

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

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]

**I.T.A. No. 2374/Kol/2016**  
Assessment Year: 2012-13

**Income Tax Officer, Ward-2(4), Kolkata.....Appellant**  
**3, Govt. Place (W)**  
**Kolkata - 700 001**

**Smt. Dipu Chakraborty.....Respondent**  
**Village Khalore**  
**P.O. Bagnan**  
**Howrah - 711 303**  
**[PAN : AFAPC 1987 M]**

**I.T.A. No. 74/Kol/2017**  
Assessment Year: 2012-13

**Smt. Dipu Chakraborty.....Appellant**  
**Village Khalore**  
**P.O. Bagnan**  
**Howrah - 711 303**  
**[PAN : AFAPC 1987 M]**

**Income Tax Officer, Ward-2(4), Kolkata.....Respondent**  
**3, Govt. Place (W)**  
**Kolkata - 700 001**

**Appearances by:**

*Shri Miraj D. Shah, AR, appeared on behalf of the assessee.*

*Shri Sallong Yaden, Addl. CIT, DR, appearing on behalf of the Revenue.*

Date of concluding the hearing : May 15<sup>th</sup>, 2018

Date of pronouncing the order : July 4<sup>th</sup>, 2018

**ORDER**

**Per J. Sudhakar Reddy :-**

These are cross appeals directed against the order of the ld. Commissioner of Income Tax (Appeals) - 14, Kolkata, (hereinafter the 'ld. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 30/09/2016, relating to Assessment Year 2012-13.

2. Facts in brief:-

The assessee is an individual and is in the business of sale of rice. She filed her return of income on 27/09/2012, declaring total income of Rs.1,82,720/-. During the course of assessment proceedings, the Assessing Officer found that the assessee had not disclosed her bank account in Axis Bank A/c No. 912010000608331 (hereinafter 'A/c No. 8331') and that this account had cash deposits to the tune of Rs.85,60,796/-, during the

impugned Financial Year 2011-12 relevant to the Assessment Year 2012-13. This cash deposits were converted into fixed deposits during the year.

2.1. It was further found that the assessee had another savings bank account bearing no. 580010100073820 (hereinafter 'A/c No. 3820') which was closed on 17/01/2012. She further had two more bank accounts, one in Axis Bank by No. 912010062913345 (hereinafter 'A/c. No. 3345') and one in Bank of Baroda bearing no. 03972. The assessee was asked to explain the source of cash deposits in all these four bank accounts.

The assessee submitted a cash flow statement for the Financial Year ending 31/03/2011 and 31/03/2012, relevant to the Assessment Year 2011-12 and 2012-13, copy of which is extracted at page 3 of the assessment order. It was submitted that the assessee does not maintain a balance sheet or profit and loss account. The assessee explained with a letter, containing some documents and a fresh cash flow statement that she had received *stree dhan* of Rs.36,15,000/-. The Assessing Officer held that this is an afterthought. Later in her letter dt. 15/09/2015, the assessee changed her stand and submitted that she received gifts from close relatives which were in cash, the sources of which are, withdrawals from their respective bank accounts and some agricultural income. Gifts were claimed to have been received from her sister Smt. Aloka Bhattacharya of Rs.15,60,000/-, Smt. Kanika Roy of Rs.6,30,000/- and Rs. 8,00,000/- from her sister in law Smt. Bulu Chakraborty, respectively. Declaration of gifts prepared on 15/09/2015, from her relatives were filed before the Assessing Officer. The assessee submitted that these gifts were wrongly stated as *streedhan* by her and that this was just a mininterpretation as the assessee did not know the difference and significance.

2.2. The Assessing Officer summoned Smt. Aloka Bhattacharya, u/s 131 of the Act. During questioning by the Assessing Officer, she confirmed the gift and also stated her sources of gift. The Assessing Officer came to a conclusion that there are inconsistencies in the statement and held that the explanation given by the assessee is false. The Assessing Officer came to a conclusion for the detailed reason given in his order, that the claim of gifts is an afterthought. After taking into account the cash deposits and withdrawals in the bank accounts an addition of Rs.60,50,001/- was made by the Assessing Officer. The Assessing Officer at para 6(e) page 11 of his order held as follows:-

*"6(e) As per assessee's explanation it is noticed from the above that out of Cash deposit of Rs.85,60,796/- only Rs,25,10,795/- ( Rs.8,00,000/- on 10.01.2012, Rs.9,00,000/- on 13.01.2012, Rs.8,07,495/- & Rs.3,300/- on 16.01.2012) deposited and withdrawn during the month of January, 2012 and rest of the deposit amounts Rs.60,50,001/- deposited during the month of January, 2012 are from past withdrawal as stated by*

*assessee. the view of the assessee is not tenable and acceptable. Hence, Rs.60,50,001/- (Rs.85,60,796/- (-) 25,10,795) is treated as concealed and unaccounted income of the assessee and added back to the total income of the assessee. Penalty proceeding u/s. 271(1)(c) of the IT Act, 1961 is initiated separately."*

2.2.1. Thereafter, the Assessing Officer made an addition of Rs.40,50,000/-. Thus the Assessing Officer rejected the following claims of sources of income made by the assessee:-

- a) Having received agricultural income from Pisciculture
- b) Having gifts received from elder sister Smt. Aloka Bhattacharya and Kanika Roy and from Smt. Bulu Chakraborty, sister-in-law.

Further the Assessing Officer added the interest earned on fixed deposits amounting to Rs.4,11,051/-, to the total income computed at Rs.1,07,82,531/-.

2.3. Aggrieved the assessee carried the matter in appeal.

3. The Id. CIT(A) in his order accepted all the claims of the assessee of having received gifts from relative, agricultural income etc. and deleted the additions made of Rs.60,50,001/- & Rs.40,50,000/-. He granted part relief to the assessee. On the additions confirmed by the Id. CIT(A), the assessee has filed an appeal and on the additions deleted the revenue has filed an appeal.

4. The revenue's appeal is on the following grounds:-

*"1. In the facts and circumstances of the case, Ld. CIT(A) failed to appreciate the fact that the A.O. had made an addition on account of undisclosed bank accounts with Axis bank which were not reported in her regular books of accounts and allowed relief of Rs. 97,50,000/-;*

*2. In the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate the facts that after detection of evasion of income in form of deposits into undisclosed bank accounts, the assessee opted disclosure through IOS Scheme 2016 both for assessee and her husband and with the help of such undisclosed money, the assessee prepared fund flow statement and tried to explain the sources of deposits;*

*3. In the facts and circumstances of the case, the Ld. CIT(A) also failed to appreciate the facts that the assessee tried to explain the source of deposit in bank in guise of alleged Streedhan which was accumulated of cash gift received from relatives and sale proceeds of agricultural land since F.Y. 2001-02 to 2011-12;*

*4. In the facts and circumstances of the case, the Ld. CIT(A) allowed the relief relying upon the judgment of ITAT Jaipur in the case of Radhey Shyam Agarwal v ITO [2015] 61 taxman.com 427 but failed to appreciate the fact*

*that in the said judgment Hon'ble Bench accepted the period of retention of cash for 10 months only whereas in the instant case, the retention period of ideal cash in hand was more than ten years.*

*5. The appellant craves leave to add, alter or abrogate any ground of appeal at the time of hearing."*

5. The assessee filed her appeal on the following grounds:-

*"1. For that in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeal) erred in sustaining the addition of Rs.3.5 Lacs as unexplained cash credit in the hands of the assessee."*

6. The ld. D/R submitted that the assessee changed her version from time to time and initially tried to explain the deposits in the bank accounts as proceeds from sale and purchase of rice. He submitted that the Assessing Officer has committed an error at page 3 of the assessment order and had the calculation error not been made the addition would have been higher. He submitted that the assessee claims in her explanation that she had received gifts in cash from her close relatives. It is claimed that the entire amount available in their bank accounts by the donors have been totally withdrawn and given to the assessee. This as per the ld. D/R is an unnatural and not a possible act and against human behavior and preponderances of probabilities. The assessee, who has four bank accounts and has been operating the same regularly, claims to have kept these cash gifts with her, in cash, for a very long period. He submitted that this explanation of the assessee cannot be believed as it is against probabilities. He submitted that when the assessee has four bank accounts, to claim that huge sums of money were kept with her for long periods is false. He pointed out that gifts are claimed to be kept with the assessee in cash for more than 10 years, which shows the total falsity of the claim. He took this Bench through each of the findings of the Assessing Officer on all the claims of the gifts and submitted that he ld. CIT(A) was in error in accepting the false claim of the assessee of having received gifts in cash and for holding the cash for long periods of time. He pleaded that the order of the Assessing Officer be upheld and the findings of the ld. CIT(A) reversed.

7. The ld. Counsel for the assessee, on the other hand, submitted a consolidated cash flow statement to explain the source of cash deposits in all these bank accounts. He submitted that the Assessing Officer has passed an assessment order for the

Assessment Year 2010-11 and 2011-12, wherein the income of the assessee has been computed at Rs.58,82,820/- and Rs.45,85,890/-, by making additions of cash deposits in bank accounts respectively. He submitted an analysis of all the bank accounts and pointed out that the total withdrawals from all the accounts during the year worked out to Rs.65,00,000/-. Thus, he argues that if all the deposit and withdrawals in all the bank accounts are considered and if peak credit theory is applied, the balance that remains to be explained by the assessee is only Rs.35 Lakhs/-. He pleaded that the additional income assessed for the Assessment Year 2010-11 & 2011-12, should be considered as source of income for explaining the cash deposits during the impugned Assessment Years by granting telescoping benefit.

This alternative and unprejudiced contention of the assessee is made, though the stand of the assessee that it had received gifts from close relatives was reiterated. The Id. Counsel for the assessee submitted that all the documentation required for proving that the gift was genuine and was filed before the Assessing Officer and no contrary evidence was brought on record by the Assessing Officer and that the explanation of the assessee was rejected incorrectly. He supported the order of the Id. CIT(A).

In response, the Id. D/R, submitted that the assessments for the Assessment Year 2010-11 & 2011-12 were not within his knowledge and that he has for the first time seen the copies of these assessment orders and the claim of the assessee for telescoping of the additional income assessed in these Assessment Years may be considered. He further pointed out that the assessee has made declaration under income declaration scheme, 2016, and this proves that the assessee was maintaining unaccounted bank accounts.

The Id. Counsel for the assessee replied that the assessee has availed a scheme given by the Government of India and that this cannot be held against the assessee. He pleaded that peak theory may be applied and telescoping of additional incomes of earlier year be granted.

8. After hearing rival contentions, we are of the considered opinion that the claim of the assessee that she had received gifts, from close relatives in cash is an afterthought on the facts and circumstances of this case. This cash alleged received

as gift was claimed to be held by her for long periods of time which is unnatural and hence cannot be accepted. The gift received in cash for the Assessment Year 2002-03 is said to have been kept in cash with the assessee without depositing the same in a bank account till the impugned Assessment Year 2012-13. Similarly, a cash gift received in Assessment Year 2004-05 and 2005-06 are claimed to have been held by the assessee in cash up to the impugned Assessment Year and thereafter deposited in the bank account. In our considered view, the test of proximity of the source when applied, and when the theory of preponderance of probabilities are applied, the claims of the assessee look apparently false. We agree with the finding of the Assessing Officer on this aspect. Hence this finding of the Id. CIT(A) on the genuineness of the gifts cannot be upheld.

9. Be it as it may, the assessee has furnished a statement giving the analysis of the cash withdrawals and cash deposits made by the assessee in all the bank accounts during the year. An examination of the same demonstrates that the peak negative cash balance is Rs.35,14,204/-. The cash withdrawals on various dates explain the balance of cash deposits on various dates in these unaccounted Bank accounts. The theory of peak credit is not disputed by the revenue. In fact this method of arriving at the undisclosed income in unaccounted bank accounts is an accepted method.

9.1. Coming to the unexplained balance cash deposit of Rs.35,14,204/-, we agree with the contention of the Id. Counsel for the assessee that the additional income computed for the Assessment Year 2010-11 of Rs.58,88,220/- and for the Assessment Year 2011-12 of Rs.45,83,890/-, should be telescoped with this year's unexplained deposits. As this amount of Rs.35 Lakhs/- is much less than the additional income assessed during the two Assessment Years 2010-11 & 2011-12, in the hands of the assessee, no separate additions on account of unexplained cash deposits needs to be made this year. The cash deposits in all these undisclosed accounts are thus explained either by way of cash withdrawals during the year and the additional income assessed in the earlier years. Hence for these reasons we agree with the contentions of the assessee and dismiss the appeal of the revenue.

10. Coming to the assessee's appeal, the same is dismissed as not pressed.

11. In the result, both the appeal of the assessee and revenue are dismissed.

***Kolkata, the 4<sup>th</sup> day of July, 2018.***

Sd/-

**[S.S. Viswanethra Ravi]**  
Judicial Member

Dated : 04.06.2018  
{SC SPS}

Sd/-

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

*Copy of the order forwarded to:*

**1. Smt. Dipu Chakraborty**  
**Village Khalore**  
**P.O. Bagnan**  
**Howrah - 711 303**

**2. Income Tax Officer, Ward-2(4), Kolkata**  
**3, Govt. Place (W)**  
**Kolkata - 700 001**

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