

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK****BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER****ITA No.246/CTK/2014**
Assessment Year : 2009-2010

Smt. Leelabati Behra, , C/O. Kashinath Behera, At: Sahid Nagar, PO: Joda, Dist: Keonjhar	Vs.	ITO, Keonjhar Ward, Keonjhar
PAN/GIR No. AHTPB 4477 G		
(Appellant)	..	(Respondent)

Assessee by : Shri P.C.Sethi, AR
Revenue by : Shri D.K.Pradhan , DR

Date of Hearing : 12 /07/ 2017
Date of Pronouncement : 31/07/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-Berhampur, Camp: Bhubaneswar, dated 28.3.2014 for the assessment year 2009-2010.

2. Ground Nos.1 and 2 of the appeal of the assessee are as under:

"1. That, the learned CIT (A) has committed serious error in not quashing the assessment order passed by the learned Assessing Officer which is illegal, unjust, arbitrary and contrary to the principles of natural justice and without jurisdiction.

2. That, the learned CIT (A) has committed serious error in not quashing the assessment order which is passed on the basis of notice u/s 143(2) of the Income-tax Act, 1961 (hereinafter referred as "the Act") which has been done without application of mind on an extraneous reasons and for which the

assessment order passed on such illegal notice should have been quashed by the learned CIT (A).”

3. The CIT(A) has adjudicated the above grounds as under:

“5.3 I have carefully considered the matter and gone through the assessment record. First, the grounds challenging the legality of assessment are taken up for adjudication. In his written submission relating to ground No.1 the appellant has submitted that he was not given any opportunity of being heard. However, there is no dispute that the appellant was duly served with the notices u/s.143(2) and 14291). In response to such notices, the appellant **appeared** before the AO from time to time and based on such hearings the AO completed the assessment u/s. 143(3). From the perusal of the assessment order it is clear that due opportunity was given by the AO to the appellant and, therefore, I find no basis for Ld. AR's argument that adequate opportunity was not given. In any case, the present proceeding also provides further opportunity to the appellant to present his case and, therefore, I find no reason for the cause of grievance of the appellant on account of lack of opportunity. Accordingly, the ground No.1 challenging the legality of the assessment on account of violation of natural justice is dismissed.

5.3.1 So far as issue of notice u/s.143(2) is concerned, I am unable to agree with the Ld. AR that the return has to be processed u/s.143(1) before a notice u/s.143(2) is issued. There is no basis of such argument simply because the statute does not provide for any such restriction for issue of notice u/s.143(2). The time limits for processing u/s.143(1) and for issue of notice u/s. 143(2) are given in the statute and these two are quite different. To be more precise, the time limit for processing u/s.143(1) is more than the time provided for issue and service of notice u/s.143(2). If the intention of the legislature, as stated by the Ld. AR, was to ensure that before issue of notice u/s.143(2) the return has to be processed u/s.143(1), then the additional time given for processing of return will become infructuous and irrelevant. During the course of the hearing, the Ld. AR relied upon sub-section 1(D) introduced by Finance Act 2012. This provision simply mandates that the processing u/s. 143(1) shall not be necessary where a notice has been issued to the assessee u/s.143(2). In other words, under the earlier provisions, the AO had to process the return u/s.143(1) even after issue of notice u/s.143(2), which would ultimately result in an order u/s.143(3)/144. Since, the total income will be computed u/s.143(3)/144 and based on which the tax demand shall be raised or refund granted to the assessee, the legislature in its wisdom decided that processing of the return u/s.143(1) before passing of such order u/s.143(3)/144 will be an infructuous exercise and, hence, it simply provided that processing of such return shall not be necessary. In other words, the provision itself makes it clear that return would be processed and were to be processed under the earlier provision after the issue of notice u/s. 143(2). In view of the above and in view of the provisions of section 143(1) and 143(2) are separate and independent provisions, I do not find any merit in the argument of the Ld AR that the AO should have processed the return u/s.143(1) before the issue of notice u/s.143(2).

^further, the Ld. AR has challenged the issue of notice u/s. 143(2) on the ground that ie same is a case of non-application of mind. I am unable to agree. A notice .u/s. 143(2) is simply to ensure that the income disclosed in the return has not been under stated. In other words and unlike the case of reopening u/s. 147, the AO need not form a belief based on reasons to be recorded in writing that income has been under stated. The AO, therefore, need not record any reason as to why he is issuing a notice u/s. 143(2). In the instant case, as has been mentioned by the AO in the assessment order, this case was taken up for scrutiny under CASS. The Ld. AR is perhaps alluding to the fact that a selection of a case under CASS is an instance of lack of application of mind by the AO. I am unable to accept such an argument. In the interest of transparency and as a better risk management tool, the department has devised Computer Assisted Scrutiny Selection (CASS) wherein based on certain objective parameters the cases are picked up for scrutiny. Such a process has been held valid and constitutional by the Hon'ble Andhra Pradesh High Court vide their order dated 29.06.2012 in Writ Petitions No.3047 and 13542 of 2012 in case of MA. *Andhra Pradesh Beverages Corpn. Ltd. vs. ITO.*

In this case the Hon'ble High Court observed as under:

"Suffice to notice that the CASS appears to be a fair and transparent methodology evolved by the Department, harnessing technical evaluation to ensure a comprehensive, fair and transparent method of identifying cases for scrutiny under section 143 of the Act; on the basis of certain markers/indices programmed into CASS methodology, which automatically identifies a case as-justifying scrutiny, wherever one or more of the markers present in the return of income filed either electronically or manually. If the Board had directed that cases identified by CASS ought to be taken up for scrutiny we fail to see how such instructions interfere with the Assessing Officer's discretion.

CASS methodology evolved and currently employed by the Department has revealed from rival contentions and pleadings on record is but an efficient methodology for proper exercise of discretion by the Assessing Officer under section 143.

On the aforesaid notices, we find no violation of the provisions of the Act; or abdication of the statutory discretion by the respondent in taking up petitioner's case for scrutiny on the basis of CASS. "

In the instant case, as is evident from the records, the notice has been issued based on CASS and has been duly served on the appellant in time. I, therefore, find no merit in the ground raised by the appellant in challenging the notice u/s.143(2) and the ground No.2 is accordingly, dismissed."

4. Before me, Id A.R. of the assessee could not point out any specific error in the order of the CIT(A). He could not also point out any contrary

decision of any Hon'ble High Courts of Hon'ble Supreme Court. I find that the CIT(A) has dismissed the grounds by following the decision of Hon'ble A.P. High Court in the case of M/s. Andhra Pradesh Beverages Corporation Ltd.(supra). I, therefore, find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed and ground Nos.1 & 2 of the appeal of the assessee are dismissed.

5. Ground Nos.3 to 6 read as under:

3. That, the learned CIT (A) has committed serious error in not accepting the deposits in bank account of Rs. 47,40,000/- is a part of total turnover and for that matter the addition based on wrong assumption of fact by the learned Assessing Officer should have been deleted by the learned CIT (A).

4. That, the learned CIT (A) has committed a serious error in not deleting the addition which is based on the surmise and conjecture of the learned Assessing Officer without having any evidence available on record on hypothetical basis.

5. That, the learned CIT (A) has committed serious error in not deleting the addition of Rs. 47,40,000/- which was added by the learned Assessing Officer being the entire deposits rejecting the audit report and evidence submitted before him.

6. That, the learned **CIT** (A) has committed serious error in not deleting the addition made by the learned Assessing Officer of Rs. 47,40,000/- as unexplained money u/s 69A of the Act."

6. The brief facts of the case are that the assessee is a Director in a company called KNB & Co. Pvt. Ltd. She filed her return of income on 01.06.2010 disclosing total income of Rs. 1,50,000/-. Thereafter, the case was selected for scrutiny under CASS and, accordingly, notices u/s.143(2) and 142(1) were duly issued and served on the assessee. During the scrutiny proceeding the Assessing Officer found that the assessee has

deposited an amount of Rs.47,40,000/- in her 1CICI bank savings account. The Assessing Officer observed that the assessee only receives remuneration from the company as a Director and has not disclosed any other income to explain the above cash deposit. On being asked to explain the deposits, the assessee explained that she was engaged in transportation business which has not been disclosed in the return. The assessee also filed a copy of her audited accounts u/s.44AB before the Assessing Officer. **The** Assessing Officer did not accept the explanation and treated the entire deposit of Rs.47,40,000/- as unexplained and made addition to the income of the assessee.

7. On appeal before the CIT(A), the assessee submitted that the said deposits made in her bank accounts are duly recorded in the books of account on the basis of which audit report and trading profit and loss account and balance sheet has been prepared and submitted before the Assessing Officer. Therefore, the Assessing officer cannot invoke section 69A of the Act and treat the entire deposits as income of the assessee and, therefore, the addition was required to be deleted.

8. The CIT(A) called for a remand report from the Assessing Officer, wherein, the Assessing Officer vide letter No.4100 dated 14.3.2014 submitted that on verification of copy of ledger of transport charges receipts, it is observed that the assessee received the amount on day to day basis in cash but the amounts so received was deposited in lump sum on the specific dates as under:

<i>Sl.No.</i>	<i>Date of deposit</i>	<i>Amount (Rs)</i>
1.	22.04.2008	7,00,000
2.	29.04.2008	9,90,000
3.	01.05.2008	9,90,000
4.	10.05.2008	2,70,000
5.	12.05.2008	5,00,000
6.	14.05.2008	5,00,000
7.	20.05.2008	5,00,000
8.	16.12.2008	2,90,000

9. He observed that it was unbelievable that the assessee was holding such huge cash in hand for period of 21 days in the month of April to deposit the money in her bank account when she was operating her account since 29.08.2007. He further observed from the statement of bank account that major receipts/deposits are made in the month of April & May whereas amounts were withdrawn from the bank account in the month of July, August, September, October & December. He noted that from the ledger copy of transportation charges paid, it is seen that the assessee had paid to different truck owners on day to day basis during the month of June to March. Thus, the deposits & withdrawals are not correlated each other and the assessee was not having sufficient funds in her hands to make payment of transportation charges and other expenses as debited to the P&L account. Further, no tax was deducted at source at the time of making payment to the assessee by the parties u/s.194C of the Act.

10. The CIT(A) after considering the submissions held as under:

So far as the addition of ₹47,40,000/- is concerned, I again find no merit in the contentions advanced by the appellant. There is no dispute that the

amount of ₹47,40,000/- was deposited into the savings bank account of the appellant in just eight instalments. Out of this, an amount of Rs.44,50,000/- was deposited in seven instalments from 22.04.2008 to 20.05.2008 i.e. just under a period of 30 days. Another amount of Rs.2,90,000/- was deposited on 16.12.2008. In view of the above facts, I am unable to persuade myself that the above deposits of the appellant represent receipts from an alleged transport business. It is also to be noted that the appellant is a salaried employee and had only disclosed her salary income in the return. Further, neither in the scrutiny proceeding nor in the remand proceeding, the appellant has produced any evidence in support of her claim that she was engaged in transportation business. No details have been furnished regarding the parties to whom such business was rendered and the parties to whom the transport charges were paid. The Ld. AR in his written submission has stated that the business was through personal contact/over telephone, yet quite strangely the appellant fails to produce even one such party or a confirmation from any such party regarding the business transaction for verification. It is unbelievable that a person who allegedly has transport receipts of more ₹48,00,000/- and payments of more than ₹46,00,000/- does not have a single bill either in support of receipt or expenditure. Further, whether the deposits is to be added u/s.69A or u/s.68/69/69B is only academic. The substantial question is does the appellant has any acceptable explanation regarding the source of deposit and the unequivocal answer to this question is a resounding NO. It is for the appellant to explain to the satisfaction of the AO the source of these deposits particularly when these deposits were not disclosed in the return. In a recent case where the assessee disclosed income from commodities and claimed expenses but could not provide evidence in support of the business transaction the entire receipt was held as income u/s.68. Confirming the action of the AO, the Hon'ble P&H High Court in ***Dulari Digital Photo Services Pvt. Ltd. vs. CIT (DTRJ 20130978-ITA No.189 of 2012)*** held that if the assessee fails to prove the business-transaction, the entire amount has to be added. In view of the above discussion, relying on the ratio of the above decision and in the absence of any evidence or any other explanation relating to the source of the cash deposited into the savings bank account, I do not find any reason to interfere with the action of the AO in bringing to tax the entire deposit of Rs.47,40,000/-. The addition of Rs.47,40,000/- is accordingly sustained and the grounds No.3 to 6 are dismissed."

11 I have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer observed that the assessee has maintained one bank account bearing No.634201519725 with ICICI Bank, Keonjhar. The said

bank account was not disclosed by the assessee in the return of income. In her return of income, the only source of income disclosed by the assessee was income from salary. The Assessing Officer observed that the total deposits in the said bank account was Rs.47,40,000/-. When confronted, the assessee explained that she was engaged in transporting business also during the year under consideration. The claim of the assessee was that the entire deposits cannot be treated as income of the assessee and only income element imbedded in the total receipts can be brought to tax. In support of the transporting business, the assessee filed before the Assessing Officer copy of audited accounts of the transporting business, cash book and ledger of transporting business. However, the Assessing Officer not accepted the above explanation of the assessee on the ground that nothing was brought before him in respect of transporting business. He treated the entire deposits of Rs.47,40,000/- as income of the assessee.

12. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

13. I find that it is not in dispute that books of account including ledger account of creditors to whom transporting charges were paid and ledger accounts of debtors from whom transporting charges were received by the assessee were filed before the Assessing Officer. The contention of the assessee is that as no defect on verification of the said account could be pointed out by the Assessing Officer after verification of the same and, therefore, it was not correct on the part of the Assessing Officer to allege

that no supporting evidence of transporting business was filed and the Assessing Officer was not justified in rejecting the account. In my considered view, the accounts cannot be rejected without pointing out any defect therein after verification merely on the ground that the said accounts were not disclosed in the return of income. In the above circumstances, in my considered opinion, it will be just and fair and in the interest of justice to restore the issue back to the file of the Assessing Officer for proper verification of the accounts submitted by the assessee. I, therefore, set aside the issue back to the file of the Assessing Officer for making assessment denovo as per law after proper verification of accounts submitted or to be submitted by the assessee. Needless to mention that proper opportunity of hearing shall be allowed to the assessee by the Assessing Officer before making the assessment afresh. Thus, the grounds of appeal of the assessee are allowed for statistical purposes.

14. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 31/07/2017.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 31 /07/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant : Smt. Leelabati Behera, ,
C/O. Kashinath Behera, At: Sahid Nagar,
PO: Joda, Dist: Keonjhar
2. The Respondent. ITO, Keonjhar Ward,
Keonjhar
3. The CIT(A) Bhubaneswar.
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack