

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA  
[Before Shri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 1382/Kol/2019  
Assessment Year: 2013-14**

**Dr. Tushar Kanti Karmakar.....Appellant  
[PAN: AFVPK 1086 JJ]**

**Vs.**

**ITO, Ward-38(2), Midnapore.....Respondent**

**Appearances by:**

*Sh. Soumitra Choudhury, Adv., appeared on behalf of the Assessee.*

*Sh. Dhrubajyoti Ray, JCIT, Sr. DR, appeared on behalf of the Revenue.*

Date of concluding the hearing : November 05<sup>th</sup>, 2019

Date of pronouncing the order : November 29<sup>th</sup>, 2019

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-25, Kolkata ['CIT(A)' for short] dated 28.08.2018 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for the AY 2013-14.

2. There is a delay of 227 days in filing of the appeal. The assessee is an individual and filed his return of income for AY 2013-14 on 30.04.2014 declaring total income of ₹5,41,100/-. The AO completed assessment on 29.01.2016 determining the total income at ₹26,57,900/-, inter alia making additions on account of, undisclosed investment in land, bogus claim of gift etc. On appeal the ld. first appellate authority dismissed the appeal of the assessee.

3. Further aggrieved, the assessee is in appeal before me on following grounds:

*"1) For that the impugned Appellate Order of the Ld. Commissioner of Income Tax (Appeals) and also Assessment Order of the Ld. Assessing Officer, is an arbitrary, illegal and in excess of his jurisdiction while issuing the Order.*

2) For that in the facts and circumstances of the case the appeal and assessment order passed was in violation of principles of natural justice hence is bad in law and be quashed.

3) For that in the facts and circumstances of the case, the Ld. Assessing Officer couldn't try to understand as the Books of Account have necessary or not necessary as the Appellant have not exceeded monetary transaction within threshold limit, so the addition of amounting to Rs. 7,66,804 compositing under statement of addition from Sr. No. 1 to 5 of the Assessment Order. So, all additions made on this basis are illegal and uncalled for and thus the same be deleted.

4) For that in fact and circumstances of the case, the Ld. Assessing Officer couldn't to consider natural love and affection in case gift amounting to Rs. 13,50,000. Hence all additions made on this basis are illegal and uncalled for and thus the same be deleted. So, addition made on this basis are illegal and uncalled for and thus the same be deleted.

5) For that in the facts and circumstances of the case, it be directed that the computation of interest u/s 234A/B/C/D of the Income Tax Act, 1961 be recomputed the interest as per law."

4. I have gone through the petition for condonation and the evidences filed by the assessee. In my view, the assessee was prevented from sufficient cause from filing of the appeal in time. Hence I condone the appeal and admit the appeal.

5. Rival contentions heard. On a careful consideration of the facts and circumstances of the case and a perusal of the case law cited as well as the orders of the authorities below, I hold as follows.

6. Ground nos. 1 and 2 are general in nature.

7. Ground no. 3 is on the addition of amount of ₹7,66,804/-. As suggested by both the parties this issue is restored to the file of the AO for fresh adjudication in accordance with law. In case the AO proposes to invoke Section 50C of the Act, he is directed to refer the issue of valuation to the DVO and to proceed only after receipt of an order from the DVO. In the result, this ground of the assessee is allowed for statistical purposes.

8. Ground no. 4 is on the issue of disallowance of gift received from father. The AO as well as the Id. CIT(A) disbelieved the claim of the assessee for the reason that (a) The donor has no capacity to make the gift and (b) the deposits in the banks were in cash and made long after the death of the father of the assessee and hence the claim is not correct.

9. In my view, the addition made u/s 68 of the Act is not sustainable for the following reasons. The assessee does not maintain books of account and entry in the bank pass book cannot be considered as an credit entry in the books of account. Even

otherwise, the Id. CIT(A) has in his order accepted the fact that the father of the assessee has agricultural land and consequently income from agriculture. The gift from the father is definitely out of natural love and affection. Evidences in support of the factum of gift are filed. Hence, I have no hesitation in deleting the addition made. In the result, ground no. 4 of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed in part.

***Kolkata, the 29<sup>th</sup> November, 2019.***

Sd/-  
[J. Sudhakar Reddy]  
Accountant Member

Dated: 29.11.2019  
*Bidhan*

*Copy of the order forwarded to:*

- 1. Dr. Tushar Kanti Karmakar, Kuspata, Ghatal, Paschim Midnapore-721 212.***
- 2. ITO, Ward-38(2), Midnapore.***
- CIT(A)-25, Kolkata. (sent through e-mail)
- CIT-
- CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches