

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA  
[Before Shri P.M. Jagtap, Vice President (KZ)]

[Through Virtual Court]

I.T.A. No. 2375/Kol/2019  
Assessment Year: 2009-10

*Shri Anil Gupta*.....*Appellant*  
*C/o. Paramanda Giri, Giri Niwas, Hill View Park,*  
*Asansol - 713304.*  
*[PAN: AHLPG 9495 M]*

*Vs*

*ITO, Ward - 2(1), Asansol*.....*Respondent*  
*G.T. Road, Parmar Building,*  
*Asansol - 713304.*

**Appearances by:**

*Shri U. Das Gupta, Advocate appearing on behalf of the Assessee.*  
*Shri Jayanta Khanra, JCIT, appearing on behalf of the Revenue.*

Date of concluding the hearing : June 22, 2020

Date of pronouncing the order : June 22, 2020

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. CIT(A), Asansol dated 02.07.2019.

2. At the outset, it is noted that there is a delay of 2 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, an application seeking condonation of the said delay is filed by the assessee and keeping in view the reasons given therein, I am satisfied that there was a sufficient cause for the delay of 2 days on the part of the assessee in filing this appeal before the Tribunal. Even the learned DR has not raised any objection in this regard. The said delay is accordingly condoned and this appeal of the assessee is being disposed of on merit.

3. The issue raised in ground no. 1 relates to the addition of Rs. 7,40,000/- made by the AO and confirmed by the Ld. CIT(A) on account of investment found to be made by the assessee in bank deposits by treating the same as unexplained.

4. The assessee in the present case is an individual who is engaged in the business of dealing in lottery ticket in the name and style of his proprietary concern M/s. Gupta Associates. The return of income for the year under consideration was filed by him on 27.09.2009 declaring a total income of Rs. 5,92,707/-. During the course of assessment proceedings, it was found by the AO that the assessee has made investment of Rs. 7,40,000/- in fixed deposit with Syndicate Bank during the year under consideration. Since the said deposit was not reflected in the balance sheet filed by the assessee along with the return of income, the assessee was called upon by the AO to offer his explanation in the matter. In reply, it was submitted by the assessee that the said deposit was reflected in his personal balance sheet as on 31.03.2009. A copy of the said personal balance sheet was filed by the assessee to support and substantiate his explanation. The AO, however did not find the personal balance sheet prepared and furnished by the assessee to be reliable. According to him, when the fixed deposit with Syndicate Bank was made by the assessee from the bank account which was duly reflected in the audited balance sheet of his proprietary concern filed along with the return of income, the said deposit also should have been reflected in the said balance sheet and not in the so-called personal balance sheet which was prepared and furnished by the assessee subsequently during the course of

assessment proceedings as an afterthought. He, therefore, treated the investment of Rs. 7,40,000/- found to be made by the assessee in the bank account as unexplained and addition to that extent was made by him to the total income of the assessee.

5. The addition of Rs. 7,40,000/- made by the AO on account of alleged unexplained investment made in the bank deposit was challenged by the assessee in the appeal filed before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), it was reiterated on behalf of the assessee that the deposit of Rs. 7,40,000/- in question having made by transfer of funds from the disclosed bank account, there was no question of treating the said deposit as unexplained. The Ld. CIT(A) however found that immediately before the transfer of Rs. 7,40,000/- from his bank account towards the fixed deposit in question, the assessee had deposited cash of Rs. 7,43,000/- in his bank account and since the assessee failed to establish the source of the said cash deposit with any documentary evidence, the Ld. CIT(A) confirmed the addition of Rs. 7,40,000/- made by the AO on account of unexplained bank deposit.

6. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned counsel for the assessee has submitted that the relevant bank account maintained by the assessee with Syndicate Bank, Asansol Branch was duly reflected in the books of account of his proprietary concern and the cash deposits of Rs. 7,43,000/- made in the said account were

from the receipts of the proprietary business of the assessee dealing in lottery tickets. He has contended that the source of the said cash deposits thus was duly reflected in the audited books of account of the assessee's proprietary concern and if opportunity is given to assessee by sending the matter back to the AO, the assessee is in a position to explain the source of cash deposits of Rs. 7,43,000/- from the audited books of account of his proprietary concern. Keeping in view all the facts and circumstances of the case, I am inclined to accept this contention of the learned counsel for the assessee. Even the Id. DR has very fairly agreed that the matter can go back to the AO for proper verification of assessee's explanation. I accordingly set aside the impugned order of the Ld. CIT(A) on this issue and restore the matter to the file of the AO for deciding the same afresh after verifying the explanation of the assessee as regards the source of cash deposits of Rs. 7,43,000/- made in the bank account before making the impugned investment in bank deposit. Ground No. 1 of the assessee's appeal is accordingly treated as allowed for statistical purpose.

7. The issue involved in ground no. 2 relates to the addition of Rs. 1,69,000/- made by the AO and sustained by the Ld. CIT(A) on account of investment made by the assessee in purchase of flat by treating the same as unexplained.

8. During the assessment proceedings, it was found by the AO that the assessee has made investment of Rs. 8,73,000/- in purchase of flat during the year under consideration. Since the said investment only

to the extent of Rs. 4,04,000/- was reflected in the audited balance sheet of the assessee filed along with the return of income, the assessee was called upon by the AO to offer his explanation, as regards the balance investment of Rs. 4,69,000/-. In reply, it was submitted by the assessee that the balance investment of Rs. 4,69,000/- was duly reflected in his personal balance sheet as on 31.03.2009. A copy of the said balance sheet was also furnished by the assessee before the AO. The AO, however did not find the same to be reliable for the reasons given in the assessment order and treating the investment in purchase of flat to the extent of Rs. 4,69,000/- as unexplained, he made addition to that extent to the total income of the assessee.

9. The addition of Rs. 4,69,000/- made by the AO on account of the alleged unexplained investment in purchase of flat was challenged by the assessee in the appeal filed before the Ld. CIT(A). During the course of the appellate proceedings before the Ld. CIT(A), the details of payments of Rs. 4,69,000/- made against the purchase of flats were furnished by the assessee. From the perusal of the said details, it was noticed by the Ld. CIT(A) that the said payments to the extent of Rs. 3,00,000/- were made by the assessee by cheques drawn from his disclosed bank account while the remaining amount of Rs. 1,69,000/- was paid/incurred in cash. He accordingly treated the investment made in purchase of flat to the extent of Rs. 3,00,000/- as explained and since the source of the cash payments amounting to Rs. 1,69,000/- could not be explained by the assessee on evidence, he treated the same as unexplained. The addition made by the AO on this

issue amounting to Rs. 4,69,000/- thus was sustained by him to the extent of Rs. 1,69,000/-.

10. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has submitted that the cash payments in question amounting to Rs. 1,69,000/- were also made by the assessee from the withdrawals made from his proprietary concern and since the said withdrawals were duly reflected in the audited books of account of the proprietary concern of the assessee, the same could not be treated as unexplained. He has urged that this matter may also be sent back to the AO for giving the assessee an opportunity to explain the source of cash payments in question amounting to Rs. 1,69,000/- from the audited books of account of his proprietary concern. Since the ld. DR has not raised any objection in this regard and has submitted that this matter can go back to the AO for proper verification, I set aside the impugned order passed by the Ld. CIT(A) confirming the addition made by the AO on this issue to the extent of Rs. 1,69,000/- and restore the matter to the file of the AO for the limited purpose of verifying the explanation of the assessee regarding the cash payments of Rs. 1,69,000/- in question from audited books of account of his proprietary concern wherein the same are claimed to be reflected as the withdrawals made by the assessee. Ground No. 2 of the assessee's appeal is treated as allowed for statistical purpose.

**11. In the result, the appeal of the assessee is treated as allowed for statistical purpose.**

Order Pronounced in the Open Court on 22<sup>nd</sup> June, 2020.

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

**Dated: 22/06/2020**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Anil Gupta, C/o. Paramanda Giri, Giri Niwas, Hill View Park, Asansol – 713304.
2. ITO, Ward – 2(1), Asansol.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.  
ITAT, Kolkata