

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH Virtual Court "A" KOLKATA*

Before **Shri P.M.Jagtap, Vice-President** and
Shri S.S.Godara, Judicial Member

ITA No.1807/Kol/2018
Assessment Year:2014-15

Indrajit Roy 50, Gorakha Basi Road, Nagerbazar, Dum Dum, Kolkata-700 028 [PAN No.ACXPR 9706 K]	बनाम/ V/s.	Income Tax Officer, Ward-35(3), Aayakar Bhawan, 110, Santipally (Poorva), Kolkata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri A.K.Tibrewal, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Supriyo Pal, Addl.CIT-DR
सुनवाई की तारीख/Date of Hearing	04-08-2020
घोषणा की तारीख/Date of Pronouncement	19-08-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-10, Kolkata's order dated 22.06.2018, passed in case No. 198/CIT(A)-485/CIT(A)-10/W-35(3)/2014-15/2016-17Kol, 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 raised in the instant *lis* challenges correctness of the Assessing Officer's action treating bank deposits of ₹60,50,000/- as unexplained cash credits in his regular assessment framed on 22.12.2016 and restricted to the extent of ₹42,02,365/- in the CIT(A)'s order under challenge.

3. With the able assistance of both the learned representative(s), we notice that it is not his dispute about the assessee having made cash deposits of ₹60.55 lakhs in issue in two accounts to the tune of ₹56,18,500/- and ₹4,31,500/- on maintained with State Bank of India and Oriental Bank of Commerce; respectively. Case records and more particularly the cash book for the period from 01.04.2013 to 31.03.2014, corresponding cash book of M/s Aatreyee Nirman Pvt. Ltd. “ANPL” read with bank statement, ledger account, the foregoing notice ITR acknowledgement, audited balance-sheet, profit and loss account as well as regular assessment dated 24.10.2016 forming parts of the case file on forming assessee’s explanation tendered before the Assessing Officer; reveal that his stand from the date one was that the impugned cash deposits came from his “M/s ANPL” only. He further stated that he was that Managing Director of the company required to make all day-to-day expenses incurred at the company’s site. All these failed to evoke the Assessing Officer’s acceptance who was of the view that the company had sufficient cash-in-hand in his own books and therefore, it did not require the assessee to incur the expenses at its behest. And also that assessee’s foregoing explanation was not verifiable. All this made him to treat the assessee’s cash deposits as unexplained resulting in the impugned addition.

4. The CIT(A) has partly affirmed the Assessing Officer’s action as under:-

“06. FINDING AND DECISION:

1. *I have carefully considered the action of the Ld. AO in making an addition of Rs.60,50,000/- as unexplained cash credit u/s. 68 of the Act. After an exhaustive discussion and elaborating the factual matrix, I find that the Ld. AO has held the cash deposit of Rs.56,18,500/- and Rs.4,31,500/- in the bank account with State Bank of India a/c no 32272442259 and Oriental Bank of Commerce a/c no 0492151001896 respectively as unexplained cash credit u/s 68 of the Act.*
2. *The Ld. AO has carefully analysed the documents furnished and has recorded reasonable finding that there was no ATM withdrawal from Oriental Bank of Commerce and ATM withdrawal from SBI was of Rs.12,47,635/-. The AO was found from the cash book produced that there is no independent verifiability of the cash book of M/s Aatrayee Nirman Pvt Ltd from whom the Appellant Assessee assert to have received the cash. The AO has correctly found that the company M/s Aatrayee Nirman Private Limited need not adopt cumbersome process of handing over the cash to the*

appellant assessee and get it deposited only for getting withdrawal which is meagre.

- 3. I also find that the submission made by the appellant during the course of the appeal point towards that fact that the addition was made by the Ld. AO on the basis of suspicion. The appellant had tried to explain that for business expediency such deposits and withdrawals are normal. The Appellant has categorically submitted that he has received remuneration in cash from Aatrayee Nriman Pvt Ltd of Rs.6,00,000/- which is duly shown in respect to the books of appellant as well as Aatrayee Nirman Pvt Ltd. The Appellant has also provided during the appellate proceeding the order passed in respect of the company Aatrayee Nirman Pvt Ltd for the AY 2014-15 wherein the respective AO has not made any addition in the income of the said company for the cash given to the Appellant.*
- 4. In my considered view of the situation, the Ld AO has accepted in the assessment order that the cash withdrawal made from the Appellant from ATM is of Rs.12,47,635/- which is not disputed. On consideration of the appellant's submission I came to the conclusion that the remuneration of Rs.6,00,000/- was paid to the Appellant for the instant year in cash. Therefore in my considered view it is appropriate to allow the amount of Rs.18,47,635/- as the cash received from M/s Aatrayee Nirman Pvt. Ltd., The grounds therefore stand **partly allowed**.*

07. Ground No 6 relates to the action of Ld. AO in charging interest u/s.234B of I.T. Act, 1961. In this matter the Ld. A.R for the appellant has submitted as under:-

Ground No.6

In this ground of appeal the Assessee had challenged the levy of interest of Rs.12,33,837/- under section 234B of the Income Tax Act, 1961 even when there was no default of the assessee in payment of advance tax on the basis of the income declared in the return of income filed on 07.07.2014.

*Admittedly, the assessee did not pay any advance tax in accordance with section 210 of the Act inasmuch as there was no liability to pay advance tax on the basis of this estimated income declared in the return. Therefore the case of the Appellant does not fall under (ii) above. The Appellant's case is not covered under (i) above, as well, inasmuch as there was no liability to pay advance tax under section 208 of the Act. Had there been any liability of the assessee to pay advance tax under section 208 of the Act, Interest would have been charged while processing the return of income under section 143(1) of the Act. Addition of the sum of Rs.60,50,000/- in the impugned as could not be said to be "**current income**" of the Appellant within the meaning of section 208 of the Income Tax Act, 1961. In **J.K. Synthetics v. CTO (1994) 4 Hon'ble Supreme Court 276**, it was held that where claim for exemption was bona fide but disallowed, tax can be levied but no interest can be charged. It was not*

*possible for the Appellant, at any time during the relevant financial year, to foresee that the proceeds of sale of shares received by it would become income of the assessee chargeable to tax. “Lex non go co git ad impossible” (Law cannot compel you to do impossible). Before invoking 234B of the Act, it is essential to see whether the assessee comes within the sweep of section 234(1) of the Act. The addition of Rs.60,50,000/- could not have been foreseen by the Appellant that the same would be chargeable to tax and therefore was not “current income” within the meaning of section 208 of the Income Tax Act, 1961. The Hon'ble Bombay High Court, in the case of **Prime Securities Ltd. vs. ACIT [22012] 333 ITR 464 (Bom)** has also taken similar view, even after considering the judgment of Apex Court in the case of *CIT v. Anjum M.H. Ghaswala [2001] 252 IT 1 (SC)**

*The Appellant submits that the addition of the sum of Rs.60,50,000/- is addition of deem income under section 68 of the Act and that could not be said to be “current income” for the purposes of section 208 of the Act. On the facts of this case the assessee was not liable to pay any interest under section 234B of the Act. This proposition of law is well settled by jurisdictional High Court in the case of **Emami Ltd. vs. CIT [2011] 12 taxmann.com 64 (cal)** and that of Karnataka High Court in the case of **T.P.Indra Kumar vs. ITO [2010] 322 ITR 454 (Kar.)***

In the light of the submissions made hereinabove at paragraphs 1 to 16, the impugned Assessment Order passed by the Assessing Officer is perverse, illegal and invalid.

08. DECISION: *In this matter it is to be only observed that the levy of interest u/s 234A/B/C/D is mandatory and consequential, and the Ld. AO will undoubtedly impose the same when giving effect to this appellate order.*

This leaves the assessee aggrieved.

5. We have given our thoughtful consideration to rival pleadings against and in support of the impugned addition. We make it clear that although both the learned lower authorities have held the assessee's impugned cash deposits to the tune of varying sums (supra) as unexplained; the fact remains that his explanation supported by the foregoing documentary evidence of books of account, audited balance-sheet, coupled with cash books maintained at both individual as well as the company's level and sec. 143(3) assessment framed in latter case for the very assessment year have nowhere has been disputed in either of the lower proceedings. All this voluminous evidence; including the cash in issue from “M/s ANPL” credencial to assessee's

explanation of source of deposits. There is not an iota of doubt coming from the lower authorities side disputing the assessee's stand adopted throughout that the cash deposit had in fact, come from the company's cash-in-hand for meeting the day-to-day requirements at the site level. We wish to reiterate here that both the Assessing Officer as well as CIT(A) have not gone by the "source" explained to examine identity, genuineness and creditworthiness thereof in light of all the evidence available on record but they have ventured on "application" aspect of the cash deposits only. We therefore are of the view that the impugned addition in light of all the supportive evidence coming from the assessee's side cannot be sustained since based on the conjectures and surmise only. The same is directed to be deleted therefore.

7. This assessee's appeal is allowed.

Order pronounced in open court on 19/08/2020

Sd/-
(उपाध्यक्ष)
(P.M.Jagtap)
Vice President

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

*Dkp-Sr.PS

दिनांक:- 19/08/2020 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-Indrajit Roy, 50, Gorakha Basi Road, Nagarbazar, Dum Dum Kolkata-700 028
2. प्रत्यर्थी/Respondent-ITO Wd-35(3), 110, Santipally, Aayakar Bhawan (Poorva) Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
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 ।