

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

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

ITA No. 444/Kol/2018
Assessment Year: 2011-12

Shankar Agarwal.....Appellant
C/o Subash Agarwal & Associates
Siddha Gibson
1, Gibson Lane
Suite-213
2nd Floor
Kolkata – 700 069
[PAN : ACTPA 6375 K]

Assistant Commissioner of Income Tax, Circle-3, Asansol.....Respondent

Appearances by:

Shri Subash Agarwal, Advocate, appeared on behalf of the assessee.

Shri Saurabh Kumar, Addl. CIT, D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : April 18th, 2018

Date of pronouncing the order : July 13th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-Asansol, (hereinafter the 'Ld. CIT(A)'), dt. 17/01/2018, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2011-12.

2. Brief facts of the case:-

The assessee is an individual and is engaged in the business of trading of Brass and Bell Metal Utensils under the name and style of "Shankar Metal Store". The Assessing Officer found that the assessee was having 8 unaccounted bank accounts. The assessee had admitted that the transactions in these 8 unaccounted bank accounts were business transactions. The assessee claimed that due to hurry, he has lost attention and did not incorporate these in the books while filing the return of income. The Assessing Officer made an addition of the peak credit balance in each of these bank accounts u/s

69A of the Act. Further the assessee had claimed that he has received gift from his mother and father amounting to Rs.4 Lakhs and Rs. 5Lakhs respectively. On the ground that, these gifts are bogus, the amount was added u/s 68 of the Act, in the hands of the assessee. Further an amount of Rs.1,52,000/-, was added u/s 68 of the Act as the assessee failed to prove 8 loan creditors who have given Rs.19,000/- each as loan.

2.1. Aggrieved the assessee carried the matter in appeal without success.

3. Further aggrieved the assessee is in appeal before us on the following grounds:-

"1. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs. 42,87,3991- being the peak credit balance in all the undisclosed bank accounts respectively.

(b) For the Ld. CIT(A) ought to have accepted lower addition on the basis of combined peak balance worked out on the basis of combined deposits & withdrawals of all the undisclosed bank account taken together.

2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition of Rs.9,00,002/- made by the A.O. being the gifts received by the Appellant from his parents.

3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition of Rs.1 ,52,000/- made by the A.O. in respect of the unsecured loans received by the assessee.

4. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal."

4. After hearing rival contentions, perusing the papers on record, orders of the authorities below, as well as case-law cited, we hold as follows:-

5. On Ground No.1, the ld. CIT(A) at page 6 of his order rejected the contentions of the assessee, to bring to tax only the combined peak credit of these unaccounted bank accounts instead of bringing to tax the peak credit of each of these bank accounts separately, on the ground that the assessee had not produced any evidence. Before us, the assessee filed a combined statement showing the combined peak balance for different bank accounts at pages 34 to 44 of the paper book. The ld. Counsel for the assessee relied on the decision of the Kolkata 'SMC' Bench of the Tribunal in the case of *Shri Sunil Baran Dey vs. Income Tax Officer being I.T.A. No. 468/Kol/2017*, order dt. 13/10/2017, wherein at para 6 page 7 of the order, it has been held as follows:-

“6. Respectfully following the decision of the Co-ordinate Bench of this Tribunal in the case of Uday Shankar Mahawar (supra), I accept the alternative contention of the learned counsel for the assessee and direct the AO to restrict the addition on this issue to the extent of combined peak credit balance of all the 3 bank accounts in question. The working of such combined peak credit has been prepared and furnished by the assessee at page no 51 of his paper book showing the combined peak credit balance at Rs. 5,44,775/-. The AO is directed to verify the said working and allow appropriate relief to the assessee on this issue. Ground no 1 of the assessee's appeal is thus partly allowed.”

5.1. The Bench followed the decision of the Kolkata ‘C’ Bench of the Tribunal in the case of *Uday Shankar Mahawar in ITA No. 1903/Kol/2009 order dt. 16/07/2010*. The Id. D/R did not dispute, in principle, the contention of the assessee that only the combined peak credit should be brought to tax, as that would be the quantum of investment made by the assessee. Nevertheless, he relied on the order of the Id. CIT(A) and submitted that, the assessee has not provided the requisite details to compute the combined peak. Hence he contended that the order of the Id. CIT(A) should be upheld.

5.2. We apply the proposition of law laid down by the Co-ordinate Bench of the Tribunal in the case of *Uday Shankar Mahawar (supra)* and hold that only the combined peak credit of all the 8 bank accounts can be brought to tax in this case. As already stated, the assessee had submitted the statement showing the combined peak credit of all the bank accounts. As it is a matter of computation, we are of the view that this has to be verified.

Accordingly, we set aside this issue to the file of the Assessing Officer for fresh adjudication, in accordance with law. The Assessing Officer shall verify the statement showing the combined peak credit for different bank accounts and bring to tax only the combined peak credit.

5.3. In the result, Ground No. 1 is allowed for statistical purposes

6. Ground No. 2 is on the addition made by the Assessing Officer on account of gifts received by the assessee from his parents.

6.1. The assessee has filed copies of declaration of gift from both his parents. Copies of the income tax returns, profit and loss account, capital gain and balance sheets of his father and mother have been filed. Copy of cash book of as well as copy of bank statements of Shri Hanuman Prasad Agarwal (father of the assessee) & Smt. Shanti Devi Agarwal (mother of the assessee) were filed.

The Id. CIT(A) rejected the contention of the assessee on the ground that the donors do not have creditworthiness. The donors in this case happen to be the father and mother of the assessee. All necessary details were filed in this refund. Both the parents are income-tax assesseees. Under these circumstances, in our view, no addition can be made in the hands of the assessee. If the donors could not prove their capacity, addition should have been considered in their hands but not in the hands of the assessee. Hence, the addition on this account stands deleted. There is no evidence brought on record by the revenue authorities to contradict the claim of the assessee.

7. Ground No. 3, is against the addition of Rs.19,000/- each taken in cash from 8 persons. The assessee filed confirmation letter. The Assessing Officer made the addition as the assessee did not file the copies of income tax returns, profit and loss account and balance sheet of these persons. The assessee filed an application for admission of additional evidence, wherein, he seeks to file copies of ITR Acknowledgement, profit and loss account and balance sheets of these 8 parties. The Id. D/R, opposed the admission of these additional evidence.

As we have set aside the issue of combined peak to the file of the Assessing Officer, we also set aside this issue of addition u/s 68 of the Act, to the file of the Assessing Officer for the reason that the Assessing Officer has simply rejected the evidence filed by the assessee and has not made any independent inquiry or brought out any evidence to controvert the evidence produced by the assessee. The addition cannot be made, merely by rejection the evidences filed by the assessee. The Assessing Officer shall adjudicate the issue *de novo* in accordance with law. Thus, this ground is also allowed for statistical purposes.

8. Ground No. 4 is general in nature.

9. In the result, appeal of the assessee is allowed in part for statistical purposes.

Kolkata, the 13th day of July, 2018.

Sd/-
[Aby T. Varkey]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 13.07.2018
{SC SPS}

Copy of the order forwarded to:

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Suite-213
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Kolkata - 700 069
- 2. Assistant Commissioner of Income Tax, Circle-3, Asansol**
- 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