

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH : KOLKATA

[Before Hon'ble Sri A.T.Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 1373/Kol/2014

Assessment Year : 2006-07

Gulshan Hossain
Kolkata
[PAN : AAQPH 8875 C]
(Appellant)

-vs.- I.T.O., Ward-52(2)
Kolkata

(Respondent)

For the Appellant : Shri Somnath Ghosh, Advocate

For the Respondent : Shri A.K.Sinha, Addl.CIT

Date of Hearing : 08.06.2017.

Date of Pronouncement : 07.07.2017

ORDER

Per M.Balaganesh, AM

1. This appeal of the assessee arises out of the order of the Learned CIT(A)-XXXIII, Kolkata in Appeal No. 212/CIT(A)-XXXIII/ITO Ward-52(2),Kol/08-09 dated 18.03.2014 against the order of assessment framed for the Asst Year 2006-07 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The only issue to be decided in this appeal of the assessee is as to whether the Id CITA was justified in upholding the addition made u/s 68 of the Act towards unexplained deposits in the joint bank account, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is an individual engaged in the business of trading of garments and return of income for the Asst Year 2006-07 was filed by her on 17.10.2006 declaring taxable income of Rs 1,50,210/-. During the course of assessment proceedings, the Id AO found that there were cash deposits in the

sum of Rs 18,84,700/- in the bank account maintained with Standard Chartered Bank, Kolkata Metro Main Branch , N.S.Road, Kolkata on various dates during the financial year 2005-06 . The Id AO called for the explanation of the same together with the sources. Since no explanation was given by the assessee, the Id AO proceeded to add the said cash deposits of Rs 18,84,700/- as unexplained cash credit u/s 68 of the Act in the assessment.

4. Before the Id CITA, the assessee stated that the said bank account was held jointly with her daughter Ms Sofia Hossain and the cash deposited in the said bank account was mainly received in foreign currency from Mehdi Hossain (her husband) and Saiqua Shaikh (her daughter) residing in Germany and London respectively, through western union money transfer to the tune of Rs 13,94,000/-. It was submitted that the western union money transfer receipts were misplaced and hence the same could not be produced before the Id CITA as proof of her explanation. The Id AO deputed his Inspector to Post Office, Alipore Branch of Western Union to gather some information to verify the veracity of the claim made by the assessee but noted that no fruitful result could be scored from the said enquiry. The Id AO in his remand report stated that though the assessee had produced two receipts from western union amounting to Rs 10,226/- and Rs 26,050/- during financial year 2005-06 (relevant to year under appeal), they were meant for meeting day to day expenses of the assessee and hence there is no reason for the assessee to deposit the same in the bank account. The Id AO also in the remand report stated that huge amounts ranging from Rs 50,000/- to Rs 2,50,000/- have been deposited in cash in the said account and withdrawn on the same date and hence there is no explanation with evidences furnished by the assessee.

4.1. It was also explained that a sum of Rs 2,45,900/- represents cash loan received from few parties which the Id AO in the remand report had stated that the veracity of the loan confirmations could not be verified in the absence of present addresses of the said parties and one party was in Dubai and one party had deceased. The assessee was not

able to produce the present addresses of those parties and simply stated that the said loans were squared off and hence the assessee had lost touch with them thereafter. The Id AO in the remand report stated the alleged loan transactions stated by the assessee remained unsubstantiated and unproved to satisfy the conditions of section 68 of the Act and would also invite penal consequences u/s 269SS of the Act.

4.2. In respect of the remaining sum of Rs 2,44,800/- , the same was explained by the assessee to be part of her business receipts, which was stated by the Id AO in the remand report as a cooked up story as the total gross receipts of the assessee was only Rs 98,752/- out of which net income was Rs 48,756/-.

4.3. The authorized representative of the assessee along with assessee's daughter Ms Sofia Hossain appeared before the Id AO and filed submissions stating that the daughter Ms Sofia Hossain is assessed to tax in Ward 28(4) and the same addition of Rs 18,84,700/- has been made on the same ground. The assessee stated in the cash flow statement filed before the Id AO , since the bank account was a joint account, a sum of Rs 10,70,900/- represents assessee's share and remaining sum of Rs 7,48,900/- represents her daughter's share. There is no basis explained for dividing this sum also by the assessee.

4.4. The Id CITA observed that the assessee had taken divergent stands before the Id AO in the remand proceedings itself once by apportioning Rs 10,70,900/- as her share of total cash deposits but later stating that the monies represent amounts received from her husband from abroad, loans received from friends and relatives and business proceeds etc. All these explanations were not substantiated with material evidence. Hence the Id CITA upheld the addition made in the sum of Rs 18,84,700/-.

5. Aggrieved, the assessee is in appeal before us on the following grounds:-

“1. FOR THAT the Ld. Commissioner of Income Tax (Appeals) XXXIII, Kolkata fell in error in upholding the purported addition of Rs. 18,84,700/- under the alleged guise of the provision of s. 69 of the Income Tax Act, 1961 resorted to by the Ld. Income Tax Officer, Ward 52(2), Kolkata by misreading the factual matrix

of the instant case and the purported conclusion reached on that account on a tenuous basis for such perceived action is completely unfounded, unjustified and untenable in law.

2. FOR THAT under the instant facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) XXXIII, Kolkata acted unlawfully in sustaining the addition of Rs. 18,84,700/- by invoking the provision of s. 69 of the Income Tax Act, 1961 made by the Ld. Income Tax Officer, Ward 52(2), Kolkata indulging in speculation, surmise, suspicion and conjecture without satisfying the statutory prescription in that respect and his purported finding basing on such extraneous considerations not germane to the issue is wholly illegal, illegitimate and infirm in law.

3. FOR THAT the Ld. Commissioner of Income Tax (Appeals) XXXIII, Kolkata was remiss in upholding the specious action of the Ld. Income Tax Officer, Ward 52(2), Kolkata in resorting to the purported addition of Rs. 18,84,700/- being the entire deposits in the bank account alleging income from undisclosed sources without giving the benefit of "peak credit" which is an universal principle applicable under the circumstances of the instant case as well and the spurious finding on that issue without any valid justification therefor is wholly arbitrary, unreasonable and perverse."

6. The ld AR argued that the similar addition was made in the hands of assessee's daughter Ms Sofia Hossain for the Asst Year 2006-07 vide order passed by the ITO Ward 28(4), Kolkata u/s 143(3) of the Act dated 30.12.2008 . He placed a copy of the assessment order to prove the same. He stated that said bank account with Standard Chartered Bank has been duly considered and reflected in the balance sheet of assessee's daughter Ms Sofia Hossain, wherein substantive addition has been made in her hands and appeal is pending before the ld CITA. He also stated that the assessee had not maintained any books of accounts and bank statement cannot be construed as books of account. Hence the provisions of section 68 of the Act cannot be invoked at all in the facts and circumstances of the case. He placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs Bhaichand H Gandhi reported in 141 ITR 67 (Bom) in support of his contention. In response to this, the ld DR vehemently relied on the orders of the lower authorities and stated that the assessee had taken divergent stands and had furnished the various figures as her gross receipts as could be

evident from the paper book filed by the assessee. Hence the assessee is duty bound to comply with the provisions of section 44AA for maintenance of books of accounts of her business receipts, which has not been done. Hence the assessee has chosen to deliberately not maintain any books of accounts so as to escape the cash deposits from taxation by taking shelter from the decision of Hon'ble Bombay High Court thereby proving the malafide intention of the assessee.

7. We have heard the rival submissions and perused the materials available on record. We find that the assessee had given different figures towards her gross receipts. At page 11 of the paper book, the sales figure from retail trade of garments were reflected at Rs 8,12,917/- in the Trading, Profit and Loss Account for the year ended 31.3.2006 and net profit of Rs 74,350/- was reflected thereon. But the said net profit has not been carried over and instead a sum of Rs 1,50,208/- has been reflected in the capital account in Balance sheet as on 31.3.2006 reflected in page 10 of paper book. In yet another profit and loss account enclosed in Page 48 of Paper Book, the receipts from tailoring job was Rs 1,60,829.50 and Miscellaneous receipts of Rs 74,350/-. Here the receipts from retail trade of garments were not shown at all. The net profit reflected in this profit and loss account was Rs 1,50,208/- which has been considered in the balance sheet as at 31.3.2006 reflected in page 10 of paper book as stated above. The Id AO in the remand report states that the total gross receipts of the assessee from business was only Rs 98,752/- which is reflected in page 4 of Id CITA order. Hence there are various business receipts shown by the assessee at different levels. The requirement of non-maintenance of books have to be looked into from the point of view of these deficiencies. Hence it could be safely concluded that the assessee's gross receipts from business had far exceeded the limits prescribed u/s 44AA of the Act as per assessee's own submission at different stages. Hence now the assessee cannot take the plea that books of accounts are not required to be maintained and hence not maintained by the assessee and accordingly the bank statement cannot be construed as books of account and get away from the net of taxation by taking recourse to decision of Hon'ble

Bombay High Court supra. Hence we are not inclined to accept the argument of the Id AR in this regard.

7.1. But we find that the submission of the assessee that she has been receiving monies from abroad cannot be summarily brushed aside in view of the fact that there is a credit of Rs 44,679.42 in standard chartered bank account on 3.11.2005 wherein it is clearly mentioned that the same represents amounts credited in USD. This becomes a clinching evidence for appreciating the argument of the assessee. We also find that there were some cash withdrawals that were made frequently which would explain the subsequent cash deposits. Hence it would not be proper to tax the entire cash deposits made in the bank account. However, we are in agreement with the other argument of the Id AR that the deposits in the bank account in the sum of Rs 18,84,700/- cannot be added back substantively in the hands of assessee as well as her daughter.

7.2. In view of these findings, we deem it fit and appropriate to set aside the entire appeal to the file of the Id AO for denovo adjudication and reframe the assessment in accordance with law, with a direction to the assessee to co-operate with the set aside assessment proceedings by furnishing the requisite details for proving the source of deposits made in the joint bank account. The assessee is entitled to have the benefit of bifurcation of monies deposited between herself and her daughter, if proved by material evidences to that effect. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 07.07.2017

Sd/-
[A.T.Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 07.07.2017

[RG PS]

Copy of the order forwarded to:

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2. I.T.O., Ward-52(2), Kolkata. .
- 3..C.I.T.(A)-XXXIII, Kolkata 4. C.I.T.-XVIII, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches