

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**I.T.A. No. 2642/Kol/2019  
Assessment Year: 2016-17**

**Amar Adak.....Appellant**  
**[PAN: ADDPA 3831 B]**

**Vs.**

**ACIT, Circle-46, Kolkata.....Respondent**

**Appearances by:**

*Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.*

*Sh. Supriyo Paul, Addl. CIT, appeared on behalf of the Revenue.*

Date of concluding the hearing : February 24<sup>th</sup>, 2021

Date of pronouncing the order : April 30<sup>th</sup>, 2021

**ORDER**

**Per J. Sudhakar Reddy, AM:**

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)-14, Kolkata [hereinafter the "CIT(A)"], passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), dated 05.11.2019 for the Assessment Year 2016-17.

2. The assessee is an individual and is a Sr. citizen. He has income by way of share of profit from partnership firm, income from the head 'business or profession' as well as income from the head 'other sources'. He filed his e-return of income online on 09.03.2017 declaring total income of ₹61,61,350/-. The case was selected for scrutiny. The AO during the course of assessment proceedings observed that the assessee had large advances from customers and sundry creditors to the tune of ₹2,19,08,976/-. When questioned, the assessee replied that he had declared total income u/s 44AD of the Act and that he was not required to maintain books of account. The assessee submitted as follows:

*"In reply to your Show Cause Notice, I beg to state as under:*

1) On Scrutiny it is found that the Final Accounts and Balance Sheet as on 31.03.2016 was wrongly prepared and represent some wrong information and accordingly the copy of such Balance Sheet was submitted before your honour. In this connection it is stated that you do not give any cognizance to this Final Accounts and Balance Sheet. It is also stated that due to oversight and misconception in preparing such Balance Sheet is committed by my accountant. It is not his willful and deliberate negligence and forgive my accountant. I prayed before your honour not to penalize your assessee as he is being age of 80 (Eighty) years at present. My case is come u/s.44AD of the Act, show books of account is not required and balance sheet immaterial.

2) That all Fixed Deposit was made prior to last 6 (six) years and the provision for re-opening the case for last six years does not arise at all.

3) That all the fixed deposit will be matured during the financial year 2018-19 and our Banker has deducted the following TDS on interest on Fixed Deposit and accordingly the same has been shown in the return of income.

<u>Sl. No.</u>	<u>Assessment Year</u>	<u>Interest on F.D.</u>	<u>T.D.S.</u>
1.	2016-17	21,73,987.00	2,17,399.00
2.	2017-18	21,05,214.00	2,10,522.00
3.	2018-19	<u>20,49,607.00</u>	2,04,961.00
		<u>63,28,808.00</u>	

Maturity Amount of F.D. during the F.Y.2018-19 Rs. 2,84,47,987.00

Less: Principal Value of F.D prior to Last 6yrs. Rs. 1,21,49,000.00

Interest on Fixed Deposit Rs. 1,62,98,987.00

Less: Interest on Fixed Deposit shown in the

Return of Income for the

A.Y.2016-17 21,73,987.00

A.Y.2017-18 21,05,214.00

A.Y.2018-19 20,49,607.00

63,28,808.00

Interest on F.D. to be shown in the return  
of Income for the A.Y.2019-20

Rs. 99,70,179.00

It appears from the records that there was no income as interest earned or accrued during the F.Y.2012-13, 2013-14 and 2014-15 relevant to A.Y.2013-14, 2014-15 and 2015-16.

I further undertake to show the Balance Interest on Fixed Deposit of Rs. 99,70,179.00 on maturity of Fixed Deposit in the return of income and I never suppress any income as interest on Fixed Deposit on the said amount of Fixed Deposit.

Under the foregoing facts and circumstances, you are earnestly requested not to add any amount to the declared returned income and pass order u/s. 143(3) of the Act after due cognizance to the fact in the case of Fixed Deposit. Your kind cooperation in this regard will highly be appreciated."

2.1. The AO concluded as follows after considering the above reply given by the assessee:

*"4.6 Given the above facts of the case and the circumstances, it is held that the creditors being sundry creditors and advance from customers are all bogus. Hence, the amount of Rs.2,19,08,976/- is added to the total income of the assessee u/s 68 of the Act. I am also satisfied that the assessee has concealed his income and has filed inaccurate particulars of income. Hence, penalty proceedings for furnishing of inaccurate particulars of income and concealment of income is initiated separately u/s 271(1)(c) of the Act."*

2.2. Aggrieved, the assessee carried the matter in appeal. Before the Id. first appellate authority, the assessee submitted that the accountant had wrongly shown large sundry creditors and advances from customers, to counter balance and figures in the balance sheet where he has for the first time accounted for the fixed deposits of earlier years, as assets. He submitted that most of the sundry creditors did not exist nor the assessee had taken any advances from the customers. It was submitted that the assessee had made fixed deposits in the earlier years and these fixed deposits are renewed for these years. He relied on the judgement of the Hon'ble Supreme Court in the case of *Taparia Tools Ltd. Vs. JCIT [(2015) 55 taxmann.com 361 (SC)]* for the proposition that, entries in the books of account are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act. He also relied on the CBDT Circular no. 14(XL-35) dated 11.04.1955 and letter no. F.81/27/65-IT(B) dated 18.05.1965, wherein it has been stated that the AO shall not take advantage of the ignorance of the assessee as to his rights etc. He also relied on the judgement of the Hon'ble Calcutta High Court in the case of *Mayank Poddar (HUF) vs. WTO* reported in *262 ITR 633* for the proposition that there is no estoppel against law. He also on the real income theory and submitted that sundry creditors and customers which are admittedly never in existence, cannot be added u/s 68 of the Act.

2.3. The Id. CIT(A) dismissed these contentions of the assessee by holding as follows:

*"3.2 The A/R of the appellant has not submitted any written submission but has relied only on Statement of Facts, in which the appellant had accepted that the sundry debtors and advance received from customers were bogus. The relevant excerpts of the Statement of Facts are as follows:*

*"Therefore, merely because the accountant wrongly shown the corresponding amount as sundry creditors and advance from customers instead of the appellant own capital, the appellant cannot be penalized for wrong doing of the accountant sheer ignorance of overlooking the established facts, and more so when the appellant is an octogenarian super senior citizen individual.*

*In this regard your appellant already accepted his ignorance. Therefore, your appellant prays before your honour that above mentioned established facts may be accepted in appeal. In this regard your appellant refers to the CBDT Circular No. 14(XL-35) dated 11.4.1955 and letter No. F.81/27/65-IT(B) dated 18.5.1965."*

2.4. Aggrieved, the assessee is in appeal before us.

3. The Id. Counsel for the assessee submitted that no addition can be made based on figures in the fudged Balance sheet when the truth was that, there was no sundry creditor or advance from customer. He submitted that the fixed deposits in question was made by the assessee on yearly basis for several years and that they have brought into the Balance sheet in this year and it was due to the ignorance that the accountant randomly gave some figures were put on the liabilities side of the Balance sheet to tally the amount of fixed deposits held by the assessee brought into the assets side of the Balance sheet. He filed the assessment orders passed in the case of the assessee, after re-opening of the assessments u/s 148 of the Act for the AYs 2012-13, 2013-14, 2014-15 & 2015-16 and submitted that all these fixed deposits and the interest therein were brought to tax by the AO in scrutiny proceedings in these assessment years and under those circumstances the addition made for sources of fixed deposits during the year would tantamount to double addition. He submitted that no tax can be levied on non-existing sundry creditors or advances from customers. When there is no receipt of any money whatsoever, no addition can be made based on a false or bogus entry in the Balance sheet. On query from the Bench, he submitted that the assessee did not maintain any books of account that income is to be assessed u/s 44AD of the Act and on further query from the Bench, he submitted that the issue may be remanded back to the file of the AO with the direction to verify as to whether the fixed deposits were in fact made in earlier years and whether the interest thereon was brought to tax or not.

4. The Id. D/R on the other hand opposed the contention of the assessee and submitted that the return of the income was filed by the assessee with certain figures and the AO is bound to take notice and adjudicate on these figures in the Balance sheet disclosed along with the return of income. He submitted that the AO has given notice u/s 133(6) of the Act to the sundry creditors and advances from customers and when none of these could be served, the assessee came with this explanation that there was bogus accounting by the accountant of the assessee. He submitted that, income can be brought to tax in this case and that the sundry creditors and advances from customers

were rightly brought to tax u/s 68 of the Act. He submitted that the order of the Id. CIT(A) be upheld.

5. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows.

6. We find on facts, the fixed deposits were made by the assessee over a period of time during the AYs 2012-13, 2013-14, 2014-15 & 2015-16. This is evident from the record. It is also recorded by the AO that these sundry creditors and advances from customers appearing in the balance sheet are bogus and that no such creditors or customers exist. If on the asset side of the balance sheet the fixed deposits belonging to the earlier assessment years are taken as the opening balance as these are brought forward from earlier year, then in the liability side of the balance sheet, the amount received from the sundry creditors and advances from customers should be opening balances or deleted. It is clear from the balance sheet that the figure of sundry creditors and advances from customers is only balance sheet figure to counter the asset in the form of fixed deposit brought in as an asset in the balance sheet this year. The figure of sundry creditors and advances from customers are not of any cash or credit amount received by the assessee. There was no actual credit of cash or otherwise received by the assessee. No entries are made in the books of account as admittedly no books of account are maintained. Thus based on the real income thereon no addition can be made based on these false or bogus figures.

6.1. The Hon'ble Supreme Court in the case of *Kedarnath Jute Mfg. Co. Ltd. vs. CIT* reported in [1972] 82 ITR 363 (SC) laid down that the taxability or otherwise on a particular item under the Income Tax Act, 1961 will have to depend on the provisions of law relating thereto and not on the existence or the absence of entries in the books of account.

6.2. The CBDT in Circular no. 14(XL-35) dated 11.4.1955 and letter No. F.81/27/65-IT(B) dated 18.5.1965 stated that:

*"Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some*

*refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should—*

*(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;*

*(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."*

6.3. Even otherwise no addition can be made u/s 68 of the Act unless the assessee maintains books of account as held by the Hon'ble Bombay High Court in the case of *CIT vs. Bhaichand N. Gandhi* reported in 141 ITR 67 (Bom.) and the Hon'ble High Court of Delhi in the case of *CIT Vs. Ms. Mayawati* reported in 338 ITR 563 [DEL].

6.4. An addition u/s 68 of the Act was made on bogus figures which are not true and when no such entries were made in the books of account. In view of the above discussion, we delete the addition made u/s 68 of the Act on facts of this case. This ground of the assessee is allowed.

6.5. On the issue whether an addition in this year can be made u/s 69 of the Act, we restore the matter to the file of the AO for fresh adjudication in accordance with law. The AO shall consider by the investments in the fixed deposits and interest thereon were brought to tax in the earlier assessment years i.e. AYs 2012-13, 2013-14, 2014-15 & 2015-16 or not. The AO, as per law is permitted to re-open the assessment of those earlier years on bringing them in case if any to tax.

7. In the result, the appeal filed by the assessee is allowed in part.

***Kolkata, the 30<sup>th</sup> April, 2021.***

Sd/-  
[Aby T. Varkey]  
Judicial Member

Dated: 30.04.2021

*Bidhan (P.S.)*

Sd/-  
[J. Sudhakar Reddy]  
Accountant Member

*Copy of the order forwarded to:*

1. **Amar Adak, Balitikuri, (Near Market), Howrah-711 113.**
2. **ACIT, Circle-46, Kolkata.**
3. CIT(A)- 14, Kolkata (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches