

आयकर अपीलिय अधीकरण, न्यायपीठ – “ए” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

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

ITA No.1311/Kol/2017
Assessment Year :2011-12

Rabin Chandra Mondal Paschimchak, Bajkul, Purba Medinipur, West Bengal Pini-721626 [PAN No. AMUP 5427 H]	V/s.	Income Tax Officer Ward-27(2), Basudevpur, Khanjanachak, Haldia- 721602
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subash Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Dhruvajyoti Roy, JCIT-DR
सुनवाई की तारीख/Date of Hearing	28-01-2020
घोषणा की तारीख/Date of Pronouncement	19-02-2020

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2011-12, arises against the Commissioner of Income Tax (Appeals)-7, Kolkata's order dated 28.03.2017 passed in case No.588/CIT(A)-7/Kol/Wd.-27(3)/14-15, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short as 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal seeks to reverse both the lower authorities' action adding ₹45,99,123/- also alleged unexplained cash credits on account of the proprietor's capital account. The CIT(A)'s detailed discussion affirming the Assessing Officer's action to this effect reads as under:-

"6. Ground Nos. 1 & 2: In these two grounds of appeal, the appellant has disputed the addition of Rs.45,99,123/-, which was the brought forward projected cash-in-hand shown by the appellant as on 01-04-2010 as per his balance sheet as at 31-03-2011 filed by the appellant for the assessment year 2011-12 .

6.1. The AO, in the impugned order passed u/s 143(3) of the act on 30-03-2014 in the case of the appellant, stated the following for making the addition of Rs. 45,99,123/-, which had been shown by the appellant as the opening cash in hand as on 01-04-2010 in his capital account in his personal balance sheet prepared for the year ended 31-03-2012 and filed before the AO in course of the assessment proceeding.

"From the return and various submissions made by the assessee and information gathered on record during the course of assessment proceedings, issues relating to claims as follows are disputed and confronted for reasons discussed against each. The case was heard.

(Para-2) Investment found to have been made in the balance sheet of Rs.29,98,500/- which were required to be explained.

(Para-3) The assessee tried to explain by presenting a personal balance sheet with projected cash in hand of Rs.45,99,123/- to be the source of investment made in M/s R M Enterprise of Rs. 29,98,500/- . He projected a separate balance sheet to show this cash in hand. From the manner of submission reason to suspect transpires regarding the genuineness and credibility of such cash-in-hand to be the source. A simple analysis proves it beyond doubt to be a fabricated submission to bring some sort of legitimacy with regard to such claim as discussed hereunder:

- The PAN of the assessee was generated on 27/03/2006;
- The assessee's date of birth is 16/01/1983;

- The assessee's last three years' submitted return of income revealed the quantum of income earned (A.Y. 2006-07- not filed return; A.Y. 2007-08- not filed return; Rs.1,08,400/- as per R.O.I. of A.Y. 2008-09; Rs.1,98,260 as per R.O.I. of A.Y. 2009-10; Rs.2,93,310/- as per R.O.I. of A.Y 2010-11);
- Assessee's drawing shows the standard of living;
- Assessee resides in a rented house;

- The assessee has not furnished his wealth Tax Return for previous year ending on 31-03-2010 relating to the assessment year 2011-12 to justify his claim of cash in hand. If this non submission of wealth tax is taken to be bona fide then the projected generation of cash over two years cannot be taken to be bona fide. From wealth tax point of view that he had no cash on that date is construed to be proper position. It is only an afterthought.

- During the course of appellate proceedings the assessee was asked to produce his cash book and bank book. From perusal of his bank accounts it was observed that there were numerous cash deposit and withdrawal of small small amount in each of the bank accounts and also there was overdraft in most of the bank accounts (order sheet noting dtd 7-03-17 appeal proceedings). This defies logic and seems improbable since an assessee having such huge cash in hand would not have Bank Over draft and would not deposit small amount of cash.

From the above it is crystal clear the assessee started earning for the last there years since the date of generation of PAN. The income pattern and drawings as above clearly shows that to generate cash in hand of Rs. 45,99,123/- out of his earned income is mathematically impossible. Moreover, it is quite unlikely for a person having been engaged in business to keep such huge amount remained idle as cash in hand without even earning of interest from deposit in banks which is safe as well as liquidity 'is not compromised. Keeping huge cash of Rs.45,99,123/- at a rented house does not yield any income bearing huge risks of losing it at any point of time without any compulsion for immediate utilization for some gain which is not found in his submission. It was kept for more than two years as revealed from his submitted balance sheet. Furthermore, whereas his balance sheet shows an asset in the form of land was created out of gift received, but there is no mention of any kind of gift 'received with regard to cash in hand. Therefore, the cash in hand is claimed to be made out of his income which is found to be mathematically impossible vis a vis his income from disclosed sources as discussed *ibid*. The facts and circumstances prove it beyond doubt that the projection of cash in hand in any preceding year is a desperate effort to bring some sort' of legitimacy of it accumulation. In the process it is evident beyond any doubt that this cash in hand is indeed money accumulated out of undisclosed and unexplained sources not in any earlier year but in the instant year itself. In view of the above his submission with regard to the source of cash in not found to be satisfactory and tenable in the eyes' of law. Rather it is evident from the facts and circumstances narrated above beyond any doubt that the money was generated in cash from unexplained sources during the previous year under consideration i.e. previous 2010-11 relevant to the assessment year 2011-12 part of which has been used as introduction of capital in R .M. Enterprise. Hence, the entire cash of Rs. 45.98,123/- which has been projected as source the investment in M/s R. M. Enterprise is remained unexplained and as such added back."

6.2. The appellant has stated in the submission that he had closing balance of cash in hand of Rs.45,99,123/- as on 31-03-2010 in the personal capital account, a copy of which was submitted before the AO. It is also submitted that there was no provision to submit the personal balance sheet with the ITR-V and therefore he could not submit the personal balance. However, it is stated, the personal balance sheet as on 31-03-2010 was submitted before the AO as and when the same had been asked for in course of the assessment proceedings. The appellant submitted that in reply to the show cause notice issued by the AO on 28-02-2014, the appellant explained that the sum of Rs. 29,98,500/- in cash had been transferred to the business

account (Account of M/s R.M. Enterprise) in the F.Y. 2010-11 out of the said cash in hand of Rs.45,99,123/- as on 01-04-2010 The appellant furnished the copies of his personal balance sheets as at 31-03-2010 and 31-03-2011 before the AO in course of the scrutiny assessment proceedings. Copies of these balance sheets have also been furnished in course of the hearing of the instant appeal. The appellant also furnished the date wise transfer of cash totalling Rs. 29,98,500/- on six occasions during the period from 05-11-2010 to 24-03-2011 to the account of M/s R.M. Enterprise as investment of the appellant in this business.

During the course of the proceedings of the instant appeal the appellant also furnished the following to explain the cash in hand of Rs.45,99,123/- as on 01-04-2010 reflected in his per the personal balance as on 31-03-2010:-

1	A copy of the acknowledge for filling manual return in Form No. 2D (ITS-2D- Saral) for the assessment year 2006-07 along with the following:- (i) A copy of the statement of computation of total income; (ii) A copy of the business balance sheet of the appellant as on 31-03-2006 and (iii) A copy of the personal balance sheet of the appellant as on 31-03-2006
2	2. A copy of the acknowledgement for filling manual return in Form No. ITR-4 for the assessment year 2007-08 along with the following:- (i) A copy of the statement of computation of total income; (ii) A copy of the Trading and P&L account of the business of the appellant for the year ended 31-03-2007; (iii) A copy of the business balance sheet of the appellant as on 31-03-2007 and (iv) A copy of the personal balance sheet of the appellant as on 31-03-2007.-
3	A copy of the acknowledgement for filling manual return in Form No. ITR-4 for the assessment year 2008-09 along with the following:- (i) A copy of the statement of computation of total income; (ii) A copy of the Trading and P&L account of the business of the appellant for the year ended 31-03-2008; (iii) A copy of the business balance sheet of the appellant as on 31-03-2008 and (iv) A copy of, the personal balance sheet of the appellant as on 31-03-2008
4	A copy of the acknowledgement for filling manual return in Form No. ITR-4 for the assessment year 2009-10 along with the following:- i) Copies of the Trading and P&L account of the business (RM. Enterprise and RM. Educare) of the appellant for the year ended 31-03-2009 (ii) Copies of the Balance Sheets of the business (RM. Enterprise and RM. Educare) of the appellant as on 31-03-2009 (iii) A copy of the personal balance sheet of the appellant as on 31-03-2009
5	5. A copy of the acknowledgement for ruling the return online in Form No. ITR-4 for the assessment year 2010-11 along with the following:- (i) Copies of the audited accounts (P & L Accounts and Balance Sheets) of the business (RM. Enterprise and RM. Educare) of the appellant for the year" ended 31-03-2010 and a copy of the personal balance sheet of the appellant as on 31-03-2010;

	(ii) Statement of total income for the assessment year 2010-11.
6	6. A copy of the acknowledgement for filling the return online in Form No. ITR-4 for the assessment year 2011-12 along with the following:- (i) Copies of the audited accounts (P & L Accounts and Balance Sheets) of the business (RM. Enterprise and RM. Educare) of the appellant for ire year ended 31-03-2011 and a copy of the personal balance sheet of the appellant as on 31-03-2011; (ii) Statement of total income for the assessment year 2011-12

But the appellant did not furnish copies of the returns filed for the assessment years 2006-7 to 2011-12 during the hearing of this appeal.

6.3. The impugned order passed by the A.O. and the submissions and documents filed by the appellant in course of the hearing of the instant appeal having been examined the observations are made:-

- On examination of the copies of the acknowledgements for filling the returns of income Ly the appellant for the assessment years 2006-07 to 2010-11 and the copies of accounts furnished by the appellant following information regarding income, drawings and formation of capital by the appellant during the previous years relevant to the assessment year 2006-07 to 2010-11 are available.
- Statement of income & drawing

Sl No.	Financial year (A.Y)	Income declared (Rs)	Drawings (Rs)	Net income (Rs)	Gifts received (Rs)
1	2005-06 (A.Y 2006-07)	88530	62500	26030	
2	2006-07 (A.Y 2007-08)	109860	68750	41110	250000 (from father)
	2007-08 (AY 2008-09)	124650	82600	40205	
	2008-09 (AY 2009-10)	250730	178467	72263	
	2009-10 (AY 2010-11)	304578	123625	180953	

- Statement of Capital formation

Sl No.	Financial year (A.Y)	Opening capital (Rs)	Closing capital (Rs)	Opening cash-in-hand (Rs)	Closings cash-in-hand (Rs)
1	2005-06 (A.Y 2006-07)	5898413	5924443	Not mentioned	5274763 (cash and bank balance)
2	2006-07 (A.Y 2007-08)	5924443	6215553	5274763 (cash and bank balance)	5274763 (cash and bank balance)
3	2007-08 (AY 2008-09)	6215553	6257603	5274763 (cash and bank balance)	5274763 (cash and bank balance)
4	2008-09 (AY 2009-10)	6257603	6329866	5274763 (cash and bank balance)	4640623 (cash and bank balance)
5	2009-10 (AY 2010-11)	6329866	6510519	5274763 (cash and bank balance)	4599123 (cash balance)

(ii) From the above, following picture emerges:-

- The aggregate net income declared by the appellant in the returns for the assessment years 2006-07 to 2010-11 was Rs. 360561/- only.
 - The appellant had received gift of Rs.2,50,000/- from his father in the F.Y. 2006-07.
 - The aggregate net income earned during the financial years 2005-06 to 2009-10 is far short of the projected cash in hand amounting to Rs.45,99,123/- of the appellant as on 01-04-2010.
 - The appellant showed projected opening capital of Rs. 58,98,413/- as on 01-04-2005 in his personal balance sheet prepared as on 31-03-2006 and opening capital has been claimed to have have carried forward over the years.
 - The bifurcation of the closing cash and bank balance of Rs. 52,74,763/- as on 31-03-2006 has not been mention but only the consolidated figure is mention in the balance sheet prepared as on 31-03-2006.
 - The same closing cash and bank balance of Rs. 52,74,763/- has been shown in the personal balance sheet of the appellant prepared as on 31-03-2007 and 31-03-2008.
 - In the personal balance sheet of the appellant prepared as on 31-03-2010 only the cash balance of Rs. 45,99,123/- has been shown and in this balance sheet any balance in bank has not been shown.
 - The appellant did not furnish the earlier three years bank statement although the appellant was requested for furnishing the same. Therefore, his balance in personal bank account could not be verified.
 - Absence of any balance in personal bank account as found from the personal balance sheet of the appellant prepared as on 31-03-2010 clearly indicates and establishes that the appellant had shown his projected cash balance only in his personal balance sheets prepared at the end of the financial years 2005-06 to 2008-09 because it is impossible that there would not be any balance in the personal bank account of the appellant as on 31-03-2010 if there were bank balance in his personal bank accounts at the end of the earlier financial years s as shown in the personal balance sheets of the appellant prepared as on 31-03-2006; 31-03-2007; 31-03-2008 and 31-03-2009.
- (iii) Having examined the documents furnished by the appellant in course of the appeal proceedings following matters are also noted:-
- The appellant had not furnished any wealth tax return in spite of holding huge amount of cash and bank balance/ cash balance at the end of the previous year's relevant to the assessment year 2006-07 to 2011-12 and such huge amount of cash and bank/ cash balance was chargeable to wealth.

- The appellant has not furnished the copies of the Income Tax returns filed for the assessment years 2006-07 to 2010-11, particularly for the assessment years 2007-08 to 2010-11 from it could be ascertained whether any cash in hand and opening capital had been declared by the appellant in those returns of income.
- The income earned by the appellant in the past years does not support creation of huge opening capital of the appellant as on 01-04-2005 projected by the appellant in his accounts prepared and any supporting document about such huge capital was not furnished either at the stage of assessment for the A.Y. 2011-12 or during the course of the instant appeal proceedings.
- The appellant failed to justify to the satisfaction of the AO the brought forward cash balance of Rs.45,99,123/- as on 01-04-2010.
- The accounts filed in course of the instant appeal proceedings are not apparently .reliable in the facts and circumstances of the case and therefore the claim of the appellant that the cash balance of Rs.45,99,123/- had been brought forward on 01-04-2010 from earlier years is not also believable in the facts and circumstances of the case.
- The personal balance sheets of the appellant prepared as on 31-03-2006; 31-03-2007; 31-03-2008; 31-03-2009 and 31-03-2010 appear to be fabricated and prepared on paper to support the claim of the appellant but these are apparently far from reality and not believable particularly so far as relates to building of capital and cash in hand.
- The returns of income of any of the earlier assessment year had not been selected for scrutiny and therefore the opening capital and cash balance of the appellant as on 01-04-2010 remained unverified and the appellant could have prepared his personal accounts as per his suitability to give a credence to the opening capital and cash balance as on 01-04-2010.
- There were numerous cash deposit and withdrawal of small small amount in each of the bank accounts and also there was overdraft in most of the bank accounts(order sheet noting dtd 7-03-17 appeal proceedings). This defies logic and seems improbable since an assessee having such huge cash in hand would not have Bank Over draft and would not deposit small amount of cash.

6.4. In view of what have been discussed above, the addition of Rs.45,99,123/- made by the AO in the impugned order, which has been disputed in the Gr. No.s 1 & 2 of the present appeal is hereby confirmed. **Therefore, the Ground Nos. 1 and 2 of the appeal are decided against the appellant."**

This leaves the assessee aggrieved.

3. We have given our thoughtful consideration to rival contentions against and in support of the impugned addition. The assessee's case as per his stand adopted throughout is that the impugned addition has been wrongly made in his hand despite the fact that he had satisfactorily explained source thereof to earlier assessment year(s) opening balance (supra). The Revenue's case on the other hand is that the assessee had declared very nominal amount as income in the said earlier assessment years and therefore, both the lower authorities have proceeded to make the impugned addition followed by necessary directions in lower appellate order to the Assessing Officer to re-open the assessee's assessment for assessment year 2006-07.

4. We have heard foregoing rival contentions. The above factual backdrop of the issue in preceding paragraphs makes it clear that the assessee's sole explanation attributed source of the impugned sum to his opening cash balance right from assessment years 2006-07 onwards. Learned departmental representative fails to dispute that the said figures have attained finality since no proceedings are pending against this taxpayer up to Commissioner of Income Tax (Appeals)'s directions to the Assessing Officer under challenge. We therefore are of the view that once the assessee has submitted his explanation on the basis of income tax records pertaining to earlier assessment years there is hardly any justification to attribute the impugned additions per se followed by directions to the Assessing Officer to re-open the said earlier assessments. The fact also remains that the assessee has not been able to explain source of the said opening cash balance satisfactorily right from the course of the assessment till date in view of the meagre source of income in earlier years. Learned authorized representative submits at this stage once the impugned opening balance stood accepted as correct, all necessary consequence flow therefrom and the assessee is not duty bound to discharge its onus *qua* sums involved in said earlier assessment years. We find no substance in assessee's instant technical argument in view sec. 153(6) clause (i) and (ii) r.w.s. Explanation-2 thereto to conclude that this tribunal

can very well exercise its second appellate jurisdiction and direct the Assessing Officer to examine the instant issue once again in said earlier assessment year(s); however, since the assessee's corresponding income tax return(s) have been accepted, he can be very well presumed to have been holding some cash balance. We thus are of the view that larger interest of justice would be met in case a lump sum addition amount of ₹12 lakhs only out of ₹45,99,123/- is confirmed subject to a rider that the same shall not be treated as a precedent in any other assessment year. The assessee gets relief of ₹33,99,123/-. Necessary computation shall follow as per law. We order accordingly. The CIT(A)'s lower appellate findings under challenge are upheld only to the extent of ₹12 lakhs.

5. This assessee's appeal is partly allowed in foregoing terms.

Order pronounced in the open court 19/02/2020

Sd/-

(लेखा सदस्य)

(A.L.Saini)

(Accountant Member)

Kolkata,

*Dkp Sr.P.S

दिनांक:- 19/02/2020 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

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

1. अपीलार्थी/Appellant-Rabin Ch. Mondal, Paschimchak, Bajkul, Purba Medinipur Pin-721626
2. प्रत्यर्थी/Respondent-ITO Wd-27(2), Basudevpur, Khanjanachak, Haldia-721602
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।