal to learned CIT(A) who deleted the addition by observing as under:-

“7.1.2. Having considered the submission of the AR of the appellant, I find that the appellant’s bank account in question was credited with several ‘ transfer’ entries totaling to Rs.15,63,000/- in the last fortnight of the financial year, wherefrom appellant had withdrawn exactly the same amount of Rs.15,63,000/- in cash. The AO had not questioned the source of deposits and therefore, it is presumed that deposits were duly explained. The withdrawals made from a bank account where deposits stand explained, cannot be termed as unexplained money as per provisions of 69A of the Act, for want of whereabouts or utilization of the said withdrawals. Under the facts and circumstances, the addition of Rs.7,13,000/- made by the AO in terms of section 69A of the Act is found ill-conceived and bad in law. The addition of Rs.7,13,000/- is therefore, deleted.”

Being aggrieved by this order of Ld CIT(A) Revenue is in appeal before us.

10. Before us Ld. DR vehemently supported the order of Assessing Officer whereas Ld AR relied on the order of Ld. CIT(A).

10.1 We have heard the contentions of the rival parties and perused the material available on record. From the aforesaid discussion, we find that AO has made the addition u/s 69A of the Act as the assessee failed to produce the documentary evidence for the claiming of the payment of Rs. 7.13 lakhs. However, from the facts of the case, we find that the source of Rs. 7.13 lakhs has not been doubted as it was withdrawn from the bank so the transaction of making the payment of Rs.7.13 lakhs is out of the purview of Section 69A of the Act. As per the provisions of Section 69A of the Act unexplained money can be brought to tax if it is not recorded in the books of accounts and assessee offers no explanation about the nature and source of acquisition of money. In this case the source of the payment has not been doubted. Accordingly, in our considered view that there is no infirmity in the order of the Ld CIT(A) and we uphold the same. Hence this ground of appeal of Revenue is dismissed.

11. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 22/04/2016

Sd/-
(N.V.Vasudevan)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 22/04/2016 कोलकाता ।

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

1. अपीलार्थी/Appellant-ITO, Ward-1(4), Amrabati, Keranitala, P.O. Midnapore, Paschim Medinipur - 721101
2. प्रत्यर्थी/Respondent-Sri Sukamal Sikdar, Amlagora, Garhbeta, Dist. Paschim Medinipur
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।