

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

[Before Sri S. S. Godara, Judicial Member]

आयकर अपीलसं./I.T.A Nos.1451 & 1453/Kol/2019
(निर्धारण वर्ष / Assessment Years: 2006-07 & 2008-09)

Alok Kundu 38, Biseswar Banerjee Lane, Howrah, West Bengal.	Vs.	DCIT, Circle-47, Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGDPK1716G		
(Appellant)	..	(Respondent)

Appellant by : Shri M. D. Shah, Advocate

Respondent by : Shri Dhrubajyoti Ray, JCIT, Sr. DR

सुनवाई की तारीख/ **Date of Hearing** : **11/11/2019**

घोषणा की तारीख/**Date of Pronouncement** : **15/11/2019**

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's two appeals for assessment year 2006-07 & 2008-09 arise against the Commissioner of Income Tax (A) - 14, Kolkata order dated 19.03.2019 & 13.03.2019 passed in case No.CIT(A), Kolkata-14/10054/2017-18 & CIT(A), Kolkata-14/10056/2017-18; respectively involving proceedings u/s 143(3)/254 of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. I come to the assessee's former appeal ITA No.1451/Kol/2019 pertaining to Assessment Year 2006-07 involving the sole issue of correctness of land undisclosed investment made in law amounting to Rs.14,11,715/-. Both the parties invite my attention to the CIT(A)'s detailed discussion to this effect as under:

“3.3. I have considered the submission of the appellant and perused assessment records. The A.O. in the assessment order had added back a sum of Rs.14,11,715/- which was invested in purchase of

land from Howrah Improvement Trust on the grounds that the appellant could not prove the source investment. During the course of assessment and appeal proceedings, the A/R of the appellant had submitted that the source of investment amounting to Rs.7,65,000/- was from sale of land on 12.07.2001 and 23.07.2002. The source of the balance amount was withdrawals from the bank account of the appellant the Federal Bank Ltd Howrah amounting to Rs.5,88,000/- from the period 01.01.2005 to 27.01.2005 and withdrawals amounting to Rs.1,70,000/- from the bank account of the appellant's minor son Sri Prasenjit Kundu of Rs.1,70,000/- on 12.04.2004 and 27.05.2004. The plot of land in which investment of Rs.14,11,715/- made, was- purchased on 16.05.2005. The A.O. in the assessment order had also made the following observations to refute the appellant's claim about the source of investment. On enquiries it was found that the appellant had requested HIT on 09.06.2003 for extension of time to deposit money. This was followed by second letter dated 09.11.2004. Therefore, the submission of the appellant is at variance with the facts of the case as the appellant had already collected Rs.7,65,000/- as on 23.07.2002 which he could have use for payment. There is circumstantial evidence that the amount received from sale was not used as investment in the property. Secondly, the appellant had claimed that the balance amount was withdrawals from bank account of the appellant and his minor son amounting Rs. 7,58,000/- However, the A.O. had made finding in the assessment order that the appellant had not made any withdrawals during the F.Y.2004-05 apart from the above alleged withdrawals. It is improbable for individual to maintain his family without any withdrawals from his bank account. This fact could not be explained by the A/R of the appellant during appeal proceedings. Thirdly, there is a long gap between sales and withdrawals and investment in property. It may be mentioned that during survey operations the appellant in his statement dated 27.03.2003 u/s 133A(iii) of the Act, 1961 had admitted that the said investment had not been accounted, for in his books of account. It is true as held in a number of decisions by the various judicial authorities that statement given during the time of survey has no evidentiary value. However, in this case the statement only corroborate the findings of the A.O. that the source of investment in property was undisclosed. Fourthly, the payments to HIT were made by bank draft. It could not be understood why the appellant would keep the sale proceeds from sale of land in cash and also withdrawal cash from bank account which was after long gap deposited in bank to pay HIT. He could have simply deposited the sale proceeds in the bank and not withdraw cash from the bank accounts. The A/R of the appellant has referred to a number of judicial decisions which held that merely because there was time gap between cash withdrawals and cash deposit the explanation of the appellant could not be rejected. However, the fact in this case is different and the A.O. had rejected the explanation given by the appellant after examining all evidence in a holistic manner. The addition of Rs. 14,11,715/- is confirmed. This ground of appeal fails and is therefore not allowed."

3. I give my thoughtful consideration to rival contentions. Case file and more particularly the CIT(A) detailed discussion extracted hereinabove makes it clear that the assessee had attributed source of his investments to cash withdrawals and sale proceeds of land transactions. Suffice to say both the lower authorities are of the view since there was a long time gap between cash withdrawals and cash deposits in issue, the assessee's investments have to be treated as unexplained u/s 69 of the Act. I find no merit in either party's submission in entirety. The reason is that although the assessee has prima facie proved that the impugned investment came from his sale of lands outside books and cash withdrawals from his as well his minor son's accounts (supra), there is no clearcut indication about the long

time gap between the said sales and impugned investment made in the relevant previous year. The fact also remains that there is no material in the case file which could suggest that the assessee had utilized all these amounts anywhere else. I therefore deem it appropriate in this peculiar facts that a lumpsum addition of Rs.1,00,000/- out of Rs.14,11,715/- would meet the ends of justice. The assessee gets relief to the tune of Rs.13,11,715/-. Necessary computation to follow. This assessee's former appeal ITA No.1451/Kol/2019 is partly accepted.

4. Next comes assessee's later appeal ITA No.1453/Kol/2019 involving a similar addition of Rs.2,69,535/- in the nature of unexplained investment wherein he had attributed source thereof to withdrawals from the bank account of his wife Smt. Sanchita Kundu. Both the lower authorities pinpoint a long time gap between the said withdrawals and the assessee's impugned investments. I conclude in these facts going by my foregoing discussion that a lumpsum addition of Rs.30,000/- out of Rs.2,69,535/- would meet the ends of justice with a rider that same shall not be treated as a precedent in any other case. The assessee gets relief to the tune of Rs.2,39,535/-. Necessary computation to follow. This latter appeal stands partly accepted.

5. These two assessee's appeals are partly allowed in above terms.

Order is pronounced in the open court on 15.11.2019.

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 15/11/2019

(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - Alok Kundu
2. The Respondent- DCIT, Circle-47, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.