

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

[Before Sri J. Sudhakar Reddy, Accountant Member]

**I.T.A. No. 682/Kol/2014
Assessment Year: 2005-06**

Chetan Khara.....Appellant
56/1, Canning Street
2nd Floor
Kolkata - 700 001
[PAN : AFVPK 2402 E]

Income Tax Officer Ward-34(3), Kolkata..... Respondent
Ayakar Bhavan Poorva
110, Shantipally
E.M. Bypass
Kolkata - 700 107

Appearances by:

Shri O.P. Baid, FCA, appeared on behalf of the assessee.

Shri Pijush Mukherjee, J CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : November 16th, 2017

Date of pronouncing the order : January 19th, 2018

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-XX, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 03/02/2014, for the Assessment Year 2005-06.

2. The assessee is an individual and derives income from salary, car hire charges, house property, capital gains and income from other sources. He filed his return of income for the Assessment Year 2005-06 on 30/08/2005, declaring income at Rs.97,380/-. The Assessing Officer received information that the assessee had paid Rs.3,59,100/-, as application money for purchase of shares of Tata Consultancy Services Pvt. Ltd. (TCS). In the balance sheet and profit and loss account filed with the return income, no such transaction relating to shares of TCS was disclosed by the assessee as on 31.03.2005, nor capital gain or loss, on sale of such shares were reflected in the computation of income filed. The assessee was

asked to furnish details of Bank Account as well as Demat Account. The assessee filed an affidavit stating that he did not have any Demat Account in the year under consideration and that he did not hold any shares in Demat Account in his own name. The Assessing Officer enquired from National Securities Depository Ltd. (NSDL) and it was found that the assessee had many Demat Accounts and Bank Accounts. Some of them were closed and some were still active. It was found that one account of the assessee, was in the name of Mr. Chetan Khara (HUF). The assessee was confronted with this information. The Assessing Officer found that the assessee had an active Demat Account with M/s. ING Vysya Bank Ltd., for the period from 01/04/2004 to 31/03/2005. He had a Bank Account with HDFC Bank, which was also not reflected. The application money paid for share of TCS, was also not disclosed. The assessee filed a cash credit statement from ING Vysya Bank Ltd. reflecting loan of Rs.2,15,460/- to the assessee for purchasing shares in TCS. This amount was repaid. The assessee could not explain the source of repayment. The balance investment of Rs.1,43,640/- in TCS was held as undisclosed income, as the source was not stated. Certain other discrepancies were also found. After detailed discussion, the Assessing Officer determined the gross total income of the assessee at Rs.16,87,610/-. Aggrieved the assessee carried the matter in appeal.

2.1. The ld. First Appellate Authority, granted some relief.

2.2. Further aggrieved the assessee is in appeal before us.

3. The ld. Counsel for the assessee, Shri O.P. Baid, FCA, filed a paper book running into 97 pages. He submitted that the tax consultants of the assessee, Mr. Bhaskar Sanghvi & Mr. Ashok Popat, had all the documents of the assessee and in good faith, he signed the returns of income prepared by them and thereafter when the assessee found that the tax consultants were not taking proper interest, had terminated their service and appointed one Mr. O.P. Baid, FCA, as his new tax consultant.

The new tax consultants found that the return of income was not correct and it was necessary to file a fresh return of income for disclosing the true and correct income.

3.1. As the assessment was getting time barred, the assessee filed a petition dt. 23/11/2007 on 26/11/2007 before the Assessing Officer requesting him to issue notice u/s 148 of the Act, to enable the assessee to file a fresh return of income

disclosing the true and correct income and to treat the original return filed on 30/08/2005, as *non-est*.

4. It was submitted that by letter dt. 11/08/2007, the Assessing Officer was asked not to take cognizance or rely on various documents/papers filed by the former tax consultants as in the opinion of the new tax advisors, these documents and papers are *prima-facie*, erroneous and contrary to the facts. He submitted the Assessing Officer advised Mr. O.P. Baid to file a fresh return of income, in response to notice u/s 142, dt. 01/11/2007, as the column "prepare/submit a true and correct return of income" was not struck off. He submitted that the assessee had filed a fresh return of income before the Assessing Officer on 06/12/2007, before the completion of the assessment proceedings and paid further tax of Rs.34,225/-, declaring gross total income at Rs.1,92,143/-. That the Assessing Officer, without granting adequate opportunity, passed an order u/s 143(3) of the Act, making additions and that the Assessing Officer has committed errors, as in the revised returns, the assessee declared short term capital gains as Rs.90,352/-, whereas the Assessing Officer considered the amount at Rs.42,840/-, which was an erroneous figure. The Id. CIT(A) asked the assessee to file brief and concise submissions in the place of detailed written submissions. He submitted that the Id. CIT(A) had not adjudicated Ground Nos. 17, 18, 19, 20, 26 & 36, raised by the assessee before him. He submitted that the Id. CIT(A), should have adjudicated the issues that were raised by the assessee before him, which were legal grounds. It was argued that the assessee had requested the Assessing Officer to issue a notice u/s 148 and had also filed a return of income u/s 142(1) of the Act, dt. 06/12/2007 and this fresh return of income was ignored and that this is bad in law. He relied on the decision of the Hon'ble Supreme Court in the case of *CIT v. Kulu Valley Transport Co. P. Ltd. [1970] 77 ITR 518 (SC)*, for the proposition that the return submitted at any time before the assessment was made, is a valid return.

4.1. He relied on the various submissions made on merits which, I do not extract for brevity and prayed for relief.

5. The Id. D/R, on the other hand, supported the order of the Assessing Officer as confirmed by the Id. CIT(A) and pointed out and once an assessee filed a return of income and verifies the same, he cannot deny the contents of the return, without bringing on record evidence that his signature was fraudulently obtained on such

return of income and verification. He submitted that merely blaming the tax consultants is wrong. He submitted that, the assessee is supposed to know his own affairs. He submitted that, filing of a duly notarized affidavit by the assessee, that he does not hold shares in Demat Account, etc. cannot be said to have been done out of ignorance. He submitted that the assessee knows his affairs and merely blaming his consultants is wrong.

5.1. On service of notice u/s 148 of the Act, he submitted that it is well settled that Section 148 of the Act, is for the benefit of the revenue and the assessee cannot demand a notice u/s 148 of the Act. He relied on the judgment of the Hon'ble Supreme Court in the case of *CIT v. Sun Engineering Works P. Ltd. (1992) 198 ITR 297 (SC)*. It was submitted that it is for the Assessing Officer to record reasons based on information which comes into his possession for re-opening that income subject to tax has escaped assessment and then issue a notice for re-opening a completed assessment and when an assessment is not closed and is in progress, no notice u/s 148 of the Act, can be given for re-opening such unfinished assessment. On merits, he relied on the order of the Id. Assessing Officer as well as the Id. CIT(A).

6. After hearing rival contentions, I find that the assessee could not frame proper grounds of appeal. A number of grounds have been taken, without much application of mind. Some issues are repeated. No proper grounds are taken on merits. The argument of the assessee that he has requested the Assessing Officer to issue a notice u/s 148 of the Act, so as to enable him to declare his correct income, and that the Assessing Officer has not obliged, is contrary to the provisions of the Income Tax Act, 1961. As pointed out by the Id. D/R, when the assessment proceedings are in progress, the question of re-opening the very same proceedings does not arise. Thus, the entire arguments passed on the assessee's request to the Assessing Officer to issue him fresh notice so that he could file correct details etc. are mis-conceived, illegal, lack of knowledge on a wrong understanding of the law and lack of proper professional guidance. Re-opening cannot be done for the benefit of the assessee and at his whims and fancies, when assessment proceedings are in progress. Hence all these grounds are dismissed.

This is a case, where the assessee has filed a false affidavit. The fact that the assessee opened and operated a number of bank accounts as well as a number of

Demat Accounts is in his exclusive knowledge and filing of an affidavit stating that he does not have any Demat Accounts or Bank Accounts, is with a criminal intention to mislead the revenue. Blaming some Counsel for such false affidavit etc., cannot be countenanced. Thus, all the legal arguments of the assessee are dismissed as devoid of merit. If at all the assessee feels that his earlier counsels have misled him or taken him on the wrong path, he can take appropriate legal and disciplinary action against them.

6.1. Be it as it may, I am of the opinion that the entire activities of the assessee should be captured by way of single cash flow statement and income arrived at from such single cash flow statement should be brought to tax. Piecemeal additions of various entries/transactions do not enable us to the estimation of the correct income.

7. In view of the above observation, I am of the opinion that the issue should be set aside to the file of the Assessing Officer for proper estimation of income. The assessee shall file a comprehensive cash flow statement, which can be verified by the Assessing Officer from which the income can be quantified.

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

Kolkata, the 19th day of January, 2018.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 19.01.2018
{SC SPS}

Copy of the order forwarded to:

1. Chetan Khara

56/1, Canning Street

2nd Floor

Kolkata - 700 001

2. Income Tax Officer Ward-34(3), Kolkata

Ayakar Bhavan Poorva

110, Shantipally

E.M. Bypass

Kolkata - 700 107

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

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