

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.221/Ind/2017
Assessment Year:2013-14**

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| Income Tax Officer, Dhar (M.P) | बनाम/ Vs. | Shri Rajendra Kumar Gupta, 17, Sardar Patel Marg, Kukshi, Dhar (M.P) |
| (Revenue) | | (Respondent) |
| P.A. No.AADCD3053E | | |

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| Revenue by | Shri P.K.Mitra, Sr. DR |
| Respondent by | Shri S.N. Agrawal, CA |
| Date of Hearing: | 10.09.2018 |
| Date of Pronouncement: | 19.09.2018 |

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal filed at the instance of Revenue pertaining to A.Y. 2013-14 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-III, Indore, (in short 'CIT(A)'), vide appeal No. IT-71/16-17 order dated 16.12.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 22.03.2016 by ITO, Dhar.

2. Briefly stated facts as culled out from the records are that the assessee is the President of M/s. Laxmi Sakh Sahakarita Maryadit Society, Kukshi registered under the Madhya Pradesh Sahakari Society (Amendment) Act, 2012. a Private Limited Company engaged in the activity of civil construction, purchase and sale of immoveable property. His source of income was from legal practice and other sources. Income of Rs.3,29,930/- disclosed in the income tax return filed on 14.6.2014. Case selected for scrutiny through CASS. Accordingly notices u/s 143(2)/142(1) duly served upon the assessee along with questionnaire. On the basis of the information received by the Assessing Officer from the CIB due to which the case was selected for scrutiny under CASS. The Ld.A.O observed that cash exceeding Rs.10 lakh have been deposited in the saving bank account in the name of the assessee and further investigation it is revealed that on various dates sum of Rs.52,95,000/- has been deposited as cash and proceeds from fixed deposit receipts of Rs.55,42,838/- were found in the said account which was explained by the assessee that both belongs to cash deposit as well as the proceeds from fixed deposits are of the society M/s. Lakshmi

Sakh Sahakarita Maryadit Society, Kukshi and not at all related to the assessee. It was also pleaded that as the permanent account No. was not allotted to the society at that point of time, therefore the alleged sum was being reflected in the name of the assessee because the PAN number of the President i.e. assessee was given with the bank authorities.

3. The Ld.A.O doubted the existence of the society and made addition of Rs.1,08,37,838/- (Rs.52,95,000/- + Rs.55,42,838/-) to the income of the assessee thereby assessing the income at Rs.1,11,67,768/-.

4. Aggrieved assessee preferred appeal before the Ld.CIT(A) and succeeded in convincing the Ld.CIT(A) that the alleged sum of cash deposited as well as proceeds from Fixed Deposits are not related to the assessee but they belong to the society M/s Lakshmi Sakh Sahakarita Maryadit wherein all the alleged transactions have been duly reported. Ld.CIT(A) deleted all the additions.

5. Now the revenue is in appeal before the Tribunal raising following grounds;

“Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in :-

1. deleting the addition of Rs.52,95,000/- on account of unexplained cash deposits in the bank account of M/s. Lakshmi Sakh Sahakarita Marydit Society u/s 69 of the I.T. Act without appreciating the findings of the AO.
 2. deleting the addition of Rs.55,42,838/- on account of unexplained fixed deposit credited in the bank account of M/s. Lakshmi Sakh Sahakarita Marydit Society u/s 69 of the I.T. Act without appreciating the findings of the AO.
 3. deleting the addition of Rs.55,42,838/- on account of unexplained fixed deposit when the TDS on such account was claimed by the assessee and duly allowed to the assessee.
 4. deleting the addition stating that PAN of the assessee was given in the bank on behalf of the society when the PAN: AAAAL4305L was already allotted to the society on 05.02.2011”
6. Apropos first issue relating to deletion of addition of Rs.52,95,000/- on account of unexplained cash receipts, the Ld. Departmental Representative vehemently argued and supported the orders of Ld.A.O while the Counsel for the assessee relied upon the findings of Ld.CIT(A).
7. We have heard rival contentions and the record placed before us. We find that Ld.CIT(A) deleted the addition of Rs.52,95,000/- observing as follows;

“3.1 I have gone through the appellant's contention and the assessment order. The additions have been made on account of transactions in the

bank A/c No.3612 with Narmada Jhabua Gramin Bank, Kukshi. The appellant's submission is that the said account is of the society M/s Lakshmi Sakh Sahakarita Maryadit, Kukshi. The appellant is the President of the society and at the time of opening of the bank account the society had not been allotted PAN and the appellant had given his own PAN for opening of the bank account. The society was later on allotted PAN AAAAL4305L but in the bank account the Society's PAN was not substituted with the PAN of the appellant. It is submitted that the following documents which were also submitted to the Assessing Officer prove the existence of the society.

(i) Copy of the Registration Certificate of the society Laxmi Sakh Sahkarita Mariyadit, Kukshi under the Madhya Pradesh Autonomous Cooperatives, 1999 dated 05/04/2006.

(ii) Copy of the Registration Certificate of the society Laxmi Sakh Sahkarita Mariyadit, Kukshi under the Madhya Pradesh Cooperative Society (Amended) Act, 2012 dated 08/01/2014.

(iii) Copy of PAN card of the society Laxmi Sakh Sahkarita Mariyadit, Kukshi Kukshi.

(iv) The letter of the Auditor Mr. Rakesh Gupta, CA stating that the accounts of the society have been audited for period ending 31/03/2013 enclosing the P&L a/c and balance sheet.

(v) Copy of bank account of the society with Narmada Jhabua Gramin Bank A/c No. 3612 for the period 01/04/2012 to 31/03/2013.

3.2 The Assessing Officer has not brought anything on record to show that the society Laxmi Sakh Sahkarita Mariyadit, Kukshi does not exist. The Assessing Officer has made the addition of Rs.52,95,000/- on account of cash deposit in the bank A/c No.3612 holding that the source of the said deposits has not been explained by the appellant. Addition of Rs. 55,42,838/- has been made on account of proceeds of fixed deposit credited into the bank account. During the assessment proceedings the

appellant had submitted all the above details before the Assessing Officer but he simply stated that the existence of the society is not proved. The documents placed on record clearly establish that the society Laxmi Sakh Sahkarita Maiyadit, Kukshi whose president is Mr. Rajendra Kumar Gupta, is having A/c No. 3612 with Narmada Jhabua Gramin Bank, Kukshi. The cash book of the society clearly reflects the cash deposits of Rs.52,95,000/- which has been deposited in the said bank account, The Assessing Officer has himself, stated that during the assessment proceedings the appellant had submitted a letter from the society Laxmi Sakh Sahkarita Maryadit, Kukshi stating that they have a bank account with Narmada Jhabua Gramin Bank, Kukshi wherein the PAN of the president Shri Rajendra Kurnar has been given. The Assessing Officer has not brought anything on record to disprove the contention of the appellant.

3.3 From the facts and circumstances of the case it is evident that bank account no. 3612 in Narmada Jhabua Gramin Bank, Kukshi is of the society M/s. Laxmi Sakh Sahkarita Maiyadit whose president is the appellant. The cash book of the society M/s Laxmi Sakh Sahakarita Maryadit reflects the said cash balances which have been deposited in the account. Therefore, the addition of Rs. 52,95,000/- on account of cash deposited in the said account during the period under consideration cannot be made in the hands of the appellant. The addition of Rs. 52,95,000/- is deleted and ground no. 2 is allowed”.

8. The findings of the Ld.CIT(A) were not controverted by the Departmental Representative. Records asserts the fact that the alleged transaction of cash deposits belonged to the society namely M/s Laxmi Sakh Sahakarita Maryadit Society. The society

was holding six bank accounts and in one of the bank Narmada Jhabua Gramin Bank, Kukshi bearing No.3612 in the computer system of the bank the PAN of the assessee was mentioned who was the President of the society as at that point of time the society was not allotted the PAN number. Ld.CIT(A) examined the issue in detail and also noted that the society was allotted the PAN No. AAAAL4305L and also allotted registration certificates given by MP Autonomous Corporation as well as MP Co-operative Society Ltd. We therefore in the facts and given circumstances of the case are of the considered view that Ld.CIT(A) rightly deleted the addition of Rs.52,95,000/- as the alleged cash belonged to M/s Laxmi Sakh Sahakarita Maryadit Society and was deposited in the bank account held by the society and the alleged cash transactions are duly reflected in the cash book maintained by the society. Therefore no interference is called in the findings of Ld.CIT(A). Ground No. 1 of the revenue's appeal is dismissed.

9. Apropos Ground No.2 & 3 which relates to unexplained fixed deposit credited in the bank at Rs.55,42,838/- similar

arguments were put-forth by both the parties and the Ld.CIT(A) deleted the alleged addition as the fixed deposit belonged to the society and not to the assessee.

10. We have heard rival contentions and records placed before us. Ld.AO made the addition on account of unexplained fixed deposit at Rs.55,42,838/- as they were appearing under the PAN Number of the assessee. Necessary verification has been carried out by Ld.CIT(A) which have not been controverted by the Departmental representative. It is an admitted fact that in the instant appeal the addition were made only because of quoting PAN of President in the bank account held by the society. All details of the alleged fixed deposits have been filed and placed on record which have been duly examined by the first appellate authority and thereby concluding that the society was having fixed deposit of Rs.50 lakhs in the maturity and interest of Rs. 5,42,838/- was received after deduction of tax at source. The alleged TDS was reflecting in the form 26AS of the assessee as his PAN number was quoted in the bank records. Audited and financial statemesnt of the society clearly shows that the fixed

deposits as well as interest accrued thereon belong to the society only and not to the assessee. Therefore we find no inconsistency in the findings of Ld.CIT(A) in deleting the addition of Rs.55,42,838/-. Ground No.2 &3 of the revenue are dismissed.

11. Apropos Ground No.4 seems to be general in nature which needs no adjudication.

12. In the result the appeal of the revenue stands dismissed.

Order was pronounced in the open court on 19.09.2018.

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANTMEMBER

Indore; दिनांक Dated : 19/09/2018

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Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore