

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri A T Varkey, JM, & Shri M.Balaganesh, AM]

I.T.A No. 74 /Kol/2016

Assessment Year : 2011-12

Sunita Vijayan, Legal Heir of
Shri Vijay Singh Rawal
[PAN: ACSPR 3474 R]
(Appellant)

-vs-

ITO, Ward-1(4), Jalpaiguri

(Respondent)

For the Appellant : Shri Subash Agarwal, Advocate

For the Respondent : Shri Saurabh Kumar, Addl. CIT Sr. DR

Date of Hearing : 26.11.2018

Date of Pronouncement : 30.11.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-Jalpaiguri [in short the Id CIT(A)] in Appeal No. 21/JAL/CIT(A)/JAL/2013-14 dated 20.11.2015 against the order passed by ITO, Ward-1(4), Jalpaiguri [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 28.03.2014 for the Assessment Year 2011-12.

2. At the outset, we find that Mrs. Sunita Jain, legal heir of Late Vijay Singh Rawal had filed revised form no. 36 before us in order to indicate that the original assessee, i.e. Vijay Singh Rawal had expired and that she is the legal heir and accordingly this appeal is filed by her in the capacity of legal heir on behalf of the deceased assessee. The same is taken on record and appeal is taken up for hearing.

3. Ground nos. 1 to 4 raised by the assessee were stated to be not pressed by the ld. AR at the time of hearing. The same is reckoned as statement from the bar and accordingly ground nos. 1 to 4 are dismissed as not pressed.

4. Ground nos. 7 to 10 are general in nature and does not require any specific adjudication.

5. The only effective issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the addition of Rs. 40,78,742/- being credits in the bank account of the assessee as unexplained cash credit, in the facts and circumstances of the case.

6. Brief facts of this issue is that the assessee is an individual, employed in Luxmi Tea Company Ltd. and posted at Matelli Tea Estate. The return of income for assessment year 2011-12 was filed on 20.07.2011 declaring total income of Rs. 1,76,560/- electronically. Thereafter, the assessee filed a manual return on 24.10.2011 declaring total income of Rs. 7,43,380/- which has been duly considered by the ld. AO while framing the assessment. The ld. AO observed that the assessee had maintained bank

accounts with Axis Bank and State Bank of India vide a/c nos. 035010100381086 and 20019732491 respectively, wherein some amounts were found to be credited, for which nature and source of those receipts were sought to be explained. The details of the same are as under:

Name of Bank & Branch	Bank a/c nos. of the assessee	Date	Description	Amount Credited
AXIS Bank,	035010100381086	11-05-2010	FRM UNIPAY TO VIJAY SINGH RAWA	Rs. 21,217/-
		15-05-2010	0035/OSC73679 Chq. No.234436	Rs. 40,000/-
		09-06-2010	by unipay 2u marketing p ltd	Rs. 21,217/-
		30-07-2010	TRF FROM UNIPAY	Rs. 21,217/-
		10-08-2010	BY CASH	Rs. 30,000/-
		13-08-2010	BY CASH	Rs. 40,000/-
		19-08-2010	FROM UNIPAY 2U MARKETING	Rs. 21,366/-
		24-08-2010	BY CLG/2N MICROUT	Rs. 10,688/-
		06-09-2010	from unipay 2u marketing	Rs. 22,026/-
		18-10-2010	BY CASH	Rs. 5,00,000/-
		18-11-2010	by unipay 2u marketing p ltd	Rs. 20,264/-
		29-11-2010	from unipay	Rs. 20,264/-
		29-12-2010	BY CLG/29/12/2010	Rs. 1,650/-
		State Bank of India	20019732491	15-06-2010
23-06-2010	SWEEP TRF CREDIT			Rs. 8,000/-
23-06-2010	SWEEP TRF CREDIT			Rs. 92,357/-
28-10-2010	OWN CHQ XFER			Rs. 7,00,000/-
TOTAL				Rs. 40,78,742/-

The assessee explained that the cash deposits into the bank account were made out of assessee's agricultural income, sale of old farm house and money received from the assessee's spouse and some of his relatives on account of settlement of family's property disputes. The Id. AO observed that no supportive evidences were furnished by the assessee in support of his contentions. Accordingly, he proceeded to treat the entire deposits of Rs. 40,78,742/- as unexplained cash credit and added the same u/s 68 of the Act, in the assessment.

7. The assessee, before the Ld. CIT(A), stated that the source of cash deposits were made out of agricultural income received in cash, sale of old farm house, some portion of amount received from assessee's spouse and major portion of deposits came from his

deceased father. The assessee has stated that his deceased father got the said amount as compensation on compulsory acquisition of agricultural land from Noida Development Corporation. Since the assessee was staying very close to his father and became close confidant of his father to accumulate the total amount to his account in order to settle to the legal heirs after his death, in good faith, the assessee had accumulated the said money and kept in his account. The assessee has furnished the copy of last will of his father Lt. Col. (Retd.) Jagmal Singh dated 08.09.2009. The Will stated about distribution of various immovable properties among three sons, one daughter and one grandson after the demise. As per the will, Lt. Col. (Retd.) Jagmal Singh had nominated his younger son Shri Vijay Singh Rawal i.e. the assessee herein, for his pension account in SB a/c no. 11047317718 with SBI , Meerut Cantonment Branch. The Ld. CIT(A) found that this will is of no relevance and does not explain the source of various credit entries in the bank account held by the assessee. He also observed that no evidence was submitted by the assessee regarding the date of death of Mr. Jagmal Singh in order to make the will become operational. Since no evidences were submitted by the assessee to explain the source of credits in bank account, the Ld. CIT(A) upheld the action of the ld. AO by confirming the addition n of Rs. 40,78,742/-. Aggrieved the assessee is in appeal before us.

8. We have heard the rival submissions. We find that the ld. AR stated that the assessee was having salaried income and other interest income close to Rs 10 lacs as Gross Total Income for the year in addition to agricultural income of Rs. 1 lac. Certainly the assessee could have made reasonable savings in order to explain the source of cash deposits in the sum of Rs. 5,70,000/- made in the bank account on various dates. Hence he argued that the source of cash deposits in the sum of Rs. 5,70,000/- should be treated as explained. He also furnished a fund flow statement explaining the nature and source of each credit and also came forward to offer some portion of the credits to tax as

additional evidences with a prayer to admit the same on the ground that the assessee during the pendency of proceedings before the lower authorities was not in proper state of mind as he was suffering from Metastatic NSCLC with brain and bone Metastases which ultimately lead to his demise on 17.06.2016. We find that the assessee had sought to explain the nature and source of each and every credits in the bank account by way of this additional evidence which in our considered opinion, requires to be admitted. We also find that these additional evidences were not examined by the Id. AO as explanation was not offered by the assessee in the first round of proceedings. Hence in the interest of justice and fair play, we deem it fit and appropriate, to remand this appeal to the file of Id. AO for de novo adjudication of the issue of total deposits in the sum of Rs. 40,78,742/- and pass an order in accordance with law. The assessee is given full liberty to furnish fresh evidence in support of his contentions. In view of these directions, no opinion is hereby given on the merits of the addition. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the Court on 30.11.2018

Sd/-
[A T Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 30.11.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Sunita Vijayan, Legal heir of Late Vijay Singh Rawal, C/O., Subash Agarwal & Associates, Siddha Gibson, 1, Gibson lane, 2nd Floor, Suite-213, Kolkata-700069.
2. ITO, Ward-1(4), Jalpaiguri
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches