

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.194/Kol/2017
Assessment Year :2009-10

ACIT, Circle-29, Aykar Bhawan, 2, Gariahat Road, South, 4 th Floor, Kolkata-68	V/s.	Smt. Pushpa Bagla 5H, New Road, Kolakta-27 [PAN No.ADRPB 6361 M]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर स/By Appellant	Shri S. Dasgupta,Addl. CIT-DR
प्रत्यर्थी की ओर स/By Respondent	None
सुनवाई की तारीख/Date of Hearing	28-05-2018
घोषणा की तारीख/Date of Pronouncement	31-05-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for the assessment year 2009-10 arises against Commissioner of Income Tax (Appeals)-8, Kolkata's order dated 08.11.2016, in case No.cita-8 Kolkata-FY2016-17/0_10_143(3)_B-1A/548, reversing Assessing Officer's action making addition of ₹45,08,127/- credited to assessee's capital account, in proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. Case called twice. None appears at the assessee's behest. She had filed her adjournment letter on 06.04.2018. Learned co-ordinate bench accepted the same. The instant appeal was postponed for today therefore. We thus proceed to adjudicate the case on merits *ex parte*.

3. Learned Departmental Representative takes us to Revenue's solitary substantive grievance seeking to revive the Assessing Officer's action making the above stated addition of ₹45,08,127/- made in the course of assessment.

Mr. Dasgupta vehemently contends that the CIT(A) has erred in law as well as on facts in deleting the impugned addition by admitting additional evidence in violation of Rule 46A of the Income Tax Rules, 1962.

4. We have given our thoughtful consideration to Revenue's sole grievance pleaded in the instant appeal. We make it clear first of all that Revenue's first and foremost plea is that the CIT(A) has admittedly additional evidence in contravention of Rule 46A of Income Tax Rules. Para-2 of the CIT(A)'s order suggests that he had indeed sought assessing authority's remand report way back in 2013. Learned CIT(A) then observes that his adjudication is based on the relevant documents forming part of assessee's submissions made before the Assessing Officer. It therefore does not appear to be a case of additional evidence. Coming to merits, the CIT(A) holds that the impugned sum is assessee's share in profit of her firm coming by way of distribution as under:-

"8. Discussion, and, Appellate decision:

The relevant facts speak for themselves from the above documents.

It will suffice to just synopsis:

The sum is but the appellant's share in the trust property bequeathed to her and to her 2 sisters, by her father Sh. Shiwchandray Dabriwala [since deceased]. Her father had in the year 2002, set-up a private trust [PS M Beneficiary Trust] for the welfare/interest of his 3 daughters whereby he settled his interest in M/s Calcutta Investors & Promoters [a business firm] for the benefit of his 3 daughters. His son [Sh. Rajendra Kr. Dabriwala] was made one of the trustees. Upon the demise of the father, the partnership share of the father got bequeath to the son, i.e. the brother of the appellant [Sh. Rajendra Kr. Dabriwala]. Honouring the Trust Deed made by his father, and being trustee, he distributed the share of profit/capital gain from sale of leasehold property to his 3 sisters – the appellant's share being the sum at ₹45,08,127/-.

The sum is but the share of profit from the firm, being distributed, and as such there does not arise of it being taxed in the hands of the appellant.

The assessee/appellant had explained the facts to the ACIT AO. it is likely that since the facts were a bit winding, due to passage of years and events, that the ACIT AO [and due to paucity of time] could not appreciate fully. The ACIT AO has not discussed the facts, but merely on opinion made the addition.

As regards the narration in the capital a/c as 'capital gain from sale of leasehold property' – which had caused the issue, the appellant had explained to the ACIT AO that it could be considered as typographical error. I consider that the narration is not so much as being grammatically incorrect, but could have been more clear if it were as 'share from sale of leasehold

property pursuant to Trust Deed of [late] father'. And in any case, ultimately it is the facts that matter, not the narration."

5. It is thus apparent that the assessee has received the sum as distribution of profit from the relevant firm assessed in her hands as "income from other sources" during the course of assessment. She placed on record copy of her reply submitted to the Assessing Officer on 20.12.2011 pleading the impugned sum to have come from a partnership firm M/s Calcutta Investors & Promoters alongwith all the relevant records. The said letter contained M/s PSM Beneficiary Trust's correspondence dated 18.03.2009 bequeathing share of profit of her brother Shri Rajendra Kumar Dabriwala alongwith relevant trust deed dated 06.08.2002, copy of partnership deed dated 27.05.2003 specifying the relevant shares of the partner concerned, her brother's letter dated 27.03.2004 addressed to the firm that the profits are to be remitted in favour of trust, partnership firm's income computation for assessment year 2008-09, profit and loss account, assessee's computation income for impugned assessment year, balance-sheet, profit and loss account etc., We conclude in view of all this overwhelming evidence that assessee had successfully discharged her onus on merits as well. We thus affirm the CIT(A)'s findings deleting the impugned addition on merits.

5. This Revenue's appeal is dismissed.

Order pronounced in the open court 31/05/2018

Sd/-
(लेखा सदस्य)
(Dr. A.L. Saini)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

दिनांक:- 31/05/2018

कोलकाता ।

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ACIT, Circle-29, Aaykar Bhawn, 2, Gariahat Road, South, 4th Floor, Kolkata-68
2. प्रत्यर्थी/Respondent-Smt. Pushpa Bagla, 5H, New Road, Kolkata-27
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।