

**IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI BENCH "E" COURT AT KOLKATA**

**Before Shri S.S.Godara, Judicial Member and
Dr. A.L.Saini, Accountant Member**

ITA No.02/Gau/2018
Assessment Year :2014-15

Sri Bishnu Ch. Dutta Amarpur, Agartala-799001 [PAN No.AHOPD 8223 B]	V/s.	Income Tax Officer, Ward-Uddaipur, Agartala City Centre, Paradise Chowmuhani, Camp Agartala-799001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri D.K.Biswas, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Amitava Sen, JCIT-DR
सुनवाई की तारीख/Date of Hearing	11-12-2019
घोषणा की तारीख/Date of Pronouncement	18-12-2019

आदेश /ORDER

PER BENCH:-

This assessee's appeal for assessment year 2014-15 arises against the Commissioner of Income Tax (Appeals)-Shillong's order dated 30.10.2017 passed in case No. CIT(A)/SHG/10332/2016-17 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 assessee's sole substantive grievance raises in the instant appeal challenges correctness of both the lower authorities' action treating his bank deposits of ₹24,80,052/- as unexplained during the course of assessment and upheld in the appellate order as under:-

“Ground No.4

This ground is directed against addition of Rs.24,80,052/-

7.1 The AO made the addition at para (7) of his order and the same is reproduced below:-

‘Cash deposit of Rs.24,80,052/- has been found reflected in totality in the bank accounts maintained by the assessee. On being asked about such cash deposits, the A/R of the assessee told that the deposits are sale proceeds of bricks of the firm M/s Kamakhya Brick Industries to which the assessee is a partner. The fact of receiving salary, interest, share of profit from the firm by the assessee is confirmed from the ITO, Ward-1, Agartala. The deposits are found to be made in the bank accounts of the assessee. On being asked why those deposits should not be considered as the income of the assessee, the A/R told that the assessee collected the sum on behalf of his firm to which he is partner and deposited into his bank account and those particular deposits were taken into account which arriving at the turnover of the firm. The A/R of the assessee was asked to explain with reason as to why the cash were deposited into his bank account. It should not be added to the declared total income of the assessee. The assessee made a submission in this regard and the same is not acceptable.

Under the circumstances, there left no other alternative but to add the above cash deposit to the declared total income of the assessee.’

7.2 In the written submission, the A/R stated that assessee was a partner in a firm namely M/s Kamakhya Brick Industries. The firm was manufacturing bricks. In order to encourage increase of sales, there was a provision at clause (9) of the Partnership Deed wherein it was stated that the partners shall devote time and attention to the business of the firm and that the partners shall be entitled to commission on book profit of the firm for work rendered by them as per their respective share of profit. Appellant was selling bricks on behalf of the firm. The sale proceeds received in cash firm remote sub-division of Amarpur near Bangladesh border were deposited by the assessee in his individual bank a/c. The amount of such sale came to Rs.24,80,052/- . Assessee withdraw the entire sale proceeds from assessee’s a/c and deposits of the same in firm’s a/c. It was stated that ledger account showing withdrawal of sale proceeds from assessee’s account and deposit of the same in the firm’s account were produced before the AO. A/R submitted that the accounts of the firm were duly audited. Sales disclosed by the firm was Rs.1,73,83,920/-. A/R also stated that due to effort of assessee, sales of the firm ha increases substantially. Copy of partnership deed was furnished. Copy of certificate in which all the partners certified that sale of bricks of firm to the extent of Rs.24,80,052/- was deposited in the Bank a/c of assessee was also furnished. A/R argued that taxation of Rs.24,80,052/- in the hand of the assessee was totally uncalled for.

7.3 I have carefully considered the mater. A claim had been made that sale proceeds of partnership firm were deposited into the bank a/c of assessee in his capacity as being one of the partners. Documentary evidences submitted before me to authenticate the claim are audited a/c of the said partnership firm. Deed of partnership & Joint Certificate from, all the partners stating that such sales proceeds of the firm were deposited in assessee’s bank account. No other documentary evidences were furnished before me. The papers submitted before are not sufficient to hold the view that sale proceeds of firm were deposited in assessee’s bank a/c. Appellant had not produced any record to show that the impugned deposits were noted in the ledger and cash books of the firm as when the same were deposited and withdrawn in cash. Confirmations given by the partners can be self-serving

*document only. Had the assessee transferred the money from his bank a/c to that of the firm' a/c by means of cheques, there could not have been reason to doubt the claim being made. But the same was not the cases. Assessee had deposited cash, withdrew cash and claimed that the cash so withdrawn was deposit into the firm' account. It belies common logic to believe that assessee should deposit cash belonging to the firm in his bank a/c, withdraw the same in cash and then deposit the money again into firm's a/c. From the copy of audited a/c of the firm, it is seen that the firm was shaving bank a/c with Tripura State Cooperative Bank and SBI, Amanpur. It is not understood why assessee was not depositing the claimed sale sufficient proof to buttress and fortify his claim. In view of this, the action taken by the AO is upheld.
Ground No. 2 is **dismissed.**"*

3. Mr. Biswas vehemently contends during the course of hearing that the assessee had sold the bricks of his firm M/s Kamakhya Brick Industries and made deposits in his personal bank account. His further case is that lower authorities have admittedly accepted assessee's status as partner of the said firm. His third argument is that even if any impugned addition has to be confirmed in principle, the same be restricted to only profit element of bricks sales than the entire sum. We find no merit in assessee's arguments. The fact remains that neither he has proved from the firm's records that any brick lot had been assigned to him for cash sales nor is there any material indicating he himself to have been engaged in bricks sales in personal capacity. This "brick sales" explanation does not inspire our concurrence therefore. We thus affirm the impugned addition of ₹24,80,052/- made in both the lower proceedings in previously.

4. Mr. Biswas lastly submits that it is not the entire amount but only the peak figure which could be added as unexplained going by comprehensive examination of assessee's credit and debit entries during the relevant period. Mr. Sen fails to dispute that neither of the lower authority has examined this peak credit issue. We therefore restore the last grievance back to the Assessing Officer to ascertain peak credit on assessee's deposits as per law within three effective opportunities of hearing to the taxpayer. The assessee is directed to appear before the Assessing Officer on or before **30.04.2020** with

all relevant documentary evidence alongwith copy of this remand direction to this effect.

5. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open court 18/12/2019

Sd/-
(A.L.Saini)
(Accountant Member)
Kolkata,
*Dkp

Sd/-
(S.S.Godara)
Judicial Member)

दिनांक:- 18/12/2019 कोलकाता/।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Sri Bishnu Ch. Dutta Amarpur, Agartala-799991
2. प्रत्यर्थी /Respondent-ITO Wd-Udaipur, Agartala City Centre, Paradise Chowmuhani Camp, Agartala-799001
3. संबंधित आयकर आयुक्त / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
गूवाहाठी ।