

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

**[Before Sri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 352/Kol/2018**

Assessment Year: 2012-13

**Shri Bikramjit Sen.....Appellant**

**C/o, A.Kayes & Co.**

**Chartered Accountants**

**231, Kamalalaya Centre**

**156A, Lenin Sarani**

**Kolkata - 700 013**

**[PAN : AMEPS 7892 Q]**

**I.T.O. Ward-22(2), Kolkata.....Respondent**

**54/1, Rafi Ahmed Kidwai Road**

**3<sup>rd</sup> Floor**

**Kolkata - 700 013**

**Appearances by:**

*Shri V.N. Purohit, FCA, appeared on behalf of the assessee.*

*Shri Sailen Samaddar, Addl. CIT, DR, appearing on behalf of the Revenue*

Date of concluding the hearing : May 22<sup>nd</sup>, 2018

Date of pronouncing the order : May 25<sup>th</sup>, 2018

**O R D E R**

**Per J. Sudhakar Reddy :-**

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-9, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 08/12/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2012-13.

2. In this case, the assessee was asked to explain the source of deposit of Rs.12,00,000/- on 02/04/2011 in its A/c No. 513501010050108, held with the Union Bank of India, Diamond Harbour Road, Amtala Branch. The assessee explained that the source is from proceeds of sale of property on 25/03/2011, for a consideration of Rs.15,02,416/-. The Assessing Officer in the last line of his assessment order observed that the assessee did not produce evidence of encashment of cheque no. 65456 of Rs.15,00,000/- in his bank account.

2.1. The Assessing Officer found that the property was in the name of Smt. Kamala Bala Sen wife of Late Manmohan Sen and that she expired on 06/11/1988

leaving behind two sons and four married daughters, who were the absolute owners of the property. The assessee claimed that the sisters had gifted their portion of the consideration to the assessee. The Assessing Officer found that no evidence in this regard was filed by the assessee. The Assessing Officer further observed that the sale in question pertained to the Assessment Year 2011-12 and the assessee has filed an affidavit promising to pay the capital gains tax liability of three elder sisters. On the ground that the amount of Rs.12,00,000/-, received on 02/04/2011 is not from the amount of proceeds from the sale of property which was received vide cheque bearing no. 65456 of Rs.15,00,000/-, the Assessing Officer made the addition u/s 68 of the Act.

2.2. Before the Id. CIT(A), the assessee has taken irrelevant grounds. Hence the Id. CIT(A) dismissed the appeal. Aggrieved the assessee is before us.

3. The Id. Counsel for the assessee filed a paper book to demonstrated that the amount of Rs. 12 Lakhs was received by way of transfer of funds, from out of the Rs.15,00,000/- sale proceeds of property sold, to the current account of the assessee's proprietary concern M/s. Sen Trading Corporation Pharmaceuticals.

4. I find that he Assessing Officer in his remand report, a copy of which is placed at page 24 & 25 of the paper book, has stated as follows:-

*"1. An amount of Rs.15,00,000/- was deposited in account no. 513502010502537 on 30.03.2011, which was cleared from our service branch on 29.03.2017. The cheque no. 65456 from HDFC Bank Ltd. was dropped at our branch by the customer, which was cleared from our service branch through clearing & amount was credited into our office account on 29.03.2017. On 30.03.2017, transfer of the said amount from office account to savings account was done.*

*Further Rs.12,00,000/- was transferred from the savings account no. 513502010502537 to current account no. 513501010050108 on 02.04.2011. The transfer was done from our branch by using debit voucher with party's concern.*

*It is evident from the above statement that, Rs.15,00,000/- was deposited in assessee's saving A/c No. 513502010502537 through Cheque No. 65456, which was said to be received from sale of land. Further Rs.12,00,000/- was transferred on 02.04.2011 to Union bank account no. 513501010050108. Hence, Source of Rs.12,00,000/- deposited in A/c. No. 513501010050108 is well justified."*

In the last paragraph also it is stated as follows:-

*"On the issue of gift made by the sisters, Sri Asit Mal,A/R of the assessee could not produce any evidence that, three sisters gave their sale amount of Rs.3,00,000/- each, to Sri Bikramjit Sen (assessee). Hence, I fully rely on the Assessing Officer, Rs.12,00,000/- treated as Capital Gain in the hand of the assessee for the applicable Assessment Year.*

5. A perusal of this report demonstrates that the addition has been made on the ground that no evidence has been filed by the assessee of having received gifts from the sisters. The fact is that the amount of Rs.12,00,000/- was from the sale proceeds of property. If it is not gift then it is loan or an amount to be given back. In my view, as the source of the funds has been explained with evidence, no addition can be made u/s 68 of the Act as unexplained investment. Levy of capital gain on sale of land in each of the hands of the co-owners is a different issue. Thus, I delete this addition and allow this ground of the assessee.

6. In the result, appeal of the assessee is allowed.

***Kolkata, the 25<sup>th</sup> day of May, 2018.***

***Sd/-***

**[J. Sudhakar Reddy]**  
Accountant Member

Dated: 25.05.2018  
{SC SPS}

*Copy of the order forwarded to:*

**1. Shri Bikramjit Sen**  
**54/1, Rafi Ahmed Kidwai Road**  
**3<sup>rd</sup> Floor**  
**Kolkata - 700 013**

**2. I.T.O. Ward-22(2), Kolkata**  
**C/o, A.Kayes & Co.**  
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**231, Kamalalaya Centre**  
**156A, Lenin Sarani**  
**Kolkata - 700 013**

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