

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C(SMC)' BENCH, KOLKATA
[Virtual Court Hearing]**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 1488/KOL/2019
Assessment Year: 2012-2013**

Deepak Karani,..... Appellant
D-28/2, Nisco Ind. Housing Estate,
Sapuipara, Bally,
Howrah-711227
[PAN:ANFPK1608L]

-Vs.-

Deputy Commissioner of Income Tax,..... Respondent
Circle-47, Kolkata,
3, Government Place (West),
Kolkata-700001

Appearances by:

Shri Abhay Nath Keshari, FCA, appeared on behalf of the assessee
Shri Jayanta Khanra, JCIT, Sr. D.R., appeared on behalf of the Revenue

Date of concluding the hearing : March 08, 2021

Date of pronouncing the order : March 08, 2021

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-14, Kolkata dated 12.03.2019 and the solitary issue involved therein relates to the addition of Rs.2,33,970/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of unexplained cash allegedly deposited by the assessee in the Bank account.

2. The assessee in the present case is an individual, who filed his return of income for the year under consideration on 02.02.2013 declaring total income of Rs.2,00,940/-. As per the information received by the Assessing Officer, the assessee was a proprietor of two concerns namely M/s. Finwise Services and M/s. Vision Enterprises and the cash

deposits of Rs.2,33,970/- were made during the year under consideration in the Bank account maintained in the name of M/s. Finwise Services with ICICI Bank. Since the said Bank account was not disclosed by the assessee in the return of income filed for the year under consideration, the assessment was reopened by the Assessing Officer and the notice under section 148 was issued by him to the assessee on 29.03.2017. In reply, it was submitted on behalf of the assessee that the return originally filed by him on 02.02.2013 may be treated as the return filed in response to the notice under section 148. During the course of assessment proceedings, the assessee denied of having any relation with the two proprietary concerns namely M/s. Finwise Services and M/s. Vision Enterprises. This stand of the assessee was not found acceptable by the Assessing Officer in the absence of any credible evidence and keeping in view that no explanation was offered by the assessee in respect of cash deposits of Rs.2,33,970/- found to be made in the Bank account of M/s. Finwise Services maintained with ICICI Bank, he added the said amount to the total income of the assessee by treating the same as unexplained in the assessment completed under section 143(3)/147 of the Act vide an order dated 29.12.2017.

3. Against the order passed by the Assessing Officer under section 143(3)/147, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the addition of Rs.2,33,970/- made by the Assessing Officer on account of cash deposits found to be made in the Bank account of M/s. Finwise Services maintained with ICICI Bank and the following submission, inter alia, was made on behalf of the assessee in support of his case on this issue:-

“Ground no. 1 relates to the error made by AO in making additions of cash deposit of Rs.2,33,970 allegedly made in ICICI Bank account of M/s Finwise services which does not belong to the appellant. The appellant fully denied during the course of income tax assessment proceeding for the said A. Y. 2012-13 but AO did not consider and pay any heed to the contentions of Appellant. But in an

assessment order passed subsequently on 12.12.2018 the successor AO fully agreed with the contention of the Appellant and accepted the plea of the Appellant as evident from the assessment order passed, enclosed herewith your kind perusal. The ICICI Bank of M/s Finwise services does not belong to the appellant so there cannot be any addition if there is any deposit in this account because the deposit is not made by the appellant.

Ground no.2 relates to the error made by AO in not appreciating the fact. There was an act of forgery done by some miscreant in the name of the Appellant, which the successor AO acknowledged while passing an order subsequently for the A. Y. 2011-12. So this ground of appeal is related to the same issue of ground no. 1 and correlated with the addition of cash amounting to Rs.2,33,970 in the ICICI Bank account of M/s Finwise, which is not owned by the appellant”.

4. The Id. CIT(Appeals) did not find merit in the submission of the assessee and proceeded to confirm the addition of Rs.2,33,970/- made by the Assessing Officer for the reasons given in paragraph no. 3.3 of his impugned order:-

“3.3. I have gone through and perused the relevant assessment records. The appellant during both assessment and appeal proceeding had vehemently denied that the bank account bearing No.090105500015 with ICIC Bank Kolkata belong to him. He had also submitted that unknown persons had forged and miss-utilized his PAN card for opening of said account. The A.O. in the assessment order had noted that during the financial year 2011-12 a sum of Rs.2,33,970/- was deposited in the account. However, the A.O. had not accepted the contention of the appellant that the bank account did not belong to him as he could not provide any credible evidence to the contrary. During the appeal proceedings, the A/R of the appellant could also provide no conclusive evidence that the bank account did not belong to him. It may be noted that till date of hearing on 12.03.2019, the appellant had not filed FIR with the Police Department regarding forgery committed by unknown persons who had opened bank account by misusing his PAN card. This is indeed surprising as any normal person would have file FIR with the Police Department, if his PAN card has being fraudulently use for opening bank account. It appears that the explanation given by the appellant was just a cover up in order to avoid tax

liability on his unaccounted transactions. Therefore, the addition of Rs.2,33,970/- is confirmed. This ground of appeal fails and is therefore not allowed”.

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the addition of Rs.2,33,970/- made by the Assessing Officer by treating the cash deposits found to be made in the bank account of M/s. Finwise Services maintained with ICICI Bank was confirmed by the Id. CIT(Appeals) mainly on the ground that the claim of the assessee of having no relation whatsoever with M/s. Finwise Services was not supported by any evidence in the form of an FIR filed by the assessee with the Police Department regarding forgery committed by unknown persons, who had allegedly opened the concerned Bank account by misusing the PAN Card of the assessee. In this regard, Id. Counsel for the assessee has submitted that such FIR was indeed filed by the assessee with Nischinda Police Station on 19.03.2019 but the Id. CIT(Appeals) could not take cognizance of the same as the impugned order was passed by him on 12.03.2019 itself. He has submitted that the assessee has also filed a complaint with the RBI Ombudsman Grievance Cell since no action was taken by the concerned Police Station in the matter till 24.10.2019. He has invited attention to the copies of these two complaints placed in his paper book and submitted that neither Assessing Officer nor the Id. CIT(Appeals) having got an opportunity to examine this evidence which supports and substantiates the claim of the assessee, the matter may be sent back to the Assessing Officer for fresh consideration. He has further submitted that the Assessing Officer may make further inquiry in the matter including getting the forensic report, if required, to verify the claim of the assessee that he was not the proprietor of M/s. Finwise Services and the Bank account in the name of the said concern was opened with ICICI

Bank by someone else by forging the PAN Card and signature of the assessee.

6. Having considered all the facts and circumstances of the case, I am inclined to accept the contention of the Id. Counsel for the assessee and since the Id. D.R. has also not raised any objection for sending the matter back to the Assessing Officer for proper verification, I set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for fresh consideration with a direction to verify the claim of the assessee in the light of the evidence brought on record in the form of complaints filed with the concerned Police Station as well as RBI. The Assessing Officer shall cause any further inquiry as he may deem fit in the facts and circumstances of the case.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on March 08, 2021.

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

Kolkata, the 8th day of March, 2021

- Copies to :*
- (1) ***Deepak Karani,
D-28/2, Nisco Ind. Housing Estate,
Sapuipara, Bally, Howrah-711227***
 - (2) ***Deputy Commissioner of Income Tax,
Circle-47, Kolkata,
3, Government Place (West), Kolkata-700001***
 - (3) ***Commissioner of Income Tax (Appeals)-14, Kolkata;***
 - (4) ***Commissioner of Income Tax- ,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.