

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.361/Kol/2016**  
Assessment Year :2009-10

DC/ACIT, Circle-50, DS-II, 2 <sup>nd</sup> Floor, Uttarapan Shopping Complex, Manicktola Civic Centre, Ultadanga, Kolkata-54	<b>V/s.</b>	Shri Dilip Kundu 1, Pannajhil, Noapara, Barrackpore Road, Barasat, Kolkata-125 <b>[PAN No.AGXPk 0593 K]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Robin Choudhury, Addl. CIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Soumitra Choudhury, Advocate
सुनवाई की तारीख/Date of Hearing	28-11-2018
घोषणा की तारीख/Date of Pronouncement	26-12-2018

**आदेश /ORDER**

**PER S.S.Godara, Judicial Member:-**

This Revenue's appeal for assessment year 2009-10 arises against the Commissioner of Income Tax (Appeals)-15, Kolkata's order dated 23.12.2015, passed in case No.09/CIT(A)-15/14-15/Cir-50/Kol, in proceedings u/s. 144 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue's former substantive grievance challenges correctness of the CIT(A)'s order deleting unexplained cash deposits addition of ₹3,56,87,112/- out of ₹3,73,65,381/- made by the Assessing Officer in the course of impugned regular assessment framed on 30.12.2011 as under:-

*“Ground No.5 pertains to the addition of Rs.7,50,000/- as undisclosed income in the HDFC mutual fund. The AO has noted in the assessment order that as per the AIR information, the assessee had invested*

*Rs.7,50,000/- in HDFC Mutual Fund. In absence of any reply, the entire amount was added to the income of the assessee.*

*Ground No.6 pertains to addition of Rs.17,00,000/- consisting of FDSs of Rs.15,00,000/- in Punjab National Bank and Rs.2,00,000/- in the saving Bank account of the same bank.*

*Both the grounds are taken together as the reply of the assessee is common on both the grounds. Initially, the assessee stated that both these investments belong to his wife Smt Bulu Kundu and are disclosed in her return. In the remand report proceedings, the AO reported after verification that these investments are not disclosed in her return. Then the assessee changed his stand and submitted during the appellate proceedings that, he had conceded the addition of Rs.18,78,269/- as undisclosed income from petrol pump and peak credit balance of Rs.20,67,518/- of Account no 1439 of Canara Bank, this would cover the undisclosed investment of Rs.7,50,000/- of MFs and term deposits in Punjab National bank of Rs.17,00,000/-, otherwise it would amount to double addition. The FDRs were made on 10.02.2009. Thus, he requested for telescoping of the undisclosed income earned over the undisclosed investments. The contention of the assessee is factually and legally correct. Besides, the above undisclosed income offered by the assessee, he was also having cash of Rs.7,40,000/- (minus) Rs.4,22,171/- = Rs.3,17,829/- withdrawn from Account no 4899 and of Rs.2,82,000/- withdrawn from Account no 2734 of Central Bank of India for which separate additions have been confirmed earlier. Thus, both the additions of Rs.7,50,000/- and Rs.15,00,000/- are deleted.”*

3. We have given our thoughtful consideration to rival contentions. Mr. Choudhury vehemently argues during the course of hearing that the Assessing Officer had rightly made the impugned addition on account of assessee's failure in filing cogent evidence in support of his cash deposits made in bank. He further alleges Rule 46A violation at CIT(A)'s behest whilst admitting additional evidence without reasoning or following for Assessing Officer's comments. We find no merit in either of the twin arguments. There is no dispute about the assessee having made the impugned cash deposits in his bank account. We do not see any such additional evidence before the CIT(A). It transpires during the course of hearing that the assessee filed his bank statement etc. which already formed part of assessment records. Learned Departmental Representative fails to dispute the fact that assessee's income from petrol pump dealership stands accepted as correct. We observe

his peculiar facts and circumstances that the CIT(A) has rightly treated the assessee's cash sales to be source of his impugned cash deposits made in bank. The assessee has made all of his payments to M/s HPCL through this bank account only. We conclude in these facts and circumstances that the CIT(A) has correctly assessed only the income component in assessee's cash deposits rather than the entire sum u/s 69 of the Act. We decline Revenue's first substantive ground accordingly.

4. The Revenue's latter two substantive grounds seek to revive the assessing officer's action adding assessee's investments of ₹7.05 lac in HDFC mutual fund and partly deleting the addition of ₹ 17 lac. consisting of ₹15 lac taken as unaccounted investments in Punjab National Bank and ₹2 lac deposited by adopted telescoping method. Relevant CIT(A)'s discussion to this effect reads as under:-

*"5. Ground no. 2 pertains to addition of Rs.3,73,65,381/- as unexplained deposits in Axis Bank Account. The AO has stated in the assessment order that the assessee maintains CA-Business Classic bank account no. 548010200007258 with Axis Bank and total credits during the period 01.04.2009 to 31.03.2010 was Rs.3,75,65,381. Since, the assessee did not submit any details regarding the nature of the deposits, the AO added the entire amount as undisclosed income.*

*During the appellant proceedings, the assessee stated that the correct account no is 021010200005885 and the same is in the name of Rathala Services Station, 28, Jessore Road, Rathala, Barasat. The bank account was opened on 12.11.2008. It was further contended that the assessee was given power of attorney by Sri Samarendra nath Pal on 22.09.2008 to run this petrol pump. It was further admitted that the assessee had deposited the proceeds of the petrol pump in this bank account and at the same time had paid to HPCL from this bank account towards purchase of the petrol and diesel. He accepted that total deposits are Rs.375.65 lacs and the corresponding payments are Rs.358.20 lacs, thus the net profit out of this undisclosed business would be the difference of the two which comes to Rs.17.45 lacs. However, the assessee accepted that 5% of the turnover of Rs.3,75,65,381/- amounting to Rs.18,78,269/- be confirmed.*

*All the submissions of the assessee were forwarded to the AO for comments during the remand report proceedings. In fact, despite being given many opportunities, the assessee was not able to procure the details of the pay orders issued from this bank account. It was only after the efforts of the AO that the details of the pay orders were procured from the bank and it was found that actually all the pay orders were*

*issued to HPCL towards purchase of the petrol and diesel. Thus, the contention of the assessee is found to be correct and it is held that the cost of the petroleum products should be allowed to be set-off against the undisclosed sales of petrol and diesel. The net-profit @ 5% on this unaccounted business, as offered by the assessee is accepted as the real income. Hence, the addition is restricted to Rs.17,78,269/- and the balance amount of Rs.3,56,87,112/- is deleted.”*

5. We have heard rival contentions. We do not see any reason to disagree with CIT(A)'s clinching findings adopting telescoping method of his cash available to be forming source of the impugned investments. Learned Departmental Representative fails to dispute the corresponding reconciliation between the two heads. We accordingly affirm the CIT(A)'s findings qua this latter issue as well.

6. This Revenue's appeal is dismissed.

Order pronounced in the open court 26/12/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

\*Dkp, Sr.P.S

दिनांक:- 26/12/2018 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

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

1. अपीलार्थी/Appellant-DC/ACIT, Cir-50, DS-II, 2<sup>nd</sup> Floor, Uttarapan Shopping Complex  
Manicktola Civic Centre, Ultadanga Kolkata-54
2. प्रत्यर्थी/Respondent-Shri Dilip Kundu, 1, Pannajhil, Noapara, Barrackpore Road,  
Barasat,Kolkata-700125
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,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।