

आयकर अपीलीय अधिकरण, "एस.एम.सी", न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.282/CTK/2018

(निर्धारण वर्ष / Assessment Year :2013-2014)

| | | |
|---|-----|--------------------------------|
| Smt. Pratibha Kochar, Plot No.57, Budha Nagar, Bhubaneswar-751006 | Vs. | ITO, Ward-5(2), Bhubaneswar |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ASOPS 4563 Q | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

निर्धारिती की ओर से /Assessee by : Shri P.K.Pattnaik, AR
राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR
सुनवाई की तारीख / Date of Hearing : **25/04/2019**
घोषणा की तारीख/Date of Pronouncement **25/04/2019**

आदेश / O R D E R

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 09.05.2018 passed in First Appeal No.0193/2017-18 for the assessment year 2013-2014.

2. The grounds raised by the assessee read as follows:-

1. *That, the order of Learned C.I.T. (A) II, Bhubaneswar is not just and fair on the facts and in the circumstances of the case.*
2. *That, the Learned C.I.T. (A) II, Bhubaneswar is not justified in dismissing the appeal and confirming the addition of Rs.4,34,850/- only made by the Learned Assessing Officer without considering properly the explanation and documents submitted before him during the course of hearing.*
3. *That, the appellant is an Income Tax Assessee since the Assessment Year 1997-98 and is filing her returns of income regularly and she had invested a sum of Rs.4,34,850/- only in the purchase of flat out of her past assessed income.*

4. *That, considering the facts that the appellant has been disclosing her income for last 16 years and paying tax, she must have savings of Rs.4,34,850/- only with her for investment in the purchase of flat.*
5. *That, on the facts and circumstances of the case, the Learned C.I.T. (A) II, Bhubaneswar has not acted judiciously and has passed the order whimsically without considering the period of her income and probability of savings of a person who is an assessee for such a long period.*
6. *That, on the facts and in the circumstances of the case, the total addition of Rs.4,34,850/- only be deleted.*
7. *That, other grounds, if any, shall be urged at the time of hearing.*

3. On perusal of the grounds raised by the assessee, I observe that the assessee has challenged the first appellate order on the ground that the Id. CIT(A) was not justified in dismissing the appeal and confirming the addition of Rs.4,34,850/- made by the AO without proper consideration of explanation and documents submitted by the assessee during the assessment proceedings.

4. I have heard arguments of both the sides and carefully perused the relevant material placed on the record of Tribunal, *inter alia*, assessment order, first appellate order and paper book of the assessee along with written submissions spread over 39 pages.

5. Ld. AR submitted that during the assessment year 2013-2014 the assessee received a sum of Rs.7,20,000/- towards salary, interest on the capital invested Rs.1,47,316/- and share on profit of Rs.5,94,194/- from the partnership firm M/s Vdeal Systems, wherein she and her husband are the partners. Ld. AR also drew my attention towards copies of the computation of income, statement of details of income and deduction

claimed by the assessee along with the acknowledgement in support of filing of income tax return for AY 2013-2014 which shows that during the assessment year 2013-2014 under consideration, the assessee declared income of Rs.14,61,470/- and after claiming exemption u/s.10(2A) of the Income Tax Act, 1961 (for short the 'Act') regarding share of profit from partnership firm shown income of Rs.7,20,000/- and also paid tax thereon. Ld. AR vehemently pointed out that in view of the above facts and circumstances of the case and keeping in view a very peculiar fact of the present case that the assessee is regularly filing income tax returns from the assessment years 1997-1998 to 2013-2014 i.e. since last 16 years, wherein the assessee has shown notable income and has also paid taxes thereon, therefore, a meagre amount of Rs.4,34,850/- invested by the assessee in purchasing a flat jointing with her husband cannot be treated as unexplained investment for making a baseless addition. Ld. AR submitted that keeping in view the entire facts and circumstances of the case and conduct of the assessee as an honest and sincere taxpayer such impugned amount which is lesser than the total income of the assessee during the relevant financial year cannot be treated as unexplained investment from the income of undisclosed source for making another addition. Therefore, the impugned addition made by the AO and upheld by the CIT(A) may kindly be deleted. Ld. AR lastly submitted that except copies of the computation of income and returns of income for last 16 years, the assessee is unable to produce any other document as her husband is not cooperating with her due to broken

marital relationship under litigation, therefore, relief may kindly be granted to the assessee.

6. Replying to the above, Id. DR strongly supported the assessment order as well as first appellate order and submitted that the AO asked the assessee to produce the source of investment of impugned amount but assessee could not produce the evidence in support of investment and rightly treated the same as undisclosed investment of the assessee for making addition. Id. DR also submitted that the first appellate authority was also correct in upholding the assessment order and dismissing the explanation and documentary evidence of the assessee.

7. On careful consideration of above rival submissions, I am of the considered view that although the Id. DR has strongly supported the impugned assessment and first appellate order, he has not controverted the fact, which is glaring from the copies of the assessment order and computation of income filed by the assessee from assessment years 1997-1998 to 2013-2014. Let me examine the income shown by the assessee during the present assessment year and from the computation of income I find that the assessee paid total tax of Rs.99,465/-. The computation of income for A.Y.2013-2014 further reveals that the assessee has declared Rs.7,20,000/- as salary, Rs.1,47,317/- as interest income and Rs.5,94,153/- as share of profit from partnership firm, namely, M/s Vdeal System held with her husband and, thus, the assessee has declared total income of Rs.14,61,470/- which is almost three times of impugned amount of Rs.4,34,850/-. Id. DR did not controvert another fact

that the assessee is regularly filing returns of income from A.Y.1997-98 to 2013-14 and paying taxes thereon. Even a man of ordinary prudent may understand the situation that where marital disputes arose between husband and wife leading to litigation in the courts, then cooperation level from both the sides becomes zero. In the present case, the assessee who is facing the same problem due to broken marital relation and litigations between her husband. Therefore, keeping in view the explanation of the assessee as well as documentary evidence filed before the authorities below in the form of copies of income tax returns, acknowledgement and computation of income, I am satisfied that the assessee has submitted all possible evidence to support his explanation under her command and the taxman cannot expect a lady assessee to submit the documents which are not under her command and due to dispute with her husband not possible to submit before the revenue authorities. Therefore, at the cost of repetition, I may again point out that the income declared by the assessee during the relevant assessment year under consideration i.e. A.Y.2013-2014 is three times more than the impugned amount which was invested by her towards jointly purchased of flat with her husband. Hence, the explanation of the assessee is plausible and deserves to be accepted and, therefore, the investment made by her during the same period cannot be treated as unexplained investment especially when the assessee is regularly filing returns of income from the assessment years 1997-1998 to 2013-2014, thus, I accept the same. Accordingly the sole

ground/issue agitated by the assessee in this appeal is allowed and the AO is directed to delete the addition.

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

Order pronounced in the open court on this 25/04/2019.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 25/04/2019

प्र.कु.मि/PKM, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .
Smt. Pratibha Kochar,
Plot No.57, Budha Nagar,
Bhubaneswar-751006
2. प्रत्यर्थी / The Respondent-
ITO, Ward-5(2), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack