

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

[Before Sri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 2261/Kol/2018
Assessment Year: 2015-16

Sardar Rajdeep Singh.....Appellant
137/4, Narikeldanga Main Road
Kakurgachi
Kolkata
[PAN : BJHPS 6779 P]

Income Tax Officer, Ward-45(2), Kolkata.....Respondent

Appearances by:

Shri P.C. Nayak, ACIT(Retired) & K.K. Khemka, A/R, appeared on behalf of the assessee.
Shri A.K. Bandopadhyay, D/R (ITAT), appearing on behalf of the Revenue.

Date of concluding the hearing : March 25th, 2019
Date of pronouncing the order : April 29th, 2019

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) - 13, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 06/09/2018, for the Assessment Year 2015-16.

2. The assessee is an individual and derives income from salary. A survey operation u/s 133A of the Act, was being carried out in the business premises of M/s. Golden Goenka Fin. Corp. Ltd., at 1, British India Street, 1st Floor, Room No. 109, Kolkata - 700069 on 17/03/2015. During the course of survey, the assessee, Mr. Sardar Rajdeep Singh entered the premises with a bag which contained cash of Rs.15,00,000/-. As he could not explain the source of the said cash in the statement recorded u/s 131 of the Act, a warrant of authorisation was issued to seize the unaccounted cash u/s 132 of the Act and the entire cash of Rs. 15,00,000/- was seized. Notice u/s 153A of the Act, was served upon the assessee. Pursuant to the notice, the assessee e-filed his return of income for the Assessment Year 2015-16 on 26/08/2015 declaring total income of Rs.8,97,530/-. The explanation given by the assessee regarding the source of cash was rejected by the Assessing Officer. He added an amount of Rs.7,23,044/- and determined the total income at

Rs.16,78,330/-. Aggrieved the assessee carried the matter in appeal without success.

3. Further aggrieved the assessee is in appeal before us.

4. The Id. Counsel for the assessee, Mr. P.C. Nayak, pleaded before us that the assessee had gone to the office of M/s. Golden Goenka Fin. Corp. Ltd., for seeking advice and help to invest in mutual funds after collecting the amount in question from this friends and relatives who had given him interest free loans for temporary period.

The Id. D/R relied on the order of the Id. CIT(A) confirming the action of the Id. Assessing Officer.

5. Rival contentions heard. The Id. CIT(A)'s findings and decision while confirming the action of the Assessing Officer is as follows:-

"During the course of filing of return it was found that the appellant has filed its return of income declaring Rs.8,97,530/- as against declared amount of Rs.15,00,000/- during the course of search which was stated to be his income of the current year. the appellant came with the explanation that Rs.7,23,044/- was his past saving from relatives and income which was not supported by any evidences. It was merely a argument of the appellant that "the assessee was a salaried employee and had income from salary for about 15 years and the amount of cash of my savings out of income of earlier as well as current year. For most of the earlier years my income was below taxable limit and as per law, no tax was payable. For the immediate earlier, i.e. A.Y. 2014-15 and current year i.e. 2015-16, he had taxable income and as per law in favour of said contention the assessee takes so many case law which has been observed.."

At the appellate stage the appellant. has argued that since the AR has accepted the return filed by him from block period and the income disclosed by the appellant and was accepted by the AO which are as under:-

AY	Assessed income	Returned income
2009-10	80700	80700
2010-11	92760	92760
2011-12	92330	92330
2012-13	116750	116750
2013-14	116700	116700
2014-15	176700	176700

The aforesaid amount was shown in the balance sheet of the appellant therefore the aforesaid amount stands accepted by the AO.

In this regard it is pertinent to mention here that the appellant had never filed its return of income. Perusal of his return of income filed in response of 153A shows that its income from AY 2009-10 to 2013-14 was between

Rs.80,000/- to Rs.1,10,000/- only. The appellant is showing very minimal withdrawal in his balance sheet ranging between Rs.24,000/- to Rs.30,000/- for the entire year. It is pertinent to mention here that all these returns were filed on 07-09-2016 and the computation of income and balance sheet have been filed along with return of income which was filed in response to notice u/s153A of the IT Act. It clearly goes to show that the aforesaid balance sheet was filed in order to make an argument that the appellant was showing cash in hand of Rs.11,00/- in Ay 2010-11, Rs.13,500/- in AY 2011-12, Rs.43,000/- in AY 2012-13 and Rs.36,487/- in AY 2013-14. Remaining amount was claimed to be given as advance to relatives. It is pertinent to mention here that these amounts were claimed to be given in cash and received in cash. These amounts were not through banking channels. The appellant has not explained the reasons as why these loans were not given through banking channels therefore the plea of the appellant that remaining money was from his relatives, cash in hand, money given to relatives is nothing but a concocted story in order to save him from the tax liability which is confessed before the search team u/s 132(4) of the I.T. Act.

In this regard it is pertinent to mention here that the appellant was found with cash of Rs.15,00,000/- which was in itself against the appellant and the same was not accounted for in his books of accounts neither it was form withdrawals of his bank account. The appellant correctly disclosed his undisclosed income of AY 2014-15. As regards the argument of the appellant that the AO has accepted his balance sheet therefore addition cannot be sustained is not legally correct because once the appellant was found that undisclosed money of Rs.15,00,000/- which was duly disclosed before the income tax officials carrying survey on the appellants premises. The AO had to issue notice u/s153A for six years and in response to aforesaid notices the return of income was filed by the appellant on 17-09-2016 which were in compliance to notice issued by the AO.

The AO had no jurisdiction to assess the income of earlier years and it was to be accepted because no incriminating documents were found relating to those other years during the course of search. Therefore, no addition has been made by the AO because it was not within the jurisdiction of the AO to make the addition without any incriminating documents found during the course of survey. The aforesaid view has been upheld by the honourable Delhi high court in case of CIT Vs Kabul Chawla vide ITA No.707/2014 and others dated 28-08-2015 wherein the honourable court has held that if no incriminating material was unearthed during the search no additions could have been made as the assessee involved were non abated and the quantum proceeding were not pending and the due date for issuance of notice u/s.143(2) was expired therefore there was no reference to the material found in remaining five years. It can be seen that in the remaining years no incriminating material was found during the search. The decision of the tribunal in the case of Shri Govind Agarwal Vs ACIT being ITA No.3389/Mum/2011 dated 10-01-2014 wherein the honourable Tribunal held that in case of non abated years, addition can only be made with respect to seized material found during the course of search. While arriving at this conclusion, the honourable tribunal has relied upon the order of the honourable tribunal in the case of All Cargo Global Logistics V Addl CIT 137 ITD 287(MUM)(SB) which has since been upheld by the honourable Bombay high court referred above. Therefore it was beyond the jurisdiction of the AO to make any assessment on regular basis therefore the argument of the appellant that the AO has accepted his balance sheet is not legally correct. The AO rather did not have jurisdiction to make any assessment in respect of such response. As stated above that the appellant was found in possession of Rs.15,00,000/- which was not withdrawal from his any bank account which was not recorded in his

books of account and the appellant has never filed his return of income therefore it is income of the year in which it was found and it represents his undisclosed income of that year only and the AO has jurisdiction to assess the aforesaid income in the year itself only therefore keeping in view of the aforesaid facts and decision of honourable courts the action of the AO is upheld and the ground of appeal is dismissed."

6. We find no infirmity in the detailed reasoning given in the order of the Id. CIT(A). The assessee's claim that he was a salaried employee for about 15 years and he had cash savings in earlier year as well as in the current year, etc., is not supported by evidence. The submission that all the savings as well as transaction loan etc. were in cash is also not acceptable as it is not common human behaviour. As the assessee could not explain the possession of cash satisfactorily with evidence. Hence we uphold the order of the Id. CIT(A).

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

Kolkata, the 29th day of April, 2019.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated :29.04.2019

{SC SPS}

Copy of the order forwarded to:

1. Sardar Rajdeep Singh
137/4, Narikeldanga Main Road
Kakurgachi
Kolkata

2. Income Tax Officer, Ward-45(2), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches