

**IN THE INCOME TAX APPELLATE TRIBUNAL : 'D' BENCH, KOLKATA**

**Before : Shri P.M. Jagtap, Accountant Member and  
Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No. 235/Kol/2015**  
A.Y 2009-10

**Deputy Commissioner  
Of Income-tax, CC-4(1)  
Kolkata**  
[Appellant]

**Vs.**

**M/s. B.S.Agarwal**  
PAN: AACFM 6525C

[Respondent]

Applicant/Appellant by : Shri Kalyan Nath, Sr.DR  
Respondent/Department by : Shri Subash Agarwal, Advocate, Id.AR

Date of Hearing : 13-09-2017  
Date of Pronouncement : 06-12-2017

**ORDER**

**Shri S.S.Viswanethra Ravi, JM:**

This appeal by the Revenue is against the order dt. 19-01-2015 of the CIT-A, 21, Kolkata for the A.Y 2009-10.

2. The only issue is to be decided as to whether the CIT-A is justified in deleting the impugned addition of Rs. 71,93,038/- made u/s. 69 of the Act in the facts and circumstances of the case.

3. The brief facts of the case are that the assessee is a partnership firm and deriving its income from contract works. The assessee filed its return of income declaring total income of Rs.28,16,797/-. A search and seizure operation u/s. 132 of the Act was conducted. The AO completed the assessment u/s. 143(3) of the Act on 23-12-2010 accepting the total income as returned.

4. The relevant facts relating to the issue in hand are that vide his order passed u/s. 263 the Id. CIT set aside the order of the AO declaring that the said assessment order is erroneous and pre-judicial

to the interest of the revenue and directed the AO to make fresh assessment by examining the relevant records, the CIT has opined that AO did not consider properly the amount of demand draft Rs.71,93,038/- as shown in the asset side of balance sheet and which should have been taxed for the A.Y under consideration as it was shown over a period of 2 years. In giving effect of the proceedings the AO asked the assessee to explain why the said amount should not be treated as unexplained investment. In response to said objection, the assessee submitted that the value of draft as shown in the asset side of balance sheet is an amount to be realized from sundry debtor. Such draft was not deposited in the bank account on certain issues between the partners and since the time period of such draft is only 6 months and it cannot be realized after such period. The assessee also contended that the same cannot be treated as unexplained investment and requested the AO to treat the same as receivable from debtors. The said submission found not acceptable to the AO and added the same as unexplained investment vide his order dt. 20-12-2013 passed u/s. 263 r.w.s 143(3) of the Act

5. Aggrieved by such order of the AO passed u/s.263/143(3) of the Act, the assessee challenged the same before the CIT-A.

6. Before the CIT-A the contention of the assessee was that the assessee had made investments in Fixed Deposit in various banks situated in Bokaro in earlier years. Out of the total Fixed Deposits, a sum of Rs.71,93,038/- was pre-matured in the A.Y 2008-09 i.e year under consideration and the banks issued drafts to the tune of Rs.71,93,038/- in favour of the assessee. But due to some disputes between the partners of the assessee firm, the said draft could not be encashed in time. Accordingly, the assessee firm reduced the sum of FD from its books of accounts and shown the same at Rs.71,93,038/- in the A.Y under consideration as draft in hand in its final accounts. Before him the assessee also contended that the said drafts of

Rs.71,93,038/- were not encashed and was lying as Rs.71,93,038/- in the asset side of the assessee firm under the head 'Draft in hand'.

7. The CIT-A after considering the above submissions of assessee sought remand report from the AO. During the remand proceedings the assessee was appeared before the AO and explained the case of assessee with the help of relevant evidences. Considering the same the AO reported the CIT-A that the contention of the assessee was correct.

8. Considering the submissions of assessee together with the remand report of the AO, the CIT-A directed the AO to delete the impugned addition. Relevant portion of the CIT-A order is reproduced herein below:-

"5. Since, there was change in the explanation about source of drafts in hand as submitted before the AO and submitted in the course of appellate proceedings and that the appellant has submitted the copies of all the bank drafts and bank statement etc., therefore, the copy of the submission and documents filed by the appellant were forwarded to the AO vide letter No.CIT(A)-21/Kol/Remand Report/BSA/14-15/558 dated 12.12.2014. The AO was asked to verify the contention of the appellant with reference to the documents filed and the assessment records that the drafts were issued by the bankers of the appellant firm out the fixed deposits with the bank. In response, the AO submitted his report vide letter No. DCIT/CC-4(1)/Kol/Remand Report/2014- 15/404 dated 08.01.2015. In his report, it is submitted by the AO that original assessment was set aside u/s 263 of the Act due to revenue audit objections. In the remand report the AO reproduced the findings in the assessment order to make addition on account of drafts in hand and the submission filed by the assessee firm in the course of appellate proceedings. It is submitted by the AO that the contention of the assessee has been examined with reference to the records available and appears to be in order.

5.1 The copy of the remand report submitted by the AO was forwarded to the appellant for counter comments, if any. In response, it is submitted by the appellant that in the remand proceedings, the A.R. of the assessee appeared before the AO and explained the case of the assessee with the help of relevant evidences which were on the record of the AO. After considering the said details, the AO has accepted in the remand report that the contention of the assessee is in order. Thus, the AO has not disputed the contention of the assessee as per the submission and he was completely satisfied with it. Therefore, the addition made by the AO u/s 69 of the Act may be deleted and the ground may please be allowed.

6. I have considered the submission of the appellant and perused the assessment order. It is observed that in the case of appellant firm the original assessment for the A.Y. 2009-10 was completed u/s 143(3) of the Act on 23.12.2010 determining the total income at Rs.28,16,797/-. However, due to revenue audit objections on the point of drafts in hand, the order u/s 143(3) was set-aside by the CIT, Central-III, Kolkata by invoking the provisions of section 263 of the Act vide order dated 07.03.2013. On perusal of the remand report submitted by the AO, it is observed that the revenue audit was of the view that the assessee firm held draft-in-hand were not valid for more than six months, the investment would be unexplained investment by the firm and the value of investment would be deemed to be income of the assessee for the financial year 2008-09 relevant to the A.Y. 2009-10. On examination of the Balance Sheet of the appellant as on 31.03.2008 it is observed that the appellant had encashed the FDR of Rs.12,70,69,991/-. However, due to dispute amongst the partners, the drafts of Rs.71,93,038/- were not deposited in the bank account of the assessee firm and, therefore, reflected separately in the Balance Sheet under the nomenclature 'D/D in Hand'. Similar was the position in the year under consideration i.e. the A.Y. 2009-10 that the drafts of Rs.71,93,038/- were still lying un-deposited in the bank account and as

*such reflected in the Balance Sheet as on 31.03.2009. It is not known that on what basis and under which law the revenue audit opined that the drafts in hand reflected in the balance sheet as on 31.03.2009, are to be treated as unexplained investment because their life had already been expired after six months. It is observed that on this point the original assessment order was set-aside u/s 263 of the Act. In the course of re-assessment proceedings the appellant firm explained the facts before the AO and filed a submission that no addition on account of draft in hand could be made u/s 69 of the Act. However, in the order under appeal, the AO did not accept the submission of the appellant and made the addition of Rs. 71, 93,038/- u/s 69 of the Act. Though, in the assessment order, the AO made addition u/s 69 of the Act on account of drafts in hand as opined by the revenue audit but he did not give any reason for not accepting the explanation of the appellant firm filed in the course of assessment proceedings. On careful consideration of the facts and in law, I am of the opinion that under no circumstances, the drafts in hand which were reflected in the balance sheet of the appellant company can be treated as unexplained assets and consequently no addition can be made u/s. 69 of Act on account of unexplained investment. I am of the opinion that once the drafts had been accounted for in the books of account of the appellant firm and duly disclosed in the balance sheet, they cannot be treated as unexplained even if the life span of such drafts was only for the six months. If the period of six months has been lapsed, it does not mean that the money had gone forever and the drafts cannot be revalidated or re-issued by the issuing bank by producing the expire drafts to the bank. In fact, in the course of appellate proceedings it is submitted by the appellant that out of the drafts of Rs.71,93,038/-, the drafts of Rs.49,00,000/- were cancelled by the bank on 12.02.2013 and a fresh draft of Rs.49,00,000/- was issued on the same date. The balance drafts were still lying with the appellant firm as drafts in hand since the disputes between the partners are still continuing. In view of above, it is held that the AO was not justified in making the addition of Rs.71,93,038/- on account of drafts in hand treating them as unexplained assets u/s. 69 of the Act. He is directed to delete the addition made by him. The ground no. 1 is allowed. "*

9. The Id. DR relied on the AO. He also submits before us that the CIT-A was not justified in allowing relief to the assessee of Rs.71,93,038/-.

10. On the other hand, the Id.AR relied on the order of the CIT-A in allowing the same.

11. Heard rival submissions and perused the record. We find that the CIT-A examining the submissions of assessee sought remand report from the AO, wherein the AO had accepted the contention of the assessee by which the CIT-A found that the bank cancelled the said draft to an extent of Rs. 49,00,000/- on 12-02-2013 and issued a fresh draft for the same amount on the same date itself. Therefore, it is to be noted that out of total impugned amount of drafts Rs.71,93,038/-, the assessee realized Rs. 49,00,000/-. It is also observed that the assessee stated due to some problems between the partners that draft initially not encashed in time and it clearly shows that the said amount is to be realized by a process in

the bank. It is also noted that the assessee requested the AO to treat the draft amount as receivable from debtors and the same cannot be treated as unexplained investment. In our opinion, there is force in the contention of the assessee in stating that the said draft amount actually was not encashed during the validity of the draft and the same cannot be treated as unexplained investment. In this regard, we may refer to the provision of section 69 of the Act for F.Y 2008 relevant to A.Y under consideration (2009-10), which is as under:-

### **Section - 69, Income-tax Act, 1961-2008**

#### ***Unexplained investments.***

<sup>33</sup> **69.** *Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the <sup>32</sup>[Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.*

12. A plain reading of the above provision explains that in order to make addition u/s. 69 the AO has to satisfy that the investments as found by him were not recorded in the books of account and for not offering proper explanation about the nature and source of investment. If the AO finds that the explanation offered by the assessee regarding the nature and source of investment is not acceptable, he can propose to add the same u/s. 69 of the Act. In the present case, the assessee has shown the value of draft in asset side in balance sheet, therefore, the question of not recording the same in the books of account does not arise at all. We find the assessee has also explained the non encashment of said draft due to some disputes between the partners, which cannot be ignored. Therefore, the addition made by the AO u/s. 69 of the Act is misconceived and it is not maintainable under law. Therefore, the CIT-A was justified in deleting the same. We find no infirmity in the impugned order of the CIT-A. Therefore, the sole ground raised by the revenue in this regard fails and it is dismissed.

13. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 06-12-2017

Sd/-  
**P.M. Jagtap**  
**Accountant Member**

Sd/-  
**S.S. Viswanethra Ravi**  
**Judicial Member**

Dated :06-12-2017

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Applicant/Department : The DCIT, CC-4(1), Kolkata  
Aaykar Bhavan Poorva, 110 Shanti Palli, E M Bye Pass,  
4<sup>th</sup> Floor, Kolkata-107.
2. Respondent/Assessee: M/s. B.S Agarwal, Ganeshalaya, Jharudih,  
Dhanbad-826001.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order

Sr.P.S,  
Head of Office  
ITAT Kolkata