

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri P.M. Jagtap, Hon'ble Accountant Member]**

**I.T.A. No. 1546/Kol/2017
Assessment Year: 2013-14**

***I.T.O. Ward-44(2), Kolkata.....Appellant
3, Government Place(W)
Kolkata - 700 001***

***Kamal Kumar Sharma.....Respondent
147, Mahatma Gandhi Road
Kolkata - 700 007
[PAN : AKZPS 9300 A]***

Appearances by:

None , appeared on behalf of the assessee.

Shri P.K. Mondal, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 19th, 2017

Date of pronouncing the order : February 23rd, 2018

O R D E R

Per P.M. Jagtap :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-13, Kolkata, dt. 12/04/2017, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), and the solitary issue involved therein relates to the deletion of the addition of Rs. 43,00,000/-, made by the Assessing Officer, on account of unexplained cash credit u/s 68 of the Act.

2. The assessee in the present case is an individual who is engaged *interalia* in the real estate business. The return of income for the year under consideration was filed by him on 24/03/2014 declaring total income of Rs. 10,460/-. In the balance sheet filed along with the said return, advances received from the 4 parties against flat booking were shown by the assessee. During the course of assessment proceedings the assessee was called upon by the AO furnish the details of the said advances. Although the assessee furnished the relevant details required by the AO in respect of advances received from the parties, he could not furnish such details in respect of the advances of Rs. 43 lakhs received from the remaining party i.e. M/s Media Morpsosis. The AO, therefore, treated the said advance amount of is 43

lakhs as unexplained cash credit and added the same to the total income of the assessee.

2.1. The addition of Rs. 43 lakhs made by the AO on account of unexplained cash credit was challenged by the assessee in the appeal filed before the Id. CIT(A). During the course of appellate proceedings before the Id. CIT(A) the copy of the relevant sale deed was filed by the assessee in order to explain the advance of Rs. 43 lakhs in question received by him against flat booking. The said document constituting additional evidence was forwarded by the Id. CIT(A) to the Assessing Officer for the latter's comment. In the remand report dated 07/03/2017, submitted to the Id. CIT(A), the AO offered his comments as under:-

"During the course of hearing dated 18/01/2017, the assessee filed a copy of sale deed dated 08/04/2011. It is seen from the said deed that Dr. Phanindra Nath Chakraborty and his wife Mrs. Anima Chakrabarty purchased a property (1450 sqft Flat) at Tollygunge, Kolkata 700026 at a sale consideration of Rs.43,00,000/- and the paid the amount by account payee cheque (Cheque No.745253 drawn on Axis Bank Ltd) on 08/04/2011.

It is seen from records that the assessee vide order sheet dated 14/03/2016 was requested to submit the details of parties made advances for flat booking. But the assessee did not submit the details of "Media Morphosis". Afterwards, the assessee submitted the sale deed of Dr. Phanindra Nath Chakraborty and his wife Mrs. Anima Chakrabarty, not any documents in respect of "Media Morphosis". On scrutiny, it is also seen that the said flat was outright sold and there was no advance payment in this respect. The assessee also failed to produce any certified copy of the deed submitted. So it is crystal clear that the assessee in the liability side of his balance sheet for assessment year 2012-13 the amount of advance received for flat booking (Rs.43,00,000/-) is totally fictitious and the AO made the addition of Rs.43,00,000/- correctly. (Copy of balance sheet for assessment year 2012-13 is enclosed)"

2.1.1. After taking into consideration the remand report submitted by the AO as well as the material available on record, the Id. CIT(A) in the case of the assessee and deleted the addition of Rs. 43 lakhs made by the AO on account of unexplained cash credits for the following reasons given in his impugned order:-

" At appellate stage, the appellant has submitted copy of bank account of State Bank of India, Chittaranjan Avenue Branch, A/c. No.66007625969 in the name

of Kamal Sharma wherein it is found that an amount of Rs,43,00,000/- was credited through Cheque NO.745253 drawn on Axis Bank Ltd on 12/04/2011. The appellant also produced copy of sale deed dated 08/04/2011 of Dr. Phanindra Nath Chakraborty and his wife Mrs. Anima Chakrabarty who have purchased d property (1450 sqft Flat) at Tollygunge, Kolkata 700026 at a sale consideration of Rs.43,00,000/- and paid the amount by account payee cheque (Cheque No.745253 drawn on Axis Bank Ltd) on 08/04/2011. Keeping in view the aforesaid fact I am of the opinion that the aforesaid transaction is genuine and proved. The addition made by the AO is not sustainable. Therefore, the addition made by the AO is hereby deleted and the ground of the appellant is allowed”

2.2. Aggrieved by the order of the Id. CIT(A), the revenue has preferred this appeal before the Tribunal.

3. At the time of hearing, fixed in this case on 19/02/2018, none has appeared on behalf of the assessee. It is also noted that there was a similar non-compliance on part of the assessee when his appeal was earlier fixed for hearing before the tribunal on 11/09/2017, 17/10/2017, 30/11/2017 and 18/01/2018. Keeping in view this non-compliance on the part of the assessee this appeal of the revenue is being disposed of ex parte quality respondent assessee after hearing the arguments of the Id. D/R and producing the relevant material available on record.

4. Although the Id. D/R, strongly relied on the order of the AO as well as the remand report submitted by him before the Id. CIT(A) in support of the revenue's case on the issue under consideration, it has observed that the amount of Rs. 43 lakhs in question received by the assessee as advance for flat booking from M/s. Media Morphosis, was treated by the AO as unexplained cash credit mainly due to the failure of the assessee to furnish relevant details. During the course of appellate proceedings, the assessee not only furnished the said details but also filed a copy of relevant sale deed to show that the amount in question was received by him against the flat booking. This documentary evidence filed by the assessee was sufficient to prove that the amount of Rs. 43 lakhs was received by him by check on 08/04/2011 as advance against flat booking and the same was duly reflected in balance sheet as on 31/03/2013 along with similar advances received from other 3 parties. It

appears that these material details and relevant to the issue in dispute, however, there aside by the AO and he doubted the genuineness of the amount in question on altogether different grounds which were not raised by him in the assessment order not the same, in my opinion, were relevant to decide the issue under consideration according to him. The Id. CIT(A), on the other hand, appreciated the documentary evidence filed by the assessee in the right perspective by treating the amount in question received by the assessee as advance against flat booking as explained and deleting the addition made by the AO by treating the same as unexplained cash credit. I, therefore, find no infirmity in the impugned order of the Id. CIT(A) giving relief to the assessee on this issue.

5. In the result, appeal of the revenue is dismissed.

Kolkata, the 23rd day of February, 2018.

Sd/-
[P.M. Jagtap]
Accountant Member

Dated :23.02.2018
{SC SPS}

Copy of the order forwarded to:

***1. I.T.O. Ward-44(2), Kolkata
3, Government Place(W)
Kolkata - 700 001***

***2. Kamal Kumar Sharma
147, Mahatma Gandhi Road
Kolkata - 700 007***

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