

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)  
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

**I.T.A. No. 975/Kol/2016**  
**Assessment Year: 2011-12**

Bhanu Prakash Jain (PAN: ACFPJ9207K)	Vs.	Income-tax Officer, Wd-34(1), Kolkata
Appellant		Respondent

Date of Hearing	22.01.2019
Date of Pronouncement	11.04.2019
For the Appellant	Shri M. D. Shah, AR
For the Assessee	Shri Robin Choudhury, Addl. CIT, Sr. DR

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal preferred by the assessee is against the order of Ld. CIT(A)-10, Kolkata dated 26.02.2016 for AY 2011-12.

2. The first two grounds of appeal of assessee are against the action of Ld. CIT(A) in confirming the additions of Rs. 38,01,157/- and Rs.40,09,893/- as undisclosed cash deposits in the bank account maintained by assessee with South Indian Bank Ltd.

3. Briefly stated the facts as observed by the AO are that during the assessment proceedings the AO found from perusal of the Balance sheet of the assessee that the two bank accounts maintained with south Indian Bank Ltd. bearing account nos. 0223053000008752 and 0223053000007742 were not reflected in it. Therefore, according to AO, both the bank accounts maintained by assessee were undisclosed to the department. The AO found from the bank statement of account no. 0223053000008752 that the assessee deposited cash amounting to Rs.38,01,157/- during the FY 2010-11 relevant to AY 2011-

12. The assessee was asked to explain the source of the same. According to AO since none appeared on the dates fixed for hearing on behalf of the assessee and did not offer any explanation about the nature and source of acquisition of the money deposited, the AO treated the same as undisclosed cash deposit and added Rs.38,01,157/- to the total income of the assessee. Likewise, in respect of other Account No. 0223053000007742 maintained with South Indian Bank Ltd., the AO found that there were deposits from various sources amounting to Rs.40,09,892/-. Assessee was asked to explain the entries in the said bank for which AO acknowledges that assessee had filed working sheet stating that there was refund of share application money from various companies. According to AO, when further query was made asking for the details of share application money supposedly paid by assessee (like giving the details of bank account through which it were paid along with the date of payment), according to AO, thereafter none appeared. Hence, according to AO, without satisfactory explanation, the money credited in the bank account is deemed to be undisclosed income of the assessee and so, he concluded that the assessee has no explanation to offer and he made the addition of Rs.40,09,893/- as undisclosed income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of AO on both the additions. Aggrieved, assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO made additions for non-compliance by the assessee. The main grievance of the assessee before the Ld. CIT(A) which the assessee raised by ground no.1, was that no proper opportunity was allowed it of hearing by AO during assessment proceedings and had filed additional evidence before the Ld. CIT(A) along with explanation of the money found in both the accounts. However, the Ld. CIT(A) did not admit the additional evidence on the plea that assessee did not spell out any reason as to what prevented him (assessee) from adducing the same before the AO. Before us the Ld. AR took pain to convince us that the assessee had given all evidence in his possession to the Ld. AR and for reasons best known to him, has not placed before the AO and during the appellate proceedings, the Ld. AR failed to spell out the reasons/failure on his part to

adduce the same before AO, which has resulted in the Ld. CIT(A) not admitting the additional evidence which fact is discernable from the acknowledgment of the same by Ld. CIT(A) who has reproduced the same at page 3 of the order of Ld. CIT(A), which are as under:

“I. In respect of bank account No. 0223053000008752: -

- (a) Fund flow statement of south India Bank A/c. No. 0223053000008752,
- (b) Details of purchase of shares,
- (c) Details of sale of shares,
- (d) Details of profit on sale of shares,
- (e) Bank statement of south Indian Bank No. 0223053000008752,
- (f) Four bills for purchase of shares – payment of which have been made by A/c payee cheques
- (g) 15 bills for sale of shares.”

“II. And in respect of other bank account no. 0223053000007742 the details as submitted by assessee before Ld. CIT(A) are as under:

- i) The assessee maintains a saving account with South Indian Bank, Burrabazar Branch, Kolkata A/c No. 0223053000007742 and during the FY 2010-11 relevant to the Ay 2011-12, the details of credit in the bank are as under:

Refund of application money of shares from various companies	Rs.24,16,414.82
Proceeds of shares from Shree Bahubali International Ltd.	Rs.15,94,457.85
Interest	<u>Rs. 247.00</u>
	<u>Rs.40,11,119.67</u>

- (ii) Out of this amount of Rs.40,11,119.67 the ITO has added a sum of Rs.40,11,119.67 to the total income of the previous year.
- (iii) Further we would like to mention that the assessee with the financial help from Shree Bahubali Consultants Ltd., 9, James Hicky Sarani, 2<sup>nd</sup> floor, Kolkata-701069 had applied for subscription of shares in various companies (public issue), the application money of which were directly paid by M/s. Shree Bahubali Consultants by debiting assessee's account. During the year in aggregate application money or proceeds of sale of shares.

- (iv) Further, we would like to inform that allotment of shares by various companies were credited in the Demat Account of the assessee, maintained with Shree Bahubali International Ltd. (Demat A/c. No. 10205913) which were said in the market from time to time. For the purpose of verification the following documents are enclosed herewith:
- (a) Bank statement of South India Bank Ltd. A/c No. 0223053000007742,
  - (b) Confirmation of Accounts of Shree Bahubali Consultants Ltd. duly confirmed signed with PAN.
  - (c) Statement of transaction and holding for Demat Account No. 10205913 maintained with Shree Bahubali International Ltd.
  - (d) Fund flow statement of south Indian Bank A/c No. 0223053000007742
  - (e) Details of share application A/c
  - (f) Ledger Account with Shree Bahubali International Ltd.
  - (g) 28 contracts for sale of shares
  - (h) Details of sale of shares
  - (i) Statement of profit on sale of shares.”

5. Despite filing of these documents to substantiate his contention, the Ld. CIT(A) did not admit the evidence. We note that the AO on the reason that assessee has not given any evidence of the deposit of cash in the bank account No. 0223053000008752 of South Indian Bank has made the addition. However, our attention was drawn to the next addition of Rs.40,11,119/- which was made by AO, wherein the AO acknowledges the fact that assessee has replied to the query asked by the AO. However, according to AO, he was not satisfied with the reply, so he made the addition, which goes on to show that assessee tried to comply with the queries raised by the AO and not being satisfied with the reply has ventured to make the entire addition of deposits. So, when we consider the appeal of the assessee in the light of the fact and circumstances discussed above, especially taking into consideration the facts that were brought to the notice by way of additional evidence goes onto show that assessee had tried to explain the deposits which has found in the undisclosed bank account. Therefore, we are of the considered opinion that assessee did not get proper opportunity before AO, so in the light of the Hon'ble Supreme Court decision in the case of Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC), wherein it was held as under:

*“It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :*

*“We will straightaway agree with the assessee’s submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard.”*

*That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.*

*Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :*

*“1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?”*

*In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the assessee.*

*The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid.”*

6. In the light of the facts aforesaid and the fact that the assessee produced additional evidences as noted by the Ld. CIT(A), and for want of reasons for not submitting the evidences before the AO, the Ld CIT(A) refused to admit the additional evidence and taking into account the Ld. AR’s submission that the Ld. AR of the assessee having failed in his duties, should not come in the way of assessee’s assessment of income, when the assessee has filed the additional evidence before the Ld. CIT(A) (supra) we are inclined to hold that assessee did not get proper opportunity before the AO and as held by the Hon’ble (three judge bench) of the Hon’ble Supreme Court in Tin Box Company Vs. CIT (supra) we therefore, set aside the impugned order and remand both the issues back to the file of the AO for de novo adjudication. Therefore, these grounds of appeal are allowed for statistical purposes.

7. Ground no. 3 is against the action of Ld. CIT(A) in confirming the addition of Rs.1,34,200/-, which the assessee claimed to be outstanding loan with interest from Smt.

Sashi Jain taken from earlier year (01.04.2006 to 31.03.2011). The Ld. CIT(A) confirmed the addition on the ground that assessee failed to furnish any evidence before the AO. Since we have already remitted the ground nos. 1 and 2 back to AO for want of proper opportunity during assessment proceedings, this ground also needs to be adjudicated afresh by AO. So, we set aside the impugned order of Ld. CIT(A) and remand this issue also back to AO for de novo assessment. Needless to say, the assessee is at liberty to adduce evidence/materials to substantiate his claim and the AO to pass assessment order after affording proper opportunity to assessee and assessee is directed to diligently take part in the assessment proceedings. With the aforesaid observations the appeal of assessee is disposed off for statistical purposes.

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

Order is pronounced in the open court on 11.04.2018

Sd/-  
(Dr. A. L. Saini)  
Accountant Member

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 11th April, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Shri Bhanu Prakash Jain, 10/1, Becharam Choudhury Lane, Howrah-711101, West Bengal
- 2 Respondent – ITO, Ward-34(1), Kolkata .
- 3 CIT(A)- 10, Kolkata.
- 4 CIT , Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar