

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.1086/Kol/2017
Assessment Year :2010-11

M/s D. K. Industries 2, Clive Ghat Street, 3 rd Floor, Kolkata-700001 [PAN No.AABFD 9250 E]	V/s.	Income Tax Officer, Ward-34(3), 110, Shanti Pally, Aayakar Bhawan, Purva, Kolkata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri K.L. Bothra, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri P. Mukherjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	14-08-2018
घोषणा की तारीख/Date of Pronouncement	05-09-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2010-11 arises against the Commissioner of Income Tax (Appeals)-10, Kolkata's order dated 02.03.2017, passed in case No.119/CIT(A)-10/Wd-34(3)/2013-14/Kol, affirming the Assessing Officer's action adding an amount of ₹22 lac as income from undisclosed sources in assessment order dated 08.03.2013, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties vehemently arguing against and in favour of impugned addition of income from undisclosed source of ₹22 lac. Case file perused.

2. Both the Learned Representatives take us to CIT(A)'s detailed discussion on the above sole issue reading as under:-

“03. Grounds No. 1& 2 relate to the action of Ld. AO in adding Rs.22,00,000/- under head ‘income from undisclosed sources’. The matter has been dealt with by Ld. AO as under:-

‘During the course of scrutiny, it was found out that in the ABN MO bank account (Account No.113110, Brabourne road, Kolkata_ of the assessee cash amounting to Rs.22,00,000/- was deposited during the year.

During the course of hearing on 16.11.2012, the assessee through it’s AR was asked to explain to explain the source of cash deposits. No explanation/reply was filed by the assessee.

On 23.11.2012, when no reply/explanation with regard to cash deposits was filed, summons u/s. 131 of the Income Tax Act, 1961 was served on the assessee.

9. 11.2.2013, Sri K.L. Bothra, Adv., A/R of the assessee appeared and filed a submission with regard to cash deposits in the bank account along with debtors-party ledger. For the sake of clarity, the submission is reproduced hereunder:-

‘Kindly refer you letter dated 26.11.12 an 11.12.2013 requiring the assessee to give source of cash deposits with ABN Amro Bank on various dates with evidences. It is submitted that the assessee has received cash from various parties as advance against the sale of Gram Whole. However, the assessee could not deliver the commodity as it was not possible to supply because of market conditions and crop etc.

Under these circumstances, the assessee has re-paid the aforesaid money to the parties by bearer cheques. The ledger copy of these transactions is enclosed herewith.

When asked to file/submit complete postal address of the claimed debtors from which the assessee has claimed to have received cash, totaling to Rs.22 lacs, the A/R stated that the assessee is not in a position to submit the addresses of the debtors namely- i) Joshi Brothers, ii) Taun Tadng Co, iii) Ved Prakash & Co., iv) Bajrang Trading Co., v) Sharma Stores, vi) Malini Industries and vii) Jayshree Udyog. On that very date, the A/R requested to conclude the hearings/proceedings as the assessee is not in a position to give any further documents/evidence in respect of details and ledger copy filed in support of cash deposits of Rs.22 lacs in the bank account of the assessee.’

10. Again on 8.3.2013, accountant of the assessee Sri B.R. Gulgulia appeared and filed submission which reads as: Kindly note we have received cash advance form our debtors for supply of gram which had to refund to the said customers because of quality was not approved.

1. The careful examination of the submission clearly shows the intention of assessee behind the submission. It wanted to shrug its responsibility of discharging its onus as envisaged under the provision of section 68 of the Income-tax Act, 1961. What was submitted by the assessee is-1. Submission claiming that the source of cash receipts of Rs.22 lacs deposited in the bank account is advance from customers for Whole Gram which it claimed to have

refunded the same to them by bearer cheques 2. Ledger accounts (only showing debits and credit of similar amount) of the seven debtor from which the assessee has claimed to have received cash totaling to Rs.22 lacs.

12. I have considered the submissions filed before me and quoted above. These show that the assessee does not have any explanation at all to explain the source of cash deposits. The assessee did not even try to furnish the address of any of the claimed debtors from which it has claimed to have received cash. The alleged repayment of advance to the claimed debtors is also not supported with any evidence. No money receipts from the claimed debtors have been submitted. Identity (and also the creditworthiness as well as genuineness of the transactions) of the claimed debtor remained unverified.

13. Claimed Re-payment of alleged advances: the assessee in its submission quoted above has stated that the alleged advances received from the claimed debtors had been repaid through bearer cheque. The such repayments have summarized below:

Sl. No.	Date	Cheque no. used withdrawal/payments	Amount of withdrawal/payments
1	6/11/09	593090	3 lacs
2	14/11/09	593095	2 lacs
3	16/11/09	593095	3 lacs
4	17/11/09	593097	2 lacs
5	18/11/09	593094	3 lacs
6	20/11/09	593098	3 lacs
7	23/11/09	593099	3 lacs
8	25/11/09	593100	3 lacs

From the bank, copy of cheques (both sides) referred above, have been obtained. Each of the cheque contain seal impression of: A/C payee & crossing cancelled please pay cash on the front side. Both side of the cheques contain seal impression of – for D K Industries-partner. Any of copies of cheques as mentioned above does not contain Assessment Year name whether full or short of the claimed debtors whose names have been mentioned above.

14. The submission/explanation of the assessee with rear to cash deposits is not tenable as it does contain any merit in it. Reasons are elaborated in the following paragraphs.

15. What the assessee produced for explanation of cash deposits') ledger accounts of seven parties – i) Joshi Brothers, ii) Tarun Trading Co. iii) Ved Prakash & Co., iv) Baajrang Trading Co;., v) Sharma Stores, vi) Malani Industries and vii) Jayshree Udyog. Neither any address nor any confirmation of account from these parties have been filed. The assessee stated that no further evidence/document is available with it.

16. Most of signatures on copy of Pay-in-slips used for making cash deposits obtained from the Bank are not legible. Still, some of the signatures are matching with each other. Signatures on pay-in slips used on 20/5/09 (two), 21/05/09 (three) and 2/5/09 (three) are matching with each other.

Signature on the back side of cheque, claimed to be used for repayment, dated 2011/2009 matches with signature on pay-in-slip used for cash deposits on 21/05/09(three).

No explanation was offered by the assessee. No explanation with regard to the source of cash deposits in the bank account has been submitted by the assessee.

17. The above submission of the assessee and details/evidence brought on record by the assessee was considered. But the contention of the assessee was not acceptable for the following reasons:-

(i) The assessee was unable to put forward any evidence in support of identity and creditworthiness of claimed depositors and genuineness of transactions/. No irrefutable evidence was brought on record by the assessee to explain the cash deposits in the bank account.

(ii) In the case of cash credit entry it is necessary for the assessee to prove not only the identity of the creditor but also to prove the capacity of the creditors to advance the money and the genuineness of the transactions. *C Kant & Co. v. CIT (1980) 126 ITR 63 (Cal)*.

(iii) The law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him/her. Where the nature and source of a receipt whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source – *Rashan Di Hatti v. it [1977] 107 ITR 938 (SC)*; *Kale Khan Mohannad Hanif v. CIT [1963] 50 ITR 1 (SC)*.

(iv) The onus is on the assessee to discharge the onus that the cash creditor in a man of means to allow the cash credit.

(v) In view of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactorily. In such a case there is, prima facie, evidence against the assessee, viz., the receipt of money,, and if he fails to rebut, the said evidence being un-rebutted, can be used against him by holding that it was are receipt of an income nature. *Sumati Dayal v CIT [1995] 214 ITR 801*.

18. So, I made the addition of Rs.22,00,000/- as income from undisclosed sources to the total income of the assessee. Penalty u/s. 271(1)(c) is attracted on this addition.”

3. Learned Authorized Representative vehemently contends during the course of hearing before us that assessee had sufficiently proved its case of having received the impugned sum of various denominations of two and three lac of cash for supply of gram commodity which was latter refunded to the very customers. We find no merit in the instant argument. The assessee has filed paper book comprising of its return, audit report, balance-sheet, profit and loss account, capital account etc., There is no gram stock indicated in its

stock-in-trade. Learned counsel fairly admitted during the course of hearing that the assessee has also been showing minimal taxable income only in its books of accounts. The fact also remains that the assessee has itself prove the payments to have received in cash followed by repayment thereof to the very customers through bearer cheque. Their identity, genuineness and creditworthiness has gone unproved therefore. We conclude in all these facts that both the lower authorities have rightly treated the assessee's so-called advance of ₹22 lac to be its income from other undisclosed sources. Its sole substantive grievance is rejected.

4. This assessee's appeal is dismissed.

Order pronounced in the open court 05/09/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 05/09/2018 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

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

1. अपीलार्थी/Appellant-M/s D. K. Industries, 2 Clive Ghat Street, 3rd Floor, Kolkata-001
2. प्रत्यर्थी/Respondent-ITO Ward-34(3), 110, Shantipally, Aayakar Bhawan, Poorva, Kol-107
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.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।