

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

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

ITA No.954/Kol/2016
Assessment Year :2010-11

Nitin Guddu Gupta Lake Plaza, 277, Jessore Road, 4 th Floor, Flat No.4D, Kolkata-700048 [PAN No. AJVPG 8851 H]	V/s.	ACIT, Circle-60, Bamboo Villa IT Office, 169, A.J.C. Bose Road, Kolkata-700 014
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Ankit Jalan, AR
प्रत्यर्थी की ओर से/By Respondent	S.M.S Tauheed, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	05-06-2018
घोषणा की तारीख/Date of Pronouncement	13-06-2018

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2010-11 challenges correctness of Commissioner of Income Tax (Appeals)-18 Kolkata's order dated 16.02.2016 passed in case No.312/CIT(A)/18/14-15/Circle-24/Kol, upholding Assessing Officer's action adding cash deposits in his two bank accounts totaling to ₹15,34,500, in assessment order dated 29.04.2013, proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. Learned counsel representing assessee first of all invites our attention to the CIT(A)'s detailed discussion on the above sole issue reading as under:-

“3.2 Grounds of appeal number 2 & 3

In this case assessee was found to have deposited cash in his bank account. Deposits were made over a number of moths and total deposits in his two bank accounts were Rs.15,34,500/-. To explain the deposits assessee has claimed that he received a gift of Rs.1,50,000/- from his mother in cash and he had in his hand an opening balance of Rs.6,46,672/-. These cash were

deposited, withdrawn and again deposited resulting into multiple deposits aggregating to Rs.15,34,5000/-. I have carefully considered the facts of the case and the submission of the assessee. Contentions of the assessee do not conform to rational behavior. If assessee had opening cash balances then it is not understood as to why such huge cash balances were kept when assessee is a salaried employee. Secondly, what was the need to deposit cash in small amounts and then withdraw it when assessee already was left with remaining cash out of the opening cash balances. This pattern is repeated throughout the year as if it was the hobby of the assessee to deposit and withdraw cash in his bank account. Assessee has failed to logically explain his actions relating to the deposit and withdrawal of the cash. Assessee's reliance on the balance sheet as on 31.3.2009 is also of no use as assessee is a salaried employee and balance sheet was not filed with his return. Hence the balance sheet prepared by the assessee to explain cash deposits in his bank accounts cannot be relied upon. Now coming to the gift from his mother, it is noticed that AO ad called upon. Now coming to the gift from his mother, it is noticed that AO had called her to record her statement regarding the gift given. However, she fumbled at the basic questions and before AO could record her statement regarding the gift given, assessee claimed that she was not well and they had a doctor's appointment and left the office with the promise of coming some other time. However, she never appeared before the AO to complete her statement. Under the circumstances the confirmation filed by her cannot be relied upon. Assessee has cited various case laws regarding the identity and creditworthiness of the person. However these things are not the issue here. What AO wanted to confirm in person whether she had actually given the gift or it was just an arrangement to help her son. While recording the statement AO would have verified this using his investigative skills. As the recording of the statement was not completed, assessee's version regarding the receipt of Rs.1,50,000/- in cash from his mother cannot be accepted. Under the circumstances the addition of Rs.15,34,500/- is confirmed."

3. We notice that the assessee has raised an additional ground as well pleading therein that CIT(A)'a has erred in law as well as on facts in invoking 68 of the Act by merely relying upon the relevant bank pass-books which is not sustainable in the eyes of law. This additional ground is not pressed during the course of hearing before us. The assessee's case through his learned counsel before us that both the lower authorities have added the impugned cash deposits without giving any credit of the corresponding repeated withdrawals forming alleged source of re-deposits. Learned Departmental Representative reiterates the CIT(A)'s stands that this assessee is a salaried employee and therefore the instant plea of withdrawals followed by re-deposits cannot be accepted. We find no reason to concern with the same. It

is evident that only deposit side of assessee's bank account has been considered for making the impugned addition without even giving credit of the withdrawals stated to be involving a sum of more than ₹10 lakh. We therefore accept assessee's grievance to this limited extent and direct the Assessing Officer to consider the same as per law after affording adequate opportunities of hearing. It has made clear that we have not expressed any opinion on the issue to be examined from the Assessing Officer's end. The assessee is directed to furnish on record his corresponding bank statements. The Assessing Officer shall therefore frame the consequential assessment within three effective opportunities of hearing.

4. This assessee's appeal is accepted as statistical purpose in above terms.

Order pronounced in the open court 13/06/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 13/06/2018 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

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

1. अपीलार्थी/Appellant-Nitin Guddu Gupta, Lake Plaza, 277, Jessore Road, 4th Floor, Flat No.4D, Kolkata-48
2. प्रत्यर्थी/Respondent-ACIT, Circle-60, Bamboo Villa IT Office, 169 AJC Bose Rd, Kol-14
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,

/True Copy/

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