

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK  
'SMC' BENCH, CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No.150/CTK/2017**  
Assessment Year : 2011-12

Sri Prakash Bhandary, S-3/9, BDA Commercial Complex, Bhubaneswar.	Vs.	ITO, Ward-2(4), Bhubaneswar.
PAN/GIR No. AETPB 0155 Q		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Purna Chandra Mishra, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 09 /08/ 2017**  
**Date of Pronouncement : 11 /08/ 2017**

**ORDER**

1. This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 4.1.2017 for the assessment year 2011-12.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the addition on cash deposit received of Rs.5,56,775/- out of Rs.22,55,153/- as income from undisclosed sources u/s.69 of the Act.

3. The brief facts of the case are that the Assessing Officer found that from AIR information that the assessee had made cash deposits of Rs.11,87,403/- with State Bank of India A/c No.20002230206 and Rs.13,67,750/- with Standard Chartered Bank A/C No.34510115330

aggregating to Rs.25,55,153/-. Since the source of cash deposits could not be satisfactorily explained by the assessee except to the extent of Rs.3,00,000/-, the Assessing Officer considered the amount of Rs.22,55,153/- as income of the assessee u/s.69 of the Act observing as under:

*" As regards the source of cash deposits in 5/B A/c No.34510115330 maintained at Standard Chartered bank amounting to Rs. 13,67,750/-, the assessee could able to explain an amount of Rs.3,00,000/- only. It is evident from the account statement of the Current A/c No.30262191355 of M/s Sugi Marketing that an amount of Rs.3,00,000 has been withdrawn on 17.5.2010 which the assessee explained that this amount forms part of cash deposits of Rs.5,00,000/- in the above 5/B account on 17/5/2010. But assessee's contention regarding the source of cash deposit out of cash "Withdrawal from CC A/c No.30324155852 found incorrect as explained in detail vide para No. 2.7 supra. Hence, the source of remaining cash deposits amounting to Rs.10,67,750/- remained unexplained.*

*Be so as it may, the assessee despite of being given ample opportunities of being heard during the course of assessment proceedings, could not able to explain the source of cash deposits in his saving bank accounts amounting to Rs.22,55,153/-(Rs/25,55,153 - Rs.3,00,000). Rather, he tried to convince the undersigned by providing facts which are not commensurate to material facts available on record. Hence, I am constrained to treat the cash deposits in S/B accounts amounting to Rs.22,55,153/- as income of the assessee from undisclosed sources and added to his total income u/s 69 of the I.T.Act, 1961."*

4. Before the CIT(A), the assessee submitted as under:

*"The assessee is a partner of the firm, M/s. Sugi Marketing. During the year in question he derives income from salary from the firm and share income from the above firm amounting to Rs. 1,71,950/-. Accordingly, the return of income was filed on 20.10.2011.*

*2. But the Ld. Assessing Officer added Rs.22,55,153/-to the total 1961 on the ground that the appellant could not be able to explain the source of cash deposits in his Saving Bank accounts amounting to Rs.22,55,153/-. The Assessing Officer was of the opinion that the appellant could not explain the following deposits in his Savings Bank accounts.*

i) Standard Chartered Bank,	A/c.No.	
Bapujinagar, BBSR	34510115330	Rs. 13,67,750/-
ii) State Bank of India,		
Rajbhawan, BBSR.	20002230206	<u>Rs. 11,87,403/-</u>
		Rs. 25,55,153/-
The A.O. accepted cash deposit on 17.5.10 (-)		<u>Rs. 3,00,000/-</u>

Balance amount is added U/s. 69 of the Income-tax Act, 1961 Rs. 22,55,153/-

3. Section 69 of the I.T. Act, 1961 explains 'Unexplained Investment as follows:

"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 Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

From this it is evident that the assessee has not invested any amount but detailed explanation offered at the time of assessment proceedings were not accepted by the Ld.A.O. It is specifically mentioned that the value of investment may be deemed to be the income and not shall be deemed to be the income as interpreted by the Hon'ble Apex Court in the case of CIT Vrs. Smt. P.K.Noorjahan (their order dated 15.1.1997) vide ITR 237 page 570 and deleted the addition made by the A.O. U/s. 69 while affirming the decision of the Hon'ble Kerala High Court in the case of CIT Vrs. Smt. P.K.Noorjahan vide (1980)123 ITR 3 (Ker).

4. Here, in the case of the appellant, it is submitted, that the appellant being a partner of the firm, M/s. Sugi Marketing used to receive the payment of sale-proceeds from all most all the launch owners or big boat owners throughout Odisha State and Outside State through his Savings Bank Account No. 20002230206 maintained in the same State Bank of India, Raj Bhawan Branch, Bhubaneswar without knowing proper accounting standard. The same may kindly be verified from page 6 to 18 of the paper book. The firm, M/s. Sugi Marketing maintained only two accounts i.e.

(i) Cash credit Account No. 30262191355 in SBI, Rajahawan Br.

(ii) Current Account No. 30324155652 -do-

The firm deals in sale of Fibre Reinforcement Plastic materials which are used for checking leaking water into the launch or big boats in sea. The firm showed total sale of Rs. 55,15,816/- during the year in question vide page 1 to 3 of paper book and the said sales of the firm are assessed to Sales-tax and Income-tax. But due to banking difficulties the appellant allowed deposits made by the launch owners/big boat owners from different parts of Odisha State in his Savings Bank account maintained in the same bank.

5. The savings bank account No.20002230206 belonging to the appellant clearly show the name of the depositors in different parts of Odisha State with the branch of the State Bank of India where the amount was deposited. As an evidence 26 confirmation letters from the depositors confirming amount received towards sale of FRP materials, are furnished for your Honour" kind verification vide page 65 to 90 of the paper book as follows:

The appellant could not find the location of other purchasers i.e. launch owners and big-boat owners for obtaining confirmation, regarding sale of Fibre Reinforcement plastic materials. However, the State Bank of India, Raj Bhawan Branch charged inter branch fee in 124 cases on the cash deposits of customers who purchased FRP materials from the firm in which the appellant is partner vide page - 6 to 18 of the Paper Book i.e. S.B.Account No. 20002230206. From this it is evident that the cash deposits relates to the firm in which the appellant is a partner. Hence, the additions made U/s.69 may kindly be deleted considering the facts and circumstances of the case.

6, I would submit before your Honour' regarding the ignorance of accounting system of the appellant that the State Bank of India, Rajbhawan Branch, Bhubaneswar credited the whole cash credit amount i.e Rs.17,00,000/- on 30.11.2010 (vide page 13 of paper book), Rs. 15,50,000/- on 31.1.2011 (vide page-15), Rs.16,00,000/- on 28.20204 (vide page 17), Rs.60,200/- on 22.3.2011 and Rs.13,90,000/-on 31.3.2011 (vide page 18) and all the above amounts were debited on the next working day in CC Account No.30324155852(vide page 28 to 58 of the paper book) belonging to the firm, M/s.Suji Marketing.

7.Discrepancy of cash deposit of Rs.13.67.750/- in standard Chartered Bank, Bapuii Nagar. BBSR.

The appellant maintains another Savings Bank Account bearing No.34510115330 in Standard Chartered Bank also: While adding the cash deposits the Ld. A.O. mentioned in para-2 of assessment order in page 6,

"In response to the above, the bank authorities furnished the ledger copies of az credit account No.30324155851 for the required period and it was further intimated that the Current Account No.30262191355 does not exist at all." In pars-3 of assessment order at page 6 states as follows:

"Scrutiny of the ledger copies of CC A/C. No. 30324155852 reveals the fact that there is no such withdrawal of Rs.4,00,000/- on 22.4.2010 as claimed by you explaining the cash deposit of Rs. 1,41,500/- on 23.4.2010 in the S.B.A/c.No.34510115330 maintained at Standard Chartered Bank, Bhubaneswar. Similarly, as regards cash deposit of Rs.5,00,000/f5 on 17.5.2010 in the above S/B account, you have contended that the said cash deposit is out of cash withdrawal of Rs.3,00,000/- from the Current Account and Rs.2,00,000/- from Cash Credit Account of the firm, M/s.Suji Marketing. But the

statement of the CC a/c. for the period 1.4.2010 to 31.3.2011 does not reflect an withdrawal of such money amounting to Rs.2,00,000/- on 17.5.2010 and the question of cash withdrawal of Rs.3,00,000/- from the Current Account on 17.5.2010 does not arise at all where the said current account is non-existent as confirmed by the bank authorities."

However, as mentioned in para - 2.10 the Ld. Assessing Officer added only Rs. 10,67,750/- towards cash deposits in Standard Chartered Bank, Bhubaneswar after satisfaction of withdrawal of Rs.3,00,000/- from CC account No.30262191355 belonging to the firm, M/s.Sugi Marketing Hence, the Ld. A.O. did not believe cash 'withdrawal of Current Account No.30324155852. But the Ld. A.O. could not verify the following withdrawals from cash credit account and account of the firm, as detailed below, for your Honour's verification.

Cash Credit Account No.30262191355 of the firm

Date of withdrawal	Amount	Vide Paper book page
22.4.2010	Rs. 4,00,000	29 (back page)
17.5.2010	Rs. 2,00,000	31
29.9.2010	Rs.6,00,000	41 (back page)
10.2.2011	Rs. 25,000	45
22.12.2010	Rs. 2,25,000	58

Current Account No.30324155852 of the firm

17.5.2010	Rs. 3,00,000	60
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The Id. A.O. did not allow Rs.2,00,000/- on the plea that the current account is not in existence as the Branch Manager, State Bank of India, Raj Bhawan Branch did not furnish the account at copy of current account. But subsequently the said B.M., SBI, Raj Bhawan Branch intimated in his letter [No.BR/SL/](#) No. 08/83 dt.4.3.2014 as follows - copy enclosed at page-91 to 93 of the paper book.

"With reference to your letter dt.4.3.2014 and our letter No.8/79 dt.28.2.2014 to Income-tax Office, we clarify that the account No.30262191355 was present upto 15.11.2010 (statement enclosed). Due to stripping of transaction upto March, 2011 the account does not reflect in our Core Banking solution on 28.2.2014. Now we have downloaded from separate server."

From the above background of the case it is clear that the Ld. Assessing Officer without examining the details of cash credit account No.30262191355 and Current account No.30324155652 of the firm, M/s. Sugi Marketing, added all the cash deposits made in the 'Individual' savings bank account No.34510115330 and account No.20002230206 of the partner, i.e. the appellant, U/s.69 as unexplained investment although everything was explained at the time of assessment proceedings. Actually the cash deposits are not investments in any individual business of the appellant who derives only share income and salary from the firm. All the

*cash deposits made are out of withdrawals from cash credit account and current account of the firm due to ignorance of accounting system."*

5. After considering the submission of the assessee, the CIT(A) confirmed the action of the Assessing Officer.
6. Before me, Id A.R. reiterated the submissions made before the CIT(A).
7. Ld D.R. supported the orders of lower authorities.
8. I have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer made addition of Rs.22,55,153/- being cash deposit made in the bank account maintained with SBI A/c No.20002230206 and Rs.13,67,750/- with Standard Chartered Bank A/C No.34510115330 aggregating to Rs.25,55,153/- as the assessee could not explain the source of deposit satisfactorily before the Assessing Officer.
9. On appeal, the CIT(A) after examining the facts in its entirety sustained the addition of Rs.5,56,775/- by observing as under:

" I have gone through the facts of the case, the written submission of the assessee and the voluminous details filed by the assessee including copies of bank statements, extracts of the sales ledger of the firm M/s. Sugi Marketing wherein the assessee is a partner, confirmations from many of the customers of the firm who have stated to have deposited the amounts towards purchase in the bank account of the assessee-partner and copies of sales invoices relating to the purchases in question etc. AN these details and documents are stated to have been filed before the AO at the time of assessment. I also find from the assessment order that the assessee has explained before the AO that the deposits in his bank accounts have come from the sale proceeds of the firm. However, the AO has not accepted this for want of cash book of the firm and other necessary details. The assessee contends that the cash book was produced before the AO. He has also offered the same for examination at the time of appeal hearing. Test check of the cash book has been carried out with reference to the

sales invoice copies filed and other details and documents. From the details and documents furnished, it is apparent that out of the total sale proceeds of the firm of Rs.15,89,291/- for which copies of invoices are available amounts totaling Rs.10,54,878/- have been deposited on various dates in the SB account of the assessee in SBI, Rajbhawan Branch. The total deposit in the SB account of the assessee with SBI, Rajbhawan Branch considered as unexplained by the AO is Rs.11,87,403/-. Out of the same, an amount of Rs. 10,54,878/- appears to be explained having come from the sale proceeds of the firm M/s. Sugi Marketing. The balance amount of Rs. 1,32,525/- still remains to be explained. Since the assessee has failed to explain the sources of Rs.1,32,525/-, the addition to this extent has to be confirmed.

The AO has considered deposits to the extent of Rs. 10,67,750/- made in the SB account of the assessee in Standard Chartered Bank as unexplained and made an addition to that extent in the assessment. In the course of appeal hearing, the assessee has pleaded that deposits totaling Rs.9,43,500/- have come out of the cash withdrawals from the accounts of the firm in SBI, Rajbhawan Branch. This claim of the assessee has been verified and found to be acceptable. The details of such -explained deposits may be mentioned below:

<i>Date</i>	<i>Amount</i>	<i>Source</i>	<i>Page no. of Paper book dated 05.08.2016</i>
23-04-10	141500.00	Out of withdrawal of Rs.400000 on 22.04.10 from 30324155852	29 Back
03-05-10	150000.00	Out of withdrawal of Rs.400000 on dt. 22.04.10 from 30324155852	29 Back
17-05-10	500000.00	Rs.2,00,000 was withdrawn from Current A/C of firm 30262191355 on 17-05-2010 because the concerned bank furnished the information subsequently to the Ld. A.O. and Rs.3,00,000 was withdrawn from CC A/C of firm 30324155852 on 17.05.2010	31 and 60
29-09-10	83000.00	Rs. 83000 was deposited out of withdrawal 160000 from CC Account 30324155852	41
16-11-10	41000.00	Rs. 41,000 deposited out of Rs, 30000 withdrawal from SB AC no.20002230206 on dt. 15.11.10 and Rs.11000 from Cash in hand on sale of the good of the firm.	12
24-12-10	28000.00	Rs.28,000 was deposited out of withdrawal Rs,225000 from CC Account 30324155852	58

Thus, out of total deposits in the account with Standard Chartered Bank of Rs. 13,67,750/- taken into consideration by the AO in assessment, Rs.

9,43,500/- appears to have come from the cash withdrawals of the firm's account. Since the AO has already considered Rs.3,00,000/- as coming out of the withdrawals from the firm's account, a further amount of Rs.6,43,500/- is now being considered as coming from explained sources. The balance amount of deposits of Rs.4,24,250/- has to be considered as unexplained. Thus, out of the total addition of Rs.10,67,750/-, an amount of Rs.6,43,500/- is deleted and Rs.4,24,250/- is confirmed."

10. Ld AR could not point out any specific error in the order of the CIT(A) during the course of hearing. Hence, I do not find any infirmity in the order of the CIT(A) , which is hereby confirmed and ground of appeal of the assessee is dismissed.

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 11 /08/2017.

Sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

Cuttack; Dated 11 /08/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The appellant : Sri Prakash Bhandary, S-3/9, BDA Commercial Complex, Baramunda, Bhubaneswar.
2. The Respondent. ITO, Ward-2(4), Bhubaneswar.
3. The CIT(A) -1, Bhubaneswar
4. Pr.CIT,-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**