

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. 1769/Kol/2016

Assessment Year : 2007-08

Chittaranjan Debnath
Burdwan
[PAN : AGKPD 6794 Q]
(Appellant)

-vs.- I.T.O., Ward-1(3),
Burdwan

(Respondent)

For the Appellant : Shri Suvo Chakraborty, Advocate

For the Respondent : Shri G.H.Sewa, Addl. CIT

Date of Hearing : 07.06.2017.

Date of Pronouncement : 14.06.2017.

ORDER

Per M.Balaganesh, AM

1. This appeal of the assessee arises out of the order of the Learned CIT(A)-Burdwan in Appeal No. 18/CIT(A)/Asl/ITO/W-1(3)/Bwn/2010-11 dated 21.06.2016 against the order of assessment framed for the Asst Year 2007-08 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The assessee has raised the following grounds before us :-

"1. For that purported addition of Rs. 12,63,838.00 as an undisclosed income of appellant is unjust since there has been deposits and withdrawals in said S.B.I. A/c. Even there had been more withdrawals than deposits. Hence no addition is sustainable.

2. For that the addition of entire amount as undisclosed is unjust since the said A/c was joint in nature and appellant's wife was income tax assessee having same commission income from G.T.F.S. like appellant. So entire amount can not be of appellant's only.

3. For that source of said add back amount was the past savings of both of appellant and his wife accumulated from their commission income.

4. For that estimated addition of Rs. 4,37,461.00 is unjust and illegal since it amounts to double addition as the appellant had already disclosed full commission income and paid tax accordingly. Hence add back amount is inclusive of said commission. So there is double taxable which is not tenable in law.

5. For that appellant may modify the grounds.”

3. The brief facts of this appeal is that the assessee is a Commission Agent of Golden Trust Financial Services (GTFS) and had filed his return of income for the Asst Year 2007-08 on 28.3.2008 disclosing taxable income of Rs 2,13,780/-. The gross commission received by the assessee was Rs 8,74,922/- which was credited in the income and expenditure account prepared by the assessee and filed before the Id AO. The assessee earned a net profit of Rs 3,13,780/- and the same was duly reflected as Gross Total Income of the assessee in the return of income and after claiming deductions under Chapter VIA to the tune of Rs 1,00,000/-, the assessee disclosed taxable profit of Rs 2,13,780/-. The Id AO observed that the assessee had disclosed his bank account maintained with Federal Bank bearing Account Number 22241 and found that the commission received by cheques were not deposited in this bank account. Accordingly further enquiry was carried out by the Id AO in this regard. Later notice u/s 133(6) of the Act was issued to GTFS with a request to produce the details of payment made in favour of assessee towards commission for the financial year 2006-07. The Id AO also came to know that the assessee was having a separate bank account with SBI Nabadwip Branch vide Account Number 01150060231 in the joint names of himself and his wife Monika Debnath. The Id AO collected the said bank statement from SBI u/s 133(6) of the Act and found that the following credits were reflected in the said bank statement :-

Sl.No.	Date of Credit	Amount
1	12.04.2006	22,045/-
2	12.04.2006	10,587/-
3	10.05.2006	28,049/-
4	13.06.2006	44,655/-
5	28.06.2006	26,806/-
6	06.07.2006	66.89/-

7	27.07.2006	2,00,000/-
8	17.08.2006	54,782/-
9	11.09.2006	31,717/-
10	12.09.2006	15,000/-
11	20.09.2006	29,539/-
12	20.10.2006	19,622/-
13	09.11.2006	6,50,000/-
14	22.12.2006	33,028/-
15	03.01.2007	2,488,.89/-
16	12.01.2007	11,867/-
17	17.02.2007	6,669/-
18	26.02.2007	500/-
19	01.03.2007	50,000/-
20	02.03.2007	16,590/-
21	22.03.2007	9,828/-
	Total	12,63,839.38/-

4. The Id AO observed that GTFS had sent their information with reference to notice u/s 133(6) of the Act mentioning the date of payment, cheque number and amount of commission paid. The assessee also produced TDS certificate in Form 16A for the financial year 2006-07. The Id AO linked the details received from GTFS with the credits found in the bank statement and observed that not a single commission amount has been deposited in SBI , Nabadwip Branch and hence accordingly concluded that the said bank account represents undisclosed bank account of the assessee and thereby brought the entire credits in the said bank account in the sum of Rs 12,63,839/- to tax. This was done ignoring the contentions of the assessee that the said bank account has been considered in the hands of his wife who is also a commission agent of GTFS and is independently assessed to tax in PAN -AGUPD8318G and assessed to tax by ITO,

Ward I(3), Burdwan and she had also filed her return for Asst Year 2007-08. It was also pleaded that the assessee had duly disclosed the total commission received and the same matches with Form 16A issued by GTFS.

5. The Id AO further observed that though the assessee had debited various expenses in his income and expenditure account and claimed the same as deduction, the same were supported only by self made vouchers and no supporting evidences were submitted by the assessee. Accordingly he estimated the allowability of expenses @ 50% of gross commission received by placing reliance on the Circular No. 553 dated 15.5.1991, 648 dated 30.3.1993 and 677 dated 28.1.1994. Accordingly, he disallowed a sum of Rs 4,37,461/- in the assessment.

6. The Id AO by making the aforesaid addition / disallowance, determined the total income of the assessee as under:-

Gross Commission received	8,74,922	
Less: Deduction allowed as above	4,37,461	
	-----	4,37,461
Amount of undisclosed income representing total credits In SBI		12,63,839

Assessed Commission income		17,01,300
Add: Income from other sources as per return		8,160

Gross Total Income		17,09,460
Less: Deduction u/s 80C		1,00,000

Assessed Income		16,09,460

7. The Id CITA upheld the action of the Id AO in respect of both the additions made in the assessment. Aggrieved, the assessee is in appeal before us.

8. We have heard the rival submissions and perused the materials available on record. We find that the Id AO had accepted the fact that the monies credited in the SBI bank account represents only commission income. We find that the Id AO has also categorically stated in his assessment order that not a single commission income was found credited in Federal Bank account already disclosed by the assessee. The Id AR had produced the entire bank statement of SBI account before us and tried to explain each and every credit thereon as amount received from GTFS. It is not in dispute that the SBI account is a joint account maintained by assessee with his wife. Hence cheques of both assessee as well as his wife are permitted to be deposited thereon. In the instant case, we find that the cheques received from GTFS by both assessee as well as his wife were deposited in SBI account. We find that the Id AR had filed the details of amounts received from GTFS throughout the year together with its mode of receipt for both assessee as well as his wife. From the same, it is glaring on us that on the same day, two cheques were issued by GTFS independently for assessee and another for his wife. Both these cheques were deposited in SBI. For example on 13.6.2006, the assessee has received Rs 29,169/- and his wife has received Rs 15,486/- and there is a single credit in SBI bank account on 13.6.2006 to the tune of Rs 44,655/- (29169+15486). Similar is the case for other dates as prepared in the tabulation above. Moreover, we find that both the assessee as well as his wife had duly credited the gross commission received in the sums of Rs 8,74,922/- and Rs 12,19,911/- in their respective income and expenditure account and this figure duly matches with the TDS certificate issued by GTFS to each of them. Hence there cannot be any addition that could be made based on credits found in the SBI bank account when the Id AO himself accepts the fact that the said credits represents only commission income derived by the assessee. Moreover, we find that the assessee himself had already credited the sum of Rs 8,74,922/- as gross commission received, out of which major portion is included in the total credits sum of Rs 12,63,839/-. We find that these facts were not examined by the Id AO. Hence we deem it fit and appropriate to set aside these issues to the file of the Id AO for denovo

adjudication and frame the assessment afresh in accordance with law. Needless to mention that the assessee be given reasonable opportunity of being heard. The assessee is at liberty to file all the evidences filed before us together with some other additional evidences , if he so desires, in support of his contentions. Since the dispute with regard to gross commission received itself has been set aside , the allowability of expenses thereon would also depend after determining the final figure of gross commission. The assessee is at liberty to file further evidences to justify the claim of expenses incurred by him before the Id AO. Accordingly the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the Court on 14.06.2017.

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

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 14.06.2017.

[RG PS]

Copy of the order forwarded to:

1. Chittaranjan Debnath, Tulshidanga, Kathirpara, Burdwan-713519.
2. I.T.O., Ward-1(3), Burdwan.
- 3..C.I.T.(A)-Burdwan 4. C.I.T.-Burdwan.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

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

