



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.143 & 144/CTK/2018

Assessment Year: 2010-2011

Sri Jayasish Roy, Plot No.484, Saheed Nagar, Bhubaneswar	Vs.	ITO, Ward 2(2), Bhubaneswar.
PAN/GIR No.AANPR 5540 H		
(Appellant)	..	(Respondent)

Assessee by : Shri P.C.Sethi, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 30/04/ 2019
Date of Pronouncement : 30 /04/ 2019

ORDER

ITA No.143/CTK/2018 is filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-2, Bhubaneswar dated 23.11.2017 for the assessment year 2010-11 in the matter of penalty u/s.271(1)(c) of the Act and ITA No.144/CTK/2018 is against the order dated 22.11.2017 u/s. 143(3) of the Act for the assessment year 2010-2011.

2. First, I take up the appeal in ITA No.144/CTK/2018 for adjudication.

3. Ground Nos.2 & 3 of appeal are general in nature and hence, requires no separate adjudication by me.

4. The sole effective issue in this appeal is that the CIT(A) erred in confirming the addition of Rs.7,34,000/- made by the Assessing Officer.

5. I have heard the rival submissions, carefully gone through the relevant materials placed on record of the Tribunal.

6. Ld A.R. of the assessee submitted that on being asked by the Assessing Officer, the assessee submitted entire details pertaining to the persons who have given hand loan in cash to the assessee. Ld A.R. further submitted that the assessee received loans in cash from the relatives and friends, which were deposited in the bank account and further invested. Ld A.R. vehemently pointed out that before the Assessing Officer as well as before the CIT(A), the assessee submitted names, address and PAN Nos. and amount received from the respective persons establishing the identity, creditworthiness and capacity of every person. Ld A.R. clarified that PAN No. pertaining to one person Shri Dinabandhu Sahoo could not be submitted as he was not a taxpayer but photocopy of voter ID was submitted showing his existence and entity. Therefore, the authorities below were not correct in



making the addition. Ld A.R. strenuously contended that the findings recorded by the Assessing Officer while making the addition are perverse and hyper technical and the CIT(A) ought to have dismissed the same but unfortunately, the CIT(A) also confirmed the action of the Assessing Officer without considering the explanation of the assessee. Ld A.R. drew my attention to paras 3.7 to 3.12 of the first appellate order and submitted that the CIT(A) could not controvert the fact that the assessee submitted the names, addresses and PAN Nos. of all hand loan creditors except one Shri Dinabandhu Sahoo but the CIT(A) proceeded to confirm the addition for want of identity of lenders in the form of Adhar Card, whereas the authorities below being Income tax authorities must have known the value of PAN Nos., which establishes the existence and identity of the hand loan creditors before the income tax authorities. Ld A.R. submitted that the CIT(A) has grossly erred in confirming the addition for want of Adhar Card of the creditors despite the fact that the assessee submitted the PAN Nos. alongwith names and address pertaining to all creditors who provided cash loans to the assessee. Ld A.R. submitted that the assessee has submitted all the possible and relevant documentary evidence before the lower authorities establishing the identity, existence and

creditworthiness as well as capacity of the creditors. Therefore, no addition is called for in this regard.

7. Ld A.R,. further submitted that the Adhar Card cannot be held as most necessary and important document to prove the identity, existence and genuineness of the persons ignoring the fact the documents in respect of names, address and PAN Nos. of the lenders. Ld A.R. submitted that the addition made by the AO and confirmed by the CIT(A) may kindly be deleted.

8. Replying to the above, Id D.R. strongly supported the orders of lower authorities and submitted that the assessee has created an afterthought explanation and has submitted a list in a planned manner of several persons claimed to be friends and relatives of the assessee at a later date only to explain the cash deposits. Ld D.R. strongly pointed out that the assessee has taken due care to declare the loan for an amount of Rs.20,000/- or less than Rs.20,000/- to escape from the mischief of provisions of section 269SS of the Act. Ld D.R. submitted that the confirmations filed by the assessee does not bear the date of loan. Therefore, the addition be confirmed.

9. On careful consideration of the rival submissions, from the relevant operative para at page-5, I observe that the Assessing

Officer acknowledges the fact that the assessee has furnished list of persons alongwith PAN Nos., addresses and confirmations obtained from the creditors but these documentary evidences and explanations have been rejected by the Assessing Officer without any verification from the creditors even on random basis. The Assessing Officer proceeded to make addition of entire amount by mentioning a normal human behavior and by also alleging that due care has been taken by the assessee to declare the loan amount of Rs.20,000/- or less than Rs.20,000/- to escape from the triggers of section 269SS of the Act. Further, from the relevant operating para of the first appellate order especially para 3.7, I observe that the CIT(A) also did not make any verification and proceeded to confirm the addition for want of Adhar Card and for want of confirmation of creditors regarding repayment whereas the assessee did file confirmation of loan creditors before the Assessing Officer which were dismissed on hyper technical ground that the date of providing loan has not been mentioned therein.

10. In view of foregoing discussion, I am of the considered view that the authorities below did not verify or examine the identity, creditworthiness or genuineness of the transaction despite the fact that the assessee submitted a detailed list containing names, address and PAN of the creditors except one Shri Dinabandhu

Sahoo. Regarding Sri Dinabandhu Sahoo, the assessee could only file Voter ID and address. Looking into the facts and circumstances of the case, I am inclined to hold that the assessee has submitted all possible evidences under his hand before the authorities below in the form of names and addresses and PAN of creditors except one person. Further, the Assessing Officer proceeded to make addition without any verification from the respective creditors even on random basis. The CIT(A) also dismissed the appeal of the assessee for want of Adhar Card ignoring the vital evidence submitted by the assessee in the form of names and address, PAN and confirmation of the creditors. In my humble understanding, the assessee has discharged its onus by providing all relevant details and documents and confirmation from the respective persons. In this situation, I find that the onus cast upon the assessee has been discharged by giving a cogent and reliable details such as names, addresses, PAN nos and confirmation from the creditors. Therefore, if the department did not agree with the explanation, then the onus was on the department to verify the facts. In the instant case, such onus which shifted on the department has not been discharged. I also find that keeping aside all the information and details furnished by the assessee, the Assessing Officer proceeded to make the

addition, which was confirmed by the CIT(A) on the sole ground that the assessee has not furnished Adhar Cards of the creditors. Therefore, the findings arrived at by the Assessing Officer as well as the CIT(A) are not correct and justified and same are perverse and, therefore, same are dismissed. I am satisfied that the assessee has submitted all relevant details and documentary evidences pertaining to all loan creditors alongwith the supporting confirmations and these vital evidences cannot be ignored without making any verification or examination. Finally, I hold that since the assessee has established the identity, creditworthiness and genuineness of the transaction, therefore, no further addition is called for in this regard. Therefore, the addition made by the authorities below has no legs to stand on the relevant provisions. I, therefore, delete the same.

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

12. ITA No.143/CRTK/2018 is against levy of penalty u/s.271(1)(c) of the Act.

13. Since, I have deleted the corresponding addition made by the Assessing Officer and confirmed by the CIT(A) in the quantum, appeal, the penalty U/s 271(1)(c) I.T. Act of Rs. 2,26,972/- has no legs to stand. While taking this view, I take

support from judicial precedent in the case of K.C. Builders vs. ACIT 135 Taxman 461 (SC), in which the Hon'ble Apex Court held that where the additions made in the Assessment Order, on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment, and therefore, in such a case, no such penalty can survive and the same is liable to be cancelled. In view of the foregoing, appeal filed by the assessee is allowed.

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

Order pronounced on 30/04/2019.

Sd/-

(Chandra Mohan Garg)
JUDICIALMEMBER

Cuttack; Dated 30 /04/2019
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sri Jayasish Roy, Plot No.484, Saheed Nagar, Bhubaneswar
2. The Respondent. ITO, Ward 2(2), Bhubaneswar2, Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary,
ITAT, Cuttack