

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH : KOLKATA

[Before Hon'ble Shri S.S. Godara, JM & Hon'ble Shri (Dr.) Arjun Lal Saini., AM]

I.T. A No. 646/Kol/2018 A.Y 2014-15

I.T.O., Ward 25(3), Kolkata

V/s.

Smt. Aparajita Chakraborty

PAN: AOFPC 4041N

(Appellant)

(Respondent)

For the Appellant

: Shri Rabin Chowdhury, CIT/DR

For the Respondent

: Shri S.M.Surana,, Advocate, AR

Date of Hearing :

22-07-2019

Date of Pronouncement :

18 -09-2019

ORDER

Shri S.S. Godara, JM:

1. This Revenue's appeal for assessment year 2014-15 arises against the CIT(A), 7, Kolkata's order dated 17-01-2018 passed in case no. 50/CIT(A)-7/Kol/Ward-25(3)/17-18 involving proceedings u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. The Revenue's sole substantive grievance raised in the instant appeal challenges correctness of the CIT(A)'s action reversing section 68 addition on account of unexplained cash credits amounting to Rs. 1,45,24,000/- vide the following detailed discussion:-

"4. The A.O has made the following observations:

"As per A/R information Cash amounting to Rs.1,45,24,000/- was deposited in the savings bank account with the following Banks.

Name of the Bank

Cash deposited

Canara Bank

Rs.51,11,500/-

<i>Indian Overseas Bank</i>	<i>Rs. 24, 52, 000/-</i>
<i>Bank of India</i>	<i>Rs.12,98,500/-</i>
<i>Bank of Baroda</i>	<i>Rs. 56,62, 000/-</i>
<i>Total cash deposited</i>	<i>Rs.1,45,24,000/-</i>

Being asked to explain the source of cash deposit of Rs. 1,45,24,000/- in the 5B a/c of different bank the A/R submitted a reply dated 20.12.2016 alongwith a notarized 'affidavit' wherein the assessee admitted the issue of cash deposit in her different bank account as above.

It was stated in the said affidavit that the above amount of cash was actually deposited in the assessee's bank account by her husband Shri Sudipta Chakraborty. Moreover, the assessee admitted that such amount of Rs.1,45,24,060/- was deposited in her bank account and she enjoyed the benefit of it. Being asked, the A/R was unable to produce any documentary evidence to prove that the said amount. was her husband's income..

The income of the assessee mainly consists of income from other source by way of tuition fees interest on EO etc. As per computation of income it was revealed that interest on FO amounting to Rs. 99,444/- was shown by the assessee. Being asked to explain the source of FD and other investment, the A/R stated, such FD and other investment was made out of the cash deposit. Hence, it" is clear that the assessee enjoyed the amount of Rs.1,45,24,000/- .

It is evident from records and in the submission of the assessee dated 20.12.2016, that cash amounting to Rs.1,45,24,000/- was actually deposited which was beyond of her regular source of income as shown in the computation. Under the facts and circumstance, assessee was again asked to explain, why the said amount of Rs.1,45,24, 000/- would not be treated as undisclosed income of the assessee from undisclosed source and why the same would not be added back to the total income of the assessee, then the A/R assessee was unable to offer any explanation and finally admitted the issue. Hence, as discussed, Rs.1,45,24,000/- is treated as unexplained cash credit of the assessee and the same is added back to the total income of the assessee.

5. *During the hearing stage, the A/ R of the Assessee Sri S. Seal, filed his written submissions which are reproduced as under:*

1. From 3rd November, 2008 to 31st October, 2014 the assessee's husband, Sri Sudipta Chakraborty, was working with a Public Limited Company namely DANIELI INDIA LIMITED (hereinafter referred to as the said "Company") which was situated at Techno Polis, 5th Floor, B - Wing, Block - BP, Plot No. - IV, Sector - V, Salt Lake, Kolkata - 700091 (presently at 1, Furnace Building, 1st Floor, Taratala Road, Kolkata - 700024).

2. During the period under appeal, that is, Financial Year 2013-14, the assessee's husband was attached with the purchase department of the said Company. During the period under appeal, he used to withdraw employer's cash and the said cash was deposited in his savings bank accounts as well as the savings bank accounts which are lying in the assessee's personal name. Moreover, he used to invest those monies to various Current Assets from the said savings accounts.

3. Subsequently in the Financial Year 2014-15, the activities of the assessee's husband came to the notice of his employer. After conducting investigation, the employer issued a show cause notice on 24th June, 2014 and Sri Sudipta Chakraborty accepted the charges of misappropriation of funds. He undertook to refund the entire amount mentioned in the said show cause notice and also undertook to refund any amount which may subsequently identified by the Company.

A copy of the said show cause notice dated 24th June, 2014 is annexed herewith and marked as 'Annexure - A'.

4. The Company initiated termination proceeding against the assessee's husband. During the termination proceeding the assessee's husband returned back the entire amount which was unauthorizedly drawn by him from his employer and deposited the same either in his bank account or in the assessee's bank account. The entire money was returned to the said Company through "RTGS".

Copies of the relevant pages of the assessee's bank statements of the next financial year, that is, Financial Year 2014-15 [to show the return of money to the said Company through "RTGS"] are annexed herewith and collectively marked as "Annexure - B".

5. After realization of the entire amount, the said Company terminated the assessee's husband from his job with effect from closing hours of business on 31st October, 2014. Apart from termination, the said Company did not initiate any other proceeding neither against the assessee's husband nor against the assessee. On 9th September, 2015 the said Company issued a letter, acknowledging that they received the entire amount from the assessee as well as assessee's husband and the said entire amount is the asset of the Company and neither the income of the assessee's husband nor the income of the assessee and thus they returned all the bank documents, which were retained by them, to the assessee and assessee's husband.

A copy of the termination letter dated 31st October, 2014 and the said letter dated 9th September, 2015 are annexed herewith and collectively marked as Annexure - C'.

6. Thereafter, in the year 2016, the return of the assessee was selected for "Limited Scrutiny" to examine the only issue of "Cash Deposit". The assessment was initiated against the assessee under Section 143(2) of the Income Tax Act, 1961 and notices were issued. A copy of the said Notice of initiation of 'Limited Scrutiny' assessment is annexed herewith and marked as 'Annexure - D'.

7. Before the Learned Assessing Officer, the assessee submitted the bank statements wherefrom it was revealed that during the Financial Year 2013-14 the total cash deposited in the assessee's bank accounts was to the tune of Rs. 1,45,24,000/-. To explain the said cash deposit, the assessee submitted a notarised affidavit stating the entire fact as stated hereinabove and annexing the said termination letter dated 31st October, 2014.

A copy of the said notarised affidavit along with the covering letter is annexed herewith and marked as "Annexure - E".

8. The Learned Assessing Officer, in his assessment order, held that the said "cash amounting to Rs. 1,45,24,000/- was actually deposited which was beyond of her regular source of income as shown in the computation." The Learned Assessing Officer, however, while coming to such conclusion neither considered the said affidavit as a whole nor appreciated the entire contention of the said affidavit in its true meaning and sense. The Learned Assessing Officer considered a portion of the said affidavit and remained silent on the other part of the same affidavit.

9. *Exactly on the similar issue a 'Limited Scrutiny' assessment was also initiated against the assessee's husband by the Learned Income Tax Officer, Ward - 6(1-), Kolkata. A similar type of affidavit was also submitted by the assessee's husband before his Assessing Officer. After considering the facts and circumstances of the case and relying on the said notarised affidavit and other available documents on record, it was observed by the by the Learned Income Tax Officer, Ward - 6(1), Kolkata that "Availability of Cash with a person who was engage in service unexpected. It was explained that cash belongs to M/s. Danieli India Limited situated at Sector V, Salt lake, Kolkata - 700091." After making such observation, it was decided by the Learned Income Tax Officer, Ward - 6(1), Kolkata, in his assessment order dated 22nd December, 2016, that "Hence, Cash deposits for which selection was made for scrutiny not found related to Sri Sudipta Chakraborty. Matter forwarded to the concerned A. O where income of t-t/s. Danieli India Limited assessed".*

A copy of the said notarised affidavit affirmed by the assessee's husband Sri Sudipta Chakraborty and the said assessment order dated 22nd December, 2016 passed by the Learned Income Tax Officer, Ward - 6(1), Kolkata are annexed herewith and collectively marked as "Annexure - F"

10. *That the entire amount of cash, which was deposited into the assessee's account and as reported by the Income Tax Authority, does not belong to the assessee and even that is not the assessee's part of income too.*

11. *For the reasons aforesaid, it is respectfully submitted that the assessee's appeal be allowed.*

6. *Conclusion:*

Ground' No.1, 3 & 4 are general in nature and need no separate adjudication.

Ground No.2:

I have carefully, read the order of the A.O as well as the detailed submission made by the Ld. A/R of the assessee. From the details filed by the A/R, it is seen that the husband of the assessee, Sri Sudipta Chakraborty, was an employee of M/s Danieli India Limited. Shri Chakraborty alongwith other staff of M/5 Danieli India Limited had

embezzled Company's fund to the tune of Rs.5,57,70,718/- from various bank accounts maintained by the Company. After stealing the said money, Shri Chakraborty had deposited a portion of the said cash so embezzled in various bank accounts maintained by him and in the name of his wife, Smt. Aparajita Chakraborty, the assessee herself. As can be seen from the details filed by the Ld. A/R, in order to escape legal punishment, the assessee's husband. had made an understanding with the Company by virtue of which he had repaid back the entire amount, which he has embezzled from the Company's account back to the Company in installments during the period from June, 2014 to March, 2015, i.e. in F.Y. 2014-15. As can be seen from the details submitted by the A/R starting from April, 2014, Smt. Chakraborty had paid back the entire money, which she has deposited in four bank accounts maintained by her namely in Canara Bank, Indian Overseas Bank, Bank of India and Bank of Baroda. Therefore, technically the said money credited in the bank account of the assessee was not the assessee's income but actually part of the asset owned by M/s Danieli India Limited, which again under pressure from the Company, the assessee had subsequently in the F.Y 2014-15 repaid the entire sum party by cheque and mostly through NEFT. As part of the settlement, M/s. Danieli India Limited after receiving the said money back had terminated the service of the assessee's husband, Sri Sudipta Chakraborty, from the Company and had wound up its operation from Kolkata region. In view of what has been described above, the addition made by the A.O is hereby deleted as the sum so credited above, the addition made by the A.O is hereby deleted as the sum so credited in the assessee's bank account is not technically her income from undisclosed source but a part of asset owned by M/s. Danieli India Limited. Similar stand has been taken by the Assessing Officer, Ward-6(1), Kolkata, having jurisdiction over the assessee's husband, Shri Sudipta Chakraborty, as can be seen from the copy of order u/s. 143(3) for the A.Y 2014-15."

3. We notice at the outset that the relevant tax effect involving in the instant appeal is less than Rs. 50 lakhs as per the CBDT's latest Circular No. 17/2019 dated 08.08.2019 enhancing threshold limit from Rs. 20 lakhs to Rs. 50 lakhs. Coupled with this, we notice that the Revenue's sole argument raised during the course of hearing seeks to restore back the instant issue(s) to the Assessing Officer by alleging that the CIT(A)

has admitted fresh additional evidence in violation of Rule 46 of the Income Tax Rules, 1962.

4. Learned Departmental Representative vehemently contends that the assessee had filed additional evidence(s) in various Annexures "A to " F" before the CIT(A) which have been admitted without affording any opportunity to the Assessing Officer. We find no substance in Revenue's instant grievance since the CIT(A)'s detailed discussion reproduced in extempore hereinabove nowhere indicates admission of additional evidence during the lower appellate proceedings. The assessee appears to be filed above said Annexures of (A to F) forming part of assessment records along with her written submissions. We therefore decline the Revenue's arguments on merits as well.

5. This Revenue's appeal is dismissed.

Order pronounced in the Court on 18 -09-2019

Sd/-

[Arjun Lal Saini]
Accountant Member

Sd/-

[S.S.Godara]
Judicial Member

Dated : 18 -09-2019

**PRADIP, Sr. PS

Copy of the order forwarded to:

1. Appellant/Department: I.T.O., Ward 25(3), Kolkata Aaykar Bhavan Dakshin, 1st Fl., 2 Gariahat Road (S), Kolkata-68.

2. Respondent/Assessee: Smt. Aparajit Chakraborty 17 Rajani Kanta Das Road, Haltu Lal Gate, Kolkata-78.

3..C.I.T(A).-
I(DR),

4. C.I.T.- Kolkata.

True copy

By Order

Assistant Registrar
H.O.O/D.D.O Kolkata