

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**

(समक्ष)Before श्री पी.एम .जगताप, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)

[Before Shri P. M. Jagtap, AM & Shri A. T. Varkey, JM]

**I.T.A. No. 550/Kol/2016**  
**Assessment Year: 2012-13**

Indrajit Dutt (PAN: ABRPD6157B)	Vs.	Assistant Commissioner of Income-tax, Circle-23, Hooghly
Appellant		Respondent

Date of Hearing	17.05.2017
Date of Pronouncement	14.07.2017
For the Appellant	Shri S. M. Surana, Advocate
For the Respondent	Shri Saurabh Kumar, Advocate

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal filed by the assessee against the order of Ld. CIT(A)-6, Kolkata dated 26.02.2016 for AY 2012-13.

2. Ground no. 1 is against the action of Ld. CIT(A) in confirming the unclaimed investment of Rs.51,00,000/- which was added by the AO u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. Brief facts of the case are that during the scrutiny proceeding assessee was asked to provide the source of the fixed deposit with Allahabad Bank amounting to Rs. 51 lacs. The

assessee brought to the notice of the AO that Rs. 11 lacs was deposited with Allahabad Bank on 10.02.2012 which was in fact drawn from M/s. Monorama Dairy & Foods Pvt. Ltd. (MDFPL) (assessee is the major share holder of his Private Limited Company), Rs. 10 lacs was taken from Smt. Subhra Dutta (assessee's wife) which were deposited on 10.02.2012 in Allahabad Bank and an amount of Rs.30 lacs was transferred from assessee's individual savings bank account maintained with SBI, Barrabazar, Chandannagar, Hooghly. The assessee produced the bank statement of both SBI as well as Allahabad Bank and Axis Bank and explained the source of the amount. However, the AO brushed aside all these and added the said amount of Rs. 51 lacs as unexplained cash credit u/s. 68 of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the same. Aggrieved, the assessee is before us.

4. We have heard rival submissions and gone through facts and circumstances of the case. We note that the assessee, an individual, was the proprietor of the business named M/s. Monorama Dairy & Foods. The said proprietary concern was converted into Private Limited Company w.e.f. 01.02.2011 and incorporated as M/s. Monorama Dairy & Foods Pvt. Ltd. (hereinafter MDFL) under the Companies Act, 1956. Before the AO, the assessee filed the audited Balance Sheet of the proprietary concern i.e. Monorama Dairy & Foods as on 31.01.2011 before being converted into a private limited company. From 01.02.2011 onwards, the proprietary concern ceased to exist whereas the private limited company M/s. Monorama Dairy & Foods Pvt. Ltd. were functioning and carrying out the business of the proprietary concern. The assessee in his individual capacity had filed his return of income on 20.03.2013 disclosing total income of Rs.10.87,910/- which was processed by the CPC u/s. 143(1) of the Act on 20.05.2013. Later the case was selected for scrutiny under CASS and thereafter, the assessment was scrutinized u/s. 143(3) of the Act. The AO noted that the assessee has deposited Rs.51 lacs as fixed deposit in Allahabad Bank, so he asked the assessee to provide the source of the said amount. The assessee brought to the notice of the AO that the assessee has drawn Rs. 11 lacs from the Private limited company (MDFL) and taken loan from his wife Mrs. Subhra Dutta an amount of Rs. 10 lacs and Rs.30 lacs was

transferred from his account maintained at SBI to Allahabad Bank. Thus, the assessee explained the source of Rs. 51 lacs deposited at Allahabad Bank. However, the AO was not convinced, so he added the same amount of Rs. 51 lacs as unexplained cash credit u/s. 68 of the Act. On appeal, the Ld. CIT(A) confirmed the addition. Aggrieved the assessee is before us.

5. We have heard both the parties and carefully perused the records. One of the main pleas of the Ld. AR Sri S. M. Surana was that the sources for Rs. 51 lacs was clearly explained and that the amount of Rs. 30 lacs was transferred from SBI S.B Account of assessee to Allahabad Bank; and Rs.11 lacs drawn from his private limited company from Axis Bank to Allahabad Bank and that he borrowed from his wife Rs. 10 lacs and deposited in the joint bank account of assessee and his wife in Allahabad Bank and thereafter Rs.51 lacs was deposited in FD account cannot be added u/s. 68 of the Act. The Ld. AR drew our attention to page 8 of the paper book wherein the bank statement of SBI maintained in the name of the assessee (individual savings bank account) has been seen annexed. It was brought to our notice that on 07.02.2012 (page 7 of the paper book) the short term deposit matured is figuring of various amounts and the same has been deposited in the savings bank account of the assessee on 11.12.2012. The said amount has been deposited by cheque on 11.02.2012 itself to Allahabad Bank maintained in the name of both assessee and his wife Mrs. Subhra Dutta (joint Account holder) which is evident from a perusal of page 17-19 of the paper book. The bank statement of Allahabad Bank which clearly corroborates the version of assessee in respect to source of deposit of Rs. 51 lakh is reproduced.

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क्र.सं.	विवरण PARTICULARS	चेक सं. CHEQUE NO	आहरित राशि AMOUNT WITHDRAWN	जमा की गई राशि AMOUNT DEPOSITED	खाता शेष BALANCE	श.सं./मि.सं.
04/16	46398 497 50095384801			5000.00	5000.00 Cr	
02/12	BY CASH			1000000.00	1005000.00 Cr	
02/12	BY CLG	154563	154561	1100000.00	2105000.00 Cr	
03/12	BY CLG			1100000.00	1005000.00 Cr	
03/12	BY CLG			1100000.00	1005000.00 Cr	
10/02/12	TO TRF			5000.00	5000.00 Cr	
10/02/12	TO TRF			1100000.00	2050000.00 Cr	
11/02/12	BY CLG		612204	200000.00	405000.00 Cr	
11/02/12	BY CLG		612205	200000.00	605000.00 Cr	
11/02/12	BY CLG		612207	200000.00	805000.00 Cr	
11/02/12	BY CLG		612199	200000.00	1005000.00 Cr	
11/02/12	BY CLG		612206	200000.00	1205000.00 Cr	
11/02/12	BY CLG		612208	200000.00	1405000.00 Cr	
11/02/12	BY CLG		612209	200000.00	1605000.00 Cr	
11/02/12	BY CLG		612210	200000.00	1725000.00 Cr	
11/02/12	BY CLG		612212	120000.00		
11/02/12	BY CLG		612197	180000.00	1905000.00 Cr	
11/02/12	BY CLG		612198	200000.00	2105000.00 Cr	
11/02/12	BY CLG		612200	200000.00	2305000.00 Cr	
11/02/12	BY CLG		612201	200000.00	2505000.00 Cr	
11/02/12	BY CLG		612202	200000.00	2705000.00 Cr	
11/02/12	BY CLG		612203	200000.00	2905000.00 Cr	
11/02/12	BY CLG		612211	200000.00	3105000.00 Cr	
13/02/12	TO TRF			1500000.00	1605000.00 Cr	
13/02/12	TO TRF			1500000.00	105000.00 Cr	
29/02/12	BY INTT			1109.00	106109.00 Cr	
07/03/12	BY INTT			69.77	106109.00 Cr	
07/03/12	CR INT DB				0.00	
07/03/12	CR INT DB NEW ACCT TYPE : 101			4500000.00	4606109.00 Cr	
09/03/12	BY TRF		000000		1106109.00 Cr	
12/03/12	DR THRU CHMANORAMA DAIRY FOOD		626742	3500000.00	106109.00 Cr	
12/03/12	DR THRU CHMANORAMA DAIRY FOOD		626743	1000000.00	106109.00 Cr	
	Carried Forward			106109.00Cr		

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Indrajit Dutt

6. M/s. Monorama Dairy & Foods Pvt. Ltd. is maintaining its account in the Axis Bank, the statement of bank account is placed at page 33 and 34 of the paper book from which it is evident that on 09.02.2012 an amount of Rs. 11 lacs was transferred to the assessee vide cheque no. 154561 and on 09.02.2012 vide cheque no. 154563 an amount of Rs.10 lacs was transferred to Mrs. Subhra Dutta. Both these amounts have been deposited and amount was transferred by cheque from Axis Bank to the joint account held by the assessee and his wife Mrs. Subhra Dutta on 09.02.2012 in the Allahabad Bank which entry is evident from page 19 of the paper book (supra).

7. From the perusal of the aforesaid bank transactions, it is clearly deciphered that assessee had drawn money by cheque from M/s. Monorama Dairy & Foods Pvt. Ltd. an amount of Rs.11 lacs on 09.02.2012 and Rs. 10 lakhs also was transferred by MDFL to assessee's wife Mrs. Subhra Dutta and Rs.30 lacs on 11.02.2012 was transferred by cheque from assessee's savings bank account maintained at SBI to Allahabad Bank. Thus, the assessee was able to show the source before the AO and the Ld. CIT(A). The transaction from one account maintained by the assessee to another account maintained with Allahabad Bank and drawing from the Private Limited Co. has been established, therefore, we do not find merit in the action of authorities below in making addition u/s. 68 of the Act, when the fact remains that addition u/s. 68 of the Act cannot be made at all in the facts and circumstances of the case. Even if there could have been any addition and that too could have been made would be u/s. 69 of the Act then also the case of the department is not that the assessee had not disclosed its SBI Account and Allahabad Bank account. Both the bank accounts were duly disclosed before the authorities below and, therefore, addition u/s. 69 of the Act also cannot be made. Therefore, we find merit in the contention of the Ld. AR and we are inclined to direct deletion of the addition made of Rs. 51 lacs.

8. Ground no. 2 is against the action of the Ld. CIT(A) confirming the addition of Rs.18,79,996/- which was added by the AO as unexplained loan given to M/s. Monorama Dairy & Foods Pvt. Ltd. The AO while examining the details of loan given to M/s. Monorama Dairy & Foods Pvt. Ltd. as on 31.03.2012 noted that the assessee has given a loan of Rs.18,79,995/- to the said company on 29.03.2012. According to the AO, despite giving several opportunities the assessee could not produce any evidence regarding the source of amount in question and only produced the fund flow statement from which the AO could not ascertain the capability of the assessee to give such a huge amount of money as loan. Therefore, he was pleased to add the said amount as deemed income of the assessee u/s. 69 of the Act. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before us.

9. We have heard rival submissions and gone through facts and circumstances of the case. We note that the assessee was the proprietor of proprietary concern M/s. Monorama Dairy & Foods. The assessee had filed the audited Balance Sheet of the said proprietary concern as on 31.01.2011 before the authorities below. From 01.02.2011 the proprietorship concern got converted itself to M/s. Monorama Dairy & Foods Pvt. Ltd. incorporated under the Companies Act, 1956. The PAN details and the income tax return filed by the said company for AYs 2011-12 and 2012-13 were brought to the knowledge of the authorities below. The copies of the audited accounts of the said company as on 31.03.2011 and 31.03.2012 relevant for AYs 2011-12 and 2012-13 were also brought to the notice of the authorities below. The case of the assessee is that the proprietary concern was converted on 01.02.2011 into a Private Limited Company and all its assets and liabilities were taken over by the company as a going concern and the net balance after adjustment of the shares issued by the company was represented as loan given to the company and disclosed in the annual accounts copy of which was filed. According to the assessee, there was no fresh loan given to the said company. We note that the authorities below could not appreciate

the facts properly which created the confusion. When the proprietary concern's assets are taken over by the Private Limited Company, the Private Limited Company is a debtor and the assets are credited in the books of the proprietary concern. Likewise, the liabilities also when taken over by the Private Limited Company from the proprietary concern, the Private Limited Company is a creditor to the proprietary concern and the liabilities are debited and the Private Limited Company is credited in the books of the proprietary concern. When this accounting exercise is conducted and when the value of asset is more than the liability, and the difference is represented as loan to the company from the proprietary concern of the assessee. This is a mere book entry. This particular aspect has not been appreciated by any of the authorities below. Even otherwise, in any case, the conversion of proprietary concern to Private Limited Company took place on 01.02.2011 i.e. in AY 2011-12 and, therefore, no addition in any manner could be made on this account in the year under appeal i.e. AY 2012-13 and, therefore, we find merit in the contention of the assessee and delete the addition as confirmed by the Ld. CIT(A).

10. In the result, appeal of assessee is allowed.

Order is pronounced in the open court on 14.07.2017

Sd/-  
(P. M. Jagtap)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 14th July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Indrajit Dutt, Barasat, Sur Para, Chandan Nagar,  
Hooghly-712 101, West Bengal.
- 2 Respondent – ACIT, Cir-23, Hooghly
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary