

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

Before Sri J. Sudhakar Reddy, Accountant Member

**I.T.A. Nos. 2295 to 2297/Kol/2017
Assessment Years: 2006-07 to 2008-09**

Rajnikant Himmatlal Kampani.....Appellant
[PAN : AFOPK 1235 Q]

ITO, Ward-12(3), Kolkata.....Respondent

Appearances by:

Shri Subash Agarwal, Advocate, appeared on behalf of the Appellant.
Shri Piyush Mukherjee, JCIT, appeared on behalf of the Respondent.

Date of concluding the hearing : November 29, 2018

Date of pronouncing the order : December 19, 2018

ORDER

All these three appeals filed by the assessee are directed against a common order passed by the Id. Commissioner of Income Tax (Appeals)-4, Kolkata (hereinafter the 'Id. CIT(A)'), dated 02.08.2017 passed u/s 147/144 of the Income Tax Act, 1961 (the 'Act') for Assessment Years 2006-07, 2007-08 & 2008-09. As the issues arising in all these three appeals are common, for the sake of convenience they are heard together and disposed off by way of this common order.

2. Shri Rajnikant Himmatlal Kampani, the assessee, is an individual and derives income from salary and interest. The Assessing Officer got information that the assessee has accounts with Dena Bank, Malabar Hill Branch, Asmita 204, Walkeshwar, Mumbai- 400006 and that he made certain investments in fixed deposits in this bank. It is also come to the notice of the Assessing Officer that the assessee has a Savings Bank A/c 12032 in this branch. As the assessee had not appeared before the Assessing Officer and explained the sources of funds for the deposits in the accounts, all the deposits in these accounts were added u/s 68 of the Act as unexplained cash credit in all the three years, the details of which are given in the assessment order.

3. The assessee carried the matter in appeal. Before the Id. CIT(A), the assessee appeared personally and stated as follows:

“The Id. ITO reopened my assessment u/s 147, on the basis of information received from Dena Bank, Malabar Hill Branch, Mumbai, regarding certain investment and these investments have been added to my income for Assessment Year 2006-07, 2007-08 and 2008-09 along with the interest without proper application of mind arbitrarily and unjustifiably. I would like to submit before your Honour that the said investment has never been related to me and I have never opened any investment in fixed deposits with the bank in Mumbai. An account, if any is opened, it may have been through forgery and fraud and my name has been utilized for unlawful gain and misused and I am not involved in said transaction at Suit No.12168 of 2013 (a copy of the same is enclosed herewith for your kind reference) against the bank officials, which is pending as on the day. It is quite clear from the mentioned fact I should not be penalized for any wrong doing on the part of the banks for which I am not liable. Since the said investment is not belonging to me. The question of the disclosure of the same does not arise. Hence the addition of the said investment u/s 68 should be deleted.”

4. The Id. CIT(A) confirmed the additions in question of the ground that the assessee had not produced any document in support of his case, like copy of Account Opening Form or copy of Withdrawal slip, which could demonstrate whether the said accounts were not opened by him. He confirmed the addition on the ground that, the burden is on the assessee to prove that the accounts do not belong to him. Aggrieved, the assessee is before us for the following grounds:

- “1. For that the reopening proceedings are bad in law and are liable to be quashed.*
- 2. For that the Id. CIT(A) erred in confirming the addition of Rs.1,43,942/- made by the A.O in respect of alleged FDs made in the joint name of the assessee and his wife and alleged interest/balance relating to Savings Bank account no.12032.*
- 3. For that the Id. CIT(A) erred in confirming the addition of Rs.1,56,907/- made by the A.O in respect of alleged FDs made in the joint name of the assessee’s wife (1st holder) and the assessee (2nd holder) along with interest.”*

5. I have heard the rival submissions. On a careful consideration of the facts and circumstances of the case and a perusal of the papers on record and the order of the authorities below I hold as follows:

(i) The assessee has in this case denied having opened any of these bank accounts. He alleged fraud and has filed a Civil Suit before the 4th Civil Judge, Junior Division Court, Alipore at Title Suit No.12168/2013 against M/s. Dena Bank, Malabar Hill Branch wherein he stated as follows:

“4. That the plaintiff has never opened any fixed deposit account alone or jointly in any bank at Mumbai and there is no occasion for the plaintiff to open any account of fixed deposit at Dena Bank, Malabar Hill Branch, Mumbai.

5. The plaintiff reasonable believes and apprehends that the said account had been opened fictitiously by committing forgery and by practicing fraud on the plaintiff. The plaintiff had never given any documents of identity or address proof to open such account and had never signed in any account opening form of Dena Bank, Malabar Hill Branch, Mumbai.

6. That the fixed deposit account as sated above had been opened in the name of the plaintiff through forgery, fraud, coercion and collusion with the bank officials and the name of the plaintiff has been utilized for unlawful gain and accordingly the aforesaid facts should be verified and investigated by the defendants. The plaintiff has no concern or connection with the said fictitious account.

7. That the plaintiff had been unnecessarily drawn into a controversy without having any fault on his part and due to such illegal acts or actions on part of the defendants the plaintiff is being harassed by the other authorities.”

(ii) In the above Civil Suit, the assessee has prayed for the following relief:

(a) A decree for declaration be passed declaring that the plaintiff had never opened any accounts with the defendant bank and the so called accounts that were opened in name of the plaintiff are all forged and fictitious;

(b) A decree for permanent injunction may passed restraining the defendant from utilizing name of the plaintiff in the above referred accounts which were fictitiously opened;

6. Under these circumstances, the Id. CIT(A)'s conclusion based on the finding that the assessee has failed to produce material in support of his contention that he has never opened a bank account with Dena Bank is wrong. When the assessee submits that he has never opened the said bank accounts and files a suit in the court against M/s Dena Bank alleging fraud, he cannot be asked to produce documents in support of his claim that he has not opened a bank account. The negative cannot be proved. The

burden of proof cannot be placed on the assessee. It is for the revenue which is making the allegation, to investigate and obtain material to disprove the claim of the assessee that he has not opened any of these accounts in this Dena Bank branch. As the revenue has not gathered any evidence, despite the assessee denying opening of these accounts and the assessee filing a Civil Suit in the court of law on this issue, I hold that the additions, in question, have been unjustly made in the hands of the assessee in all the three assessment years. Such additions cannot be sustained.

7. Under the circumstances I delete the additions made in all the assessment years and allow the appeal of the assessee.

8. In the result, the appeal of the assessee is allowed.

Kolkata, the 19th December, 2018.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 19.12.2018
RS(SPS)

Copy of the order forwarded to:

1. Rajnikant Himmatlal Kampani, 51 Paddapuku Road, 2nd Floor, Kolkata – 700 020.

2. ITO, Ward-12(3), Kolkata, 7th Floor, P-7, Chowringhee Square, Ayakar Bhawan, Kol-69.

3. CIT(A)-
4. CIT- ,
5. CIT(DR),

True copy

By order

Assistant Registrar , Kolkata Benches