

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

BEFORE SHRI A. T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1185/KoI/2014

(निर्धारणवर्ष / Assessment Year: 2009-10

I.T.O, Ward-15(1), Kolkata Bamboobilla, Kolkata – 700 014.	Vs.	DevenderJeet Singh Kler Flat no.3A, 96, Garden Reach Road, Hesting Courts, Kolkata – 700 023.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AFPPK 0039 R		
(APPELLANT)	..	(RESPONDENT)

Appellant by :Shri Saurabh Kumar,ACIT DR
Respondent by :Shri J. P. Khaitan, Sr. Advocate

सुनवाईकीतारीख/ **Date of Hearing** : **05/09/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **04/12/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to Assessment year 2009-10, is directed against an order passed by the CIT(A), in Appeal No.857/CIT(A)-XIV/2011-12, dated 03.02.2014, which in turn arises out of an order passed by the Assessing Officer u/s143(3) of the Income Tax Act, 1961, (hereinafter referred to as the 'Act') dated 28.12.2011.

2. The Revenue has raised the following grounds of appeal:

"1.That under the facts and circumstances of the case Id CIT(A) erred in deleting the addition of Rs.54,20,000/- in the head of unexplained cash credit u/s 68.

2. That under the facts and circumstances of the case Id CIT(A) erred in deleting the addition of Rs.14,00,000/- in the head of unexplained money.

3. That under the facts and circumstances of the case Id CIT(A) erred in deleting the addition of Rs.93,484/- in the head of unexplained expenditure.

4. That under the facts and circumstances of the case Id CIT(A) erred in deleting the addition of Rs.71,937/- in the head of concealed income earned from security charges.

5. That the appellant craves to add or amend any grounds of appeal on or before the date of hearing."

3. Ground No.1 and Ground No.2 raised by the Revenue relate to addition of Rs.54,20,000/- on account of unexplained cash credit and Rs.14,00,000/- on account of unexplained money u/s 69Aof the Income Tax Act, 1961.

3.1 The brief facts qua the issues are that Mr. Devender Jeet Singh Kler, the assessee, is an ex-military person. During the course of scrutiny proceedings for the A.Y. 2009-10, the Assessing Officer added Rs. 54,20,000/-, under section 68 and Rs 14,00,000/- U/s 69A of the I.T. Act .The assessee had deposited cash of Rs.54,20,000/- in the savings bank a/c of Indusind bank Khanna and Rs.19,00,000/- found credited into the S.B A/C No. 018-E04964-010, Indusind Bank, Khanna. When the Assessing Officer asked to explain about the source of cash deposit of Rs. 54,20,000/-, then the assessee explained that, it was a sale proceeds of 4 lands belongs to Hardev Singh kler, father of the assessee, including the value of crop sales. Out of Rs.54,20,000/-, the amount of Rs.50,02,500 explained as a sale proceeds of the four lands and Rs.4,25,000/-explained as a sale proceeds of crops standing on the aforesaid lands.

In respect of Rs.19,00,000/-, the assessee explained that it is a sale proceeds of personal effects of Mr. Hardev Singh, the father of the assessee. The assessee also explained the AO that Mr. Harnek Singh returned 8 pcs of Antiques and therefore the assessee returned Rs.5,00,000/- to him. Therefore, the assessee got only Rs. 14,00,000/- (Rs. 19,00,000 - Rs. 5,00,000) on account of sale of personal effects.

In the course of the assessment proceedings, the assessee explained to AO that he had received in cash on behalf of his father Hardev Singh Kler, sale proceeds of Rs.50,02,500/- of his father's agricultural land and another sum of Rs.4,25,000/- being sale proceeds of agricultural crop grown on his father's said land during the years 2005-08 and that out of such cash receipts of Rs.54,27,500/-, a sum of Rs.54,20,000/- was deposited in the said bank account. It was explained that the assessee did not want to travel to Kolkata with the cash and as such opened the savings bank account on the date of sale, namely, September 19, 2008, for depositing the money. In respect of the cheque received from Harnek Singh it was explained that Harnek Singh had initially given a cheque of Rs.19,00,000/- towards purchase of the assessee's father's household goods including silver but subsequently Rs.5,00,000/- was refunded by cheque to Harnek Singh because he returned eight items. It was explained that the cash of Rs.54,20,000/- and the net amount of Rs.14,00,000 received by cheque belonged to the assessee's father and that he had paid the entire amount to his father. In support of his explanation, the assessee furnished to the ITO copies of four deeds relating to sale of the agricultural land executed by the constituted attorney of the assessee's father Shamsheer Singh Kler, who was the elder brother of the assessee's father. The said sale deeds were in Punjabi and the assessee also furnished English translations. The assessee furnished copy of the sale bill relating to his father's household goods including silver. An affidavit of the assessee's father was also submitted. However, the ITO noted that in one of the sale deeds for an amount of Rs.4,12,500/- Shamsheer Singh Kler was not described as constituted attorney

of the assessee's father. The assessee explained that there was a drafting error in the deed, which was executed by Shamsher Singh Kler in his capacity as constituted attorney. It was submitted that it would be evident from the sale deeds, affidavit of the assessee's father and sale bill relating to household goods including silver submitted to the ITO in course of the assessment proceedings and the aforesaid documents that the assessee's father Hardev Singh Kler was the owner of the agricultural lands which were sold under the four sale deeds all dated September 19, 2008 for an aggregate sum of Rs.50,02,500/- received in cash. The sale deeds which the consideration amount was duly registered with the registering authority on September 19, 2008. The sale deed for Rs.4,12,500/- was also in respect of agricultural land bellowing to the assessee's father and was executed by Shamsher Singh Kler as constituted attorney of the assessee's father even though not expressly stated therein. Household goods including silver belonging to the assessee's father were sold for Rs.14,00,000/-. The sum of Rs.4,25,000/- represents sale proceeds of the agricultural crop from the agricultural land of the assessee's father arising from cultivation thereof during the years 2005-08 prior to sale of the land. The assessee's father received from the assessee the entire amount of Rs.68,27,500/-. It was submitted that nexus between the money received by the assessee on account of his father deposited in the said bank account and the transactions contained in the documents submitted to the ITO was clearly established. There can be no dispute that the assessee's father was the owner of agricultural land, which was sold on September 19, 2008 for cash consideration.

The assessing officer disregarded the submission of the assessee and added Rs. 54,20,000/- under section 68 of the I.T. Act treating the same as unexplained cash credit. The assessing officer also added Rs.14,00,000/- under section 69A of the I.T. Act for unexplained money credited in SB A/c No. 0181-E04964-010. In case of both the transactions, the AO observed that:

- (1) Genuineness of the sale deed is found doubtful.
- (2) Cash deposited in the bank not at one go.
- (3) No response received from Shamsher Singh kler, who was the power of attorney holder of said sold land, during the course of scrutiny hearing proceedings.
- (4) The assessee use the said money for his personal purpose.

(5) No evidence regarding the agriculture crop or sale thereof.

(6) No evidence found regarding the transaction of household goods including 30 K.G of silver.

Based on the above observations the assessing officer added Rs. 54,20,000/- under section 68 of the I.T. Act, treating the same as unexplained cash credit and also added Rs.14,00,000/- under section 69A of the I.T. Act.

3.2 Aggrieved by the addition made by the Assessing Officer, the assessee filed an appeal before the CIT(A) who has deleted the addition made by AO under section 68 and 69A of the Act. The Id CIT(A) observed that the assessee's father himself was a decorated soldier and was 84 years of age in the year 2008 and having household goods including silver worth Rs.14,00,000/- cannot be doubted. The bill relating to sale of such goods, which contained particulars of the buyer, was submitted to the ITO in course of the assessment proceedings, and payment was received by cheque. The Id. CIT(A) noted that assessee's father did not file the return of income because agricultural land was exempt from capital gain tax. The assessee retired from the Indian Air Force as a Wing Commander and he was in receipt of pension. He has interest income and a small amount of income from the business of providing security services. The assessee's father Hardev Singh Kler was a decorated soldier and participated in the Bangladesh war. The assessee's grandfather Chajja Singh was also in the Indian Army, though in the pre-independence era. In fact, the land in question was given by the Government to Chajja Singh in recognition of his service. The CIT(A) noted that this background was important for deciding the matter. The Id. CIT(A) observed that addition of cash credits was open to the authorities only when there was material to show that the assessee carried on an independent business apart from the business on which the assessment was being made.

The CIT(A) noted that the assessee resides at Kolkata. The bank account was opened by the assessee on September 19,2008 at Khanna in the State of Punjab. On the same day, four conveyance deeds were said to had been executed before the Additional District Sub-Regisrar, Khanna by Shamsher Singh as constituted attorney of the assessee's father Hardev Singh for sale of Hardev Singh's agricultural land for an aggregate sum of Rs. 50,02,500/-. It was claimed that this amount, along with another sum of Rs. 4,25,000/- referable to cultivation of the

said land during 2005-2008 prior to its sale, the said was deposited in the said bank account in amounts under Rs.10,00,000/- on a daily basis from September 19, 2008 to September 25, 2008, except on September 21, 2008, which was a Sunday.

The CIT (A) observed that in connection with the assessee's claim of sale of agricultural land, the Assessing Officer has questioned the authenticity of the replies received from the registering authority at Khanna in response to the notices/letters sent by him. According to the Assessing Officer, absence of office seal, name seal and office telephone number makes the documents suspect. The CIT(A) noted that this approach of the Assessing Officer is difficult to appreciate. The Assessing Officer has been in direct correspondence with the Additional District Sub-Registrar Khanna, and an officer of the State Government of Punjab, over a period of nearly six months. The Assessing Officer sent several letters to the said State Government official through the Indian Postal Service. The State Government official has replied several times by registered post. No doubt the office telephone number was not mentioned in any correspondence but it was not a fact that the office seal had not been affixed on the documents. But CIT(A) noted that in the certified copies of the sale deeds enclosed with the letter dated June 10, 2013, the State Government official has affixed his office seal, signed and dated every page by mentioning the date May 30, 2013, as the date of certification. The letter dated December 13, 2012 of the said official also bears his office seal. Seals were also affixed on the registered envelopes of the letters dated February 28, 2013 and April 23, 2013. If the Assessing Officer entertained any doubts he should have requested his counterpart at Additional District Sub-Registrar, Khanna(Khanna) to make local enquiries in the office of the registering authority.

The CIT(A) noted that the Additional District Sub-Registrar, Khanna has provided to the Assessing Officer certified copies of the four sale deeds. The Assessing Officer wants to ignore such certified copies because they are typed out on two pages whereas the photocopies submitted by the assessee in course of the assessment proceedings ran into several pages. The photocopies which the assessee had filed in course of the assessment proceedings were of the original deeds typed out on stamp papers with large spaces between each line in order to use up all the stamp papers. The same matter when typed out in single space for

issuing certified copy has fitted in one and half pages. Just because the certified copies so typed out were in lesser number of pages than the original documents cannot be a reason to ignore the documents. The Assessing Officer had not pointed out any difference in the contents of the photocopies of the sale deeds submitted at the time of assessment and the certified copies subsequently received from the Additional District Sub-Registrar, Khanna. In fact, the said official had stated in his letter dated June 10, 2013 that the contents of the sale deeds on stamp paper and those of the certified copies are the same.

The CIT(A) observed that the controversy raised by the Assessing Officer with regard to land revenue records was also unjustified. The Patwari Form No. 10 for Jamabandi years 2002-03 and 2007-08 have been certified by the Patwari to be correct as per records. Further, even according to the registering authority, the land sold was agricultural. The CIT(A) noted that while considering the explanation of the assessee, the AO had acted unreasonably.

The CIT(A) noted that the cash deposit in the bank to the extent of Rs.4,25,000/- is claimed to be the amount received from the cultivation of the land during 2005-2008, prior to its sale. The Assessing Officer had sent a summons to the cultivator Nirmal Singh who got it in Punjab on the date fixed for his appearance before the Assessing Officer at Kolkata. According to Nirmal Singh's declaration, notarised and letter sent to the Assessing Officer, the land was given to him by the assessee's father, (who left India for USA in 2005), for cultivation on contract basis and that upon his telephonic instruction the sum of Rs.4,25,000/- referable to cultivation of the land during 2005-2008 was paid to the assessee. The documents on record show that the land was agricultural. It therefore stands to reason that such land was cultivated and gave rise to agricultural income. Since the land was given on contract basis, the absence of details of the sales of agricultural produce such as date and quantity is not material.

The CIT(A) noted that the Assessing Officer had also raised a controversy about the receipt of the money from the assessee by his father. The assessee's father has categorically stated in his affidavit that he has received the amount. It is not for the ITO to question this statement. The relationship here is of father and son. The land belonged to the father. If the father says that he has got the money from his son, such statement cannot be questioned. Even if one proceeds on the basis

as if the father acknowledged receipt of the money but let his son have it, it cannot result in taxation of such amount in the son's hand.

Based on the reasons aforesaid, the CIT(A) deleted the addition of Rs.54,20,000/- made by the Assessing Officer.

3.3 Regarding the addition of Rs.14,00,000/- on account of the cheque received from Harnek Singh. The cheque was for Rs.19,00,000/- but Rs.5,00,000/- was returned to him and hence the addition is Rs.14,00,000/-. The CIT(A) noted that assessee had provided to the Assessing Officer a copy of the sale bill in respect of the household articles of his father. The assessee's father having moved to USA in 2005, wished to dispose of his household articles in India. Since the assessee had gone to Punjab in connection with sale of his father's agricultural land, he used the opportunity to also dispose of his father's household articles. The main reason why the AO did not accept the assessee's explanation was that the assessee's father in his affidavit dated November 16, 2011 did not mention about the return of Rs.5,00,000/-. He considered the subsequent affidavit dated January 10, 2013 of the assessee's father about the return of Rs.5,00,000/- as contradicting his previous affidavit dated November 16, 2011. The second affidavit explaining the inadvertent omission in the first affidavit cannot be considered as contradicting the first affidavit. It simply seeks to state a fact which got left out in the first affidavit. Even the AO has added Rs.14,00,000/- accepting the return of Rs.5,00,000/- to Harnek Singh. The CIT(A) observed that the particulars of the household articles were mentioned in the sale bill. Such articles were items like furniture and fixture, carpets, camera, TV, refrigerator, binoculars, exercising equipment, utensils, paintings, pen sets, wristwatch, cigar case, old collector's wine bottles, some antiques, an silver flower pot and some silver. Such articles were accumulated by the assessee's father over his lifetime. The assessee's father was a decorated soldier and was 84 years of age in 2008. The assessee's father sold the articles and the buyers paid Rs.19,00,000/- for the same by a/c payee cheque. Later, since the purchaser returned a few of the items, therefore a sum of Rs.5,00,000/- was returned to him by cheque. Therefore, the CIT(A), considering these facts and circumstances deleted the addition of Rs. 14,00,000/-.

3.4 Not being satisfied with the order of the CIT(A), the Revenue is in appeal before us. The Id. DR for the Revenue had submitted before us that during the

assessment proceedings, the AO has analyzed the various issues and the cash deposited by the assessee in the bank. During the course of assessment proceedings and also during the course of remand report the A.O found that the genuineness of the replies received from the ADSR (Registering Authorities) was doubtful and the office bearer did not provide the contact number (Telephone Number) for further verification.

In his order the Ld. CIT (A) stated in para no.8.5, that if the assessing officer entertain any doubt he should have requested his counterpart at Khanna in the state of Punjab to make local enquiries in the office of the registering authorities but the Ld. CIT (A) did not provide opportunity to remove the doubt as stated in the Para no 8.5 of his order. The Ld. CIT (A) may issue a specific direction again to verify the genuineness. The doubt of the assessing officer was not clearly removed from any ends. The Id DR for the Revenue also pointed out that during the course of scrutiny proceedings the A.O found that out of four lands, one land was related to Shamsheer Singh then how and why the total value of four lands deposited into the account of Devender Jeet Singh Kler. In his reply dated 03/11/2011 the A/R stated that there was a drafting error in the sale deed No 236907. But there was no information received regarding the said drafting error.

The Id DR also pointed out that the Assessee was requested to produce the original purchase deed of such said sold lands but as per the assessee's letter such lands were awarded by British Govt. to his grandfather Mr. Chhajja Singh but the Assessee failed to produce any evidence regarding this award. The assessee should have produced at least the paper of Mutation of land either in the name of his father or in the name of his grandfather because before selling any immovable property 'Mutation' is required.

Besides, The DR also pointed out that there was no need to deposit the cash in several days but the assessee did it and it was accepted without supporting any valid reasons. During the assessment proceedings the assessee also did not submit the purchase documents of house hold articles.

3.5 Before us, the Id. counsel for the assessee has submitted the copy of sale deed of agricultural land vide Sale Deed Nos.2956, 2953, 2955, and 2954. The sale deed contains the details of agricultural land and details of the buyers and sellers of the agricultural land. The assessee also submitted the identity of the

buyers and sellers of land and the copy of the passport. The Id. counsel submitted that a major part of the money deposited in the bank account represented sale proceeds of his father's agricultural land. The assessee used to provide security service and received a very small amount during the year under consideration from the business of security services. The assessee has explained the nature and source of the cash deposit in the bank account and there is clearly a nexus between the money deposited in the bank and sale of the land. The Id. counsel also pointed out that sale deeds provided by the Additional District Sub-Registrar, Khanna are acceptable documents and since the said official had obtained photo identities of the parties, there remains no doubt about the existence of the buyers. In a one-off transaction of the kind, the seller cannot be faulted for not keeping track of the whereabouts of the purchaser who has discharged all his obligations under the sale deed. The Id. counsel also pointed out that the controversy raised by the AO with regard to land revenue records is also unjustified. The Patwari Form No.10 for Jamabandi years 2002-03 and 2007-08 had been certified by the Patwari to be correct as per records. Further, even according to the registering authority, the land sold was agricultural. The Counsel stated that while considering the explanation of the assessee, the Department should not act unreasonably. The Cash deposit in the bank to the extent of Rs.4,25,000/- was claimed to be the amount received from the cultivation of the land during 2005-2008, prior to its sale. The AO had sent a summons to the cultivator Nirmal Singh who got it in Punjab on the date fixed for his appearance before the AO. The AO has also raised a controversy about the receipt of the money from the assessee by his father. The assessee's father has categorically stated in his affidavit that he had received the amount. It is not for the ITO to question this statement. The relationship here is of father and son. The land belonged to the father. If the father says that he has got the money from his son, such statement cannot be questioned. Even if one proceeds on the basis as if the father acknowledged receipt of the money but let his son have it, it cannot result in taxation of such amount in the son's hand. Besides, the non-filing of return by the assessee's father for the assessment year 2009-10, cannot result in any taxation in the assessee's hand. Therefore, based on these submissions, the Id. counsel for the assessee prayed that CIT(A) has passed a reasoned order and it should not be interfered by the revenue authorities.

3.6 Regarding the addition of Rs.14,00,000/- under the head of unexplained money u/s 69A. The Counsel for the assessee has submitted that the assessee had provided to the AO a copy of the sale bill in respect of the household articles of his father. The assessee's father having moved to USA in 2005, wished to dispose of his household articles in India. Since the assessee had gone to Punjab in connection with sale of his father's agricultural land, he used the opportunity to also dispose of his father's household articles. The main reason why the AO did not accept the assessee's explanation was that the assessee's father in his affidavit dated November 16, 2011 did not mention about the return of Rs.5,00,000/-. He considered the subsequent affidavit dated January 10, 2013 of the assessee's father about the return of Rs.5,00,000/- as contradicting his previous affidavit dated November 16, 2011. The second affidavit explaining the inadvertent omission in the first affidavit cannot be considered as contradicting the first affidavit. It simply seeks to state a fact which got left out in the first affidavit. Even the AO has added Rs.14,00,000/- accepting the return of Rs.5,00,000/- to Harnek Singh. The particulars of the household articles were mentioned in the sale bill. Such articles were items like furniture and fixture, carpets, camera, TV, refrigerator, binoculars, exercising equipment, utensils, paintings, pen sets, wristwatch, cigar case, old collector's wine bottles, some antiques, an silver flower pot and some silver. Such articles were accumulated by the assessee's father over his lifetime. The assessee's father is a decorated soldier and was 84 years of age in 2008. The assessee's father sold the articles and the buyers paid Rs.19,00,000/- for the same by a/c payee cheque. Later, since the purchaser returned a few of the items, a sum of Rs.5,00,000/- was returned to him by cheque. Therefore, based on the above, the addition should not be made in the hands of the assessee.

3.7 Having heard the rival submission and perused the material available on record, we are of the view that certified copies of the sale deeds provided by the Additional District Sub-Registrar, Khanna are acceptable documents and since the said official had obtained photo identities of the parties (buyer and seller of land), hence, there remains no doubt about the existence of the buyers and sellers. We also note that cash deposit in the bank to the extent of Rs.4,25,000/- is claimed to be the amount received from the cultivation of the land during 2005-2008, prior to its sale. The AO did not bring any cogent evidence to disprove the same. We note that AO had raised a controversy about the receipt of the money from the assessee by his father. The

assessee's father has categorically stated in his affidavit that he has received the amount. In respect of non-filing of return by the assessee's father for the A.Y 2009-10, we are of the view that this cannot result in any taxation in the assessee's hand because sale was agricultural land and does not attract capital gain tax. Therefore, based on the factual position, the addition of Rs.54,20,000/- made by the AO has been rightly deleted by CIT(A). Hence, we do not find any infirmity in the order passed by the Id. CIT(A) and therefore, we confirm the order passed by the Id. CIT(A).

Regarding the addition of Rs.14,00,000/-, we are of the view that assessee during the assessment proceedings had provided to the AO a copy of the sale bill in respect of the household articles of his father. The AO did not bring on record and cogent evidence to prove that sale bills of household articles are bogus. Based on the factual position, we are of the view that order passed by the CIT(A) does not contain any infirmity. Therefore, we confirm the order passed by the Id. CIT(A).

3.8 In the result, the appeal filed by the Revenue (in Ground No.1 and 2) are dismissed.

4. Ground No.3 and 4 raised by the Revenue relates to addition of Rs.93,484/- under the head of unexplained expenditure and addition of Rs.71,937/- under the head concealed income earned from security charges.

4.1 Brief facts qua the issues are that during the course of scrutiny proceedings the A.O added Rs.93,484/- u/s 69C on account of unexplained expenditure because assessee made a little drawings for family expenses. Therefore, the AO made the addition, after observing the luxurious life style of the assessee.

The Id Counsel pointed out that the assessing officer made addition on account of low drawings but the Ld. CIT (A) deleted the addition because the assessee was supported by his son.

The Id. Counsel for the assessee has submitted before us that for the addition of Rs.93,484/- on account of low drawings, the AO made his own estimate of what the assessee would have spent. The AO compared such estimate of Rs.1,71,484/- made by him with the withdrawal of Rs.78,000/- made by the assessee from his security services business and added the balance, that is, Rs.93,484 (Rs.1,71,484- Rs.78,000) . The assessee's contention that his son supported him and further that he was in receipt of tax free pension, therefore, the amount was quite enough to run the family. Therefore, the addition on account of low drawings

should be deleted. We note that the Id. DR for the Revenue has fairly agreed with the submissions of the counsel of the assessee.

Having heard the rival submissions and perused the materials available on record, we are of the view that AO during the assessment proceedings made his own estimate of what the assessee would have spent but we observe that the assessee had been supported by his son and his father was getting tax free pension which was sufficient to meet the family expenses. Therefore, considering the factual position, we are of the view that the order passed by the CIT(A) does not contain any infirmity. Therefore, we confirm the order passed by the CIT(A).

4.2 Regarding the addition of Rs. 71,937/-, the A.O found that the assessee received Rs.71,937/- more than he declared in his return for the A.Y 2009-10 in respect of security charges. The assessee is a retired ex-military person and during the assessment year under consideration, he used to provide security services and received income as a security charges. The AO held that as the assessee already claimed his all expenses, therefore the he added the extra receipt of Rs.71,937/- as concealed income. But the Ld. CIT (A) deleted the addition, stating that if the security charges increased by Rs.71,937/- then the payment was also required to be increased by Rs71,937/-.

The Id DR for the Revenue pointed out that the Ld. CIT(A) did not consider that whatever the expenses incurred by the assessee had already been claimed by him in earlier years.

Regarding securities charges, we note that according to the assessee, the profit and loss account of M/s Tornado shows security service charges received of Rs.1,62,536/- and payment to security personnel was shown as Rs.65,364/-. During the assessment proceedings, the assessee explained to the AO that the assessee had actually received Rs.2,34,473/- on account of security service charges and had paid Rs.1,37,301/- to the security personnel who had provided the security services. It was explained that the Accountant had debited payment to the extent of Rs.71,937/- made to the security personnel to the account relating to security service charges received. The result was that the security service charges received got netted off to the extent of Rs.71,937/- but such netting off did not have any effect on the income. If the security service charges of Rs.1,62,536/- shown in the profit and loss account were increased by Rs.71,937/-, the payment

made to security personnel shown as expenditure in the profit and loss account would also have to be increased by the like amount. The AO, however, treated the sum of Rs.71,937/- as concealed income ignoring the explanation that the amount paid to security personnel had to be increased by the like amount and consequential there would be no effect on the income. We note from the remand report that the AO has not controvert the fact that payment of Rs.71,937/- to security personnel was debited to the security service charges received account resulting in netting off of the receipts to that extent. Therefore, the assessee's explanation that if the security charges received were to be increased by Rs.71,937/- to Rs.2,34,473/-, the payment made to security personnel of Rs.65,364/- was also required to be correspondingly increased by Rs.71,937/- with no effect on the taxable income is quite acceptable and therefore, we confirm the order passed by CIT(A).

4.3 In the result, the appeal filed by the Revenue (Ground No.3 and Ground No.4) are dismissed.

Order pronounced in the open court on this **04/12/2017**.

Sd/-
(A. T. VARKEY)

Sd/-
(DR. A.L.SAINI)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक/Dated 04/12/2017

RS(SPS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant – I.T.O, Ward-15(1), Kolkata
2. प्रत्यर्थी/ The Respondent- Devender Jeet Singh Kler
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

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By Order

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Kolkata.