

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]**

I.T.A. No.1315/Kol/2018
Assessment Year: 2013-14

Smt. Subhra Nag.....**Appellant**
P-7A, Madhusudan Park,
104A, Karunamoyee Ghat Road,
Kolkata – 700 082.
[PAN: ACO PD 5458 R]

Income Tax Officer.....**Respondent**
Ward – 63(1), Kolkata.

Appearances by:

Shri Mihir Bandhopadhyay, AR appearing on behalf of the Assessee.
Shri Shankar Halder, Sr(DR), JCIT, appearing on behalf of the Revenue.

Date of concluding the hearing : February 06, 2019
Date of pronouncing the order : February 15, 2019

ORDER

Per P.M. Jagtap, Vice President

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 19, Kolkata dated 25.04.2018 whereby he confirmed the penalty of Rs. 31,390/- imposed by the AO u/s 271(1)(c) of the Income tax Act, 1961.

2. The assessee in the present case is an individual who filed her return of income for the year under consideration on 29.07.2013 declaring a total income of Rs. 5,38,680/-. In her bank account with State Bank of India, the assessee had made total cash deposits of Rs. 4,35,000/- during the year under consideration. During the course of assessment proceedings, the assessee was called upon by the AO to explain the source of the said cash deposits. The explanation offered by the assessee as regards the source of cash deposits was accepted

by the AO except to the extent of Rs. 1,55,000/- for the following reasons:

“That sums totalling to Rs. 1,28,000/- was withdrawn during F.Y. 2012-13 by her from her a/c held with UBI and deposited the same into her said a/c held with SBI for monthly instalment deposited in her recurring deposit a/c @ Rs. 25,000/- p.m.

The above explanation of assessee is not tenable at all as no matching was found between the date on which cash was withdrawn from UBI and the date cash was deposited into SBI. Moreover, it is not practicable for a person to withdraw cash from one a/c deposit it into other and then redeposit it to yet. There is no rational or sanity in withdrawing cash from one a/c and re-depositing in another a/c because she could have issued cheques or RTGS for re depositing in R.D a/c the only inference than can be drawn is that the assessee had cash income from other sources which she was not declared in here return of income. Accordingly a sum of Rs. 1,28,000/- is liable to be added back to assessee's total income for A.Y. 2013-14 as 'unexplained cash credit' u/s 69 of the Income tax Act, 1961.

The assessee could not give any satisfactory explanation regarding the balance cash deposit of Rs. 27,000/-, hence the same is liable to be added back to assessee's total income for A.Y. 2013-14 as 'unexplained cash credit' u/s 69 of the Income Tax Act, 1961.”

Accordingly, addition of Rs. 1,55,000/- was made by the AO to the total income of the assessee on account of unexplained cash deposits u/s 69 in the assessment completed u/s 143(3) vide an order dated 20.03.2016.

3. Penalty proceedings u/s 271(1)(c) were also initiated by the AO in respect of the addition of Rs. 1,55,000/- made on account of unexplained cash deposits and since the explanation offered by the assessee in response to the show-cause-notice issued during the course of the said proceedings was not found acceptable by him, the AO imposed a penalty of Rs. 31,390/- u/s 271(1)(c) of the Act.

4. The penalty imposed by the AO u/s 271(1)(c) was challenged by the assessee in the appeal filed before the Ld. CIT(A) and the following submission was made on behalf of the assessee in support of her case:

“During the concerned year the appellant declared a total income of Rs. 5,38,680/- in her return filed on 29.07.2013.

The appellant does not have any personal expenses since her husband is also an income tax assessee.

The appellants husband, (Shri Amitav Nag) has declared total income of Rs. 32,30,900/- during the relevant year. All these facts are borne out from the assessment order of the appellant and her penalty order under appeal before your honour now. Incomes at almost the similar range has been returned by the appellant and her husband (who maintains here domestic expenses being husband) during the immediately preceding a few years.

Hence your honour may kindly appreciate that saving of the appellant in this year and the earlier year are sufficient for depositing the alleged cash deposit of Rs. 1,55,000/- which has been held as ‘uxplained’”

5. The Ld. CIT(A) did not find merit in the submission made by the assessee and proceeded to confirm the penalty imposed by the AO u/s 271(1)(c) for the following reasons given in para 4:

“The appellant has taken 6 (six) grounds of appeal and Grounds No. 1 to 5 pertains to penalty proceedings u/s 271(1)(c). The AO in the order u/s 143(3) had observed that the appellant had deposited cash of Rs. 4,35,000/- in her Savings Bank Account on different dates and around Rs. 2,80,000/- was taken as loan from her husband but for balance Rs. 1,55,000/- assessee could not offer any explanation for the deposit having been made. The AO added the said sum and imposed penalty on the appellant. In the penalty proceedings, the appellant had contended that the appellant’s husband had declared total income of Rs. 32,30,900/- and she herself had income of Rs. 5,38,680/- and hence the addition was unwarranted and further the appellant had deposited the tax amount well before the stipulated time. Having considered the appellant’s submission / contention, I find that the penalty provision especially us/ 271(1)(c) read with Explanation 1 provides for imposition of penalty

especially no plausible and / or reasonable explanation is furnished. The appellant has not been able to offer the explanation nor she could substantiate such explanation, if any and hence the AO is wholly justified in imposing such penalty. Further, no reasonable cause has been given for such failure. Hence the imposition of penalty is confirmed. Hence this ground of the appellant fails. Grounds No. 1 to 5 are dismissed. Ground No. 6 is general."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

6. We have heard both the sides and also perused the relevant material available on record. It is observed that cash deposits found to be made in her bank account with SBI were explained by the assessee to the extent of Rs. 1,28,000/- as withdrawals made from her bank account with UBI and this explanation of the assessee was not accepted by the AO as he found that the dates of withdrawal from UBI and deposits made in SBI were not matching. He also observed that there was no rational in withdrawing cash from one account and re depositing in another account because she could have issued cheques or RTGS. Although this view taken by the AO was accepted by the assessee and the addition made on account of unexplained cash deposits was not disputed by her in appeal, the fact remains to be seen is that there were withdrawals made by the assessee in cash from her bank account with UBI and source of cash deposits to that extent was explained. Moreover, as rightly contended on behalf of the assessee before the authorities below as well as the before the Tribunal, the assessee had declared a total income of Rs. 5,38,680/- for the year under consideration while her husband had declared a total income of Rs. 32,30,900/- for the year under consideration and

keeping in view this quantum of family income declared for the year under consideration as well as for the earlier years, the availability of cash to the extent of Rs. 1,55,000/- out of savings of the year under consideration as well as earlier years cannot be doubted. Having regard to all these facts and circumstances of the case, we are of the view that even though the addition of Rs. 1,55,000/- on account of unexplained cash deposits was made by the AO and the same was accepted by the assessee, the said amount cannot be considered as concealed income of the assessee for imposition of penalty u/s 271(1)(c). We, therefore, cancel the penalty imposed by the AO and confirmed by the Ld. CIT(A) and allow this appeal of the assessee.

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

Order Pronounced in the Open Court on 15th February, 2019.

Sd/-

(A. T. Varkey)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
VICE PRESIDENT

Dated: 15/02/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. Smt. Subhra Nag, P-7A, Madhusudan Park, 104A, Karnamoyee Ghat Road, Kolkata - 700 082.
2. ITO, Ward 63(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata