

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA**

**BEFORE SHRI S. S. GODARA, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA No.1847/Kol/2017**

**(निर्धारण वर्ष / Assessment Year: 2010-11)**

<b>M/s Subhlaxmi Investment Advisory Pvt. Ltd.</b>	<b>Vs.</b>	<b>ITO, Wd-15(4), Kolkata</b>
29B, Rabindra Sarani, 4 <sup>th</sup> Floor, Room No.409, Kolkata – 73.		Aayakar Bhawan Poorva, 110, Shantipally, Kolkata – 107.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAMCS 1871 Q</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : None  
Respondent by : Shri C. J. Singh, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 25/10/2018

घोषणाकीतारीख/Date of Pronouncement : 19/12/2018

**आदेश / O R D E R**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the assessee pertaining to Assessment Year 2010-11, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-5, Kolkata in Appeal No.363/CIT(A)-5/W-15(4)/15-16 dated 30.05.2017 which in turn arises out of an assessment order passed by the Assessing Officer u/s 144/147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The grievances raised by the assessee are as follows:

*"01. That the order passed by the Hon'ble Commissioner of Income Tax(A)-5, Kolkata is bad in law as well as on facts of the case.*

*02. That the Hon'ble Commissioner of Income Tax(A)-5, Kolkata erred in law as well as on facts of the case by confirming the addition made by the ld. Assessing Officer to the tune of Rs.3,00,000/- u/s 40A(3) of the Income Tax Act by wrongly alleging that the sum has been paid to one, Mr. Sandeep Kumar Singh in cash even though the appellant had claimed that no such payment has been made to any such person and the same is apparent from audited accounts and cash book of the appellant company."*

3. The brief facts qua the issue are that during the assessment proceedings the Assessing Officer noted that assessee had paid cash of Rs.3,00,000/- in violation of section 40A(3) of the Act, to Shri Sandip Kr. Singh on 19.06.2009. Therefore, the ld. Assessing Officer noted that since the assessee had made cash payment in exceeding Rs.20,000/-, in violation of provision of section 40A(3) of the Act and therefore, the ld. Assessing Officer disallowed the sum of Rs.3,00,000/-.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has confirmed the addition made by the Assessing Officer under different sections namely section 69 of the Act, instead of section 40A(3), as made by Assessing Officer.

5. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

6. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that on perusal of the profit and loss account of the assessee no item under the expenditure is more than 1,00,000/-. After going through the assessment order, it appears that the Assessing Officer made an addition based on a letter dated 13.03.2013 received by him from one Assessing Officer being ITO, Ward-46(4), Kolkata. We note that during the appellate proceedings, the ld. CIT(A) took a different stand and observed that the addition u/s 40A(3) is not correct because there is no information in the profit and loss account about the expenditure being debited, therefore, the ld. CIT(A) made the addition u/s 69 of the Act and treated it as unexplained investment. We note that it is neither violation of section 40A(3) of the Act nor it can be treated as an unexplained investment u/s 69 of the Act as the addition made by the ld. CIT(A) was purely on conjecture and surmises. The addition made by the ld. CIT(A) u/s 69 of the Act is without any base and without verifying books of accounts of the assessee, therefore, the addition made by the ld. CIT(A) is based on surmises, and without any evidence. The ld. CIT(A) did not bring any evidence on record to show that Rs.3,00,000/- paid to Shri Sandeep Kr. Singh is an unexplained

expenditure, therefore, addition made by the ld. CIT(A) is based on surmises and conjecture and it should not be sustained and therefore we delete the addition of Rs.3,00,000/-.

7. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 19.12.2018.

Sd/-  
(S. S. GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 19/12/2018

(RS, Sr.PS)

Sd/-  
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant- M/s Subhlaxmi Investment Advisory Pvt. Ltd.
2. प्रत्यर्थी/ The Respondent- ITO, Wd-15(4), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.