

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.107/Kol/2021
Assessment Year: 2012-13

Kalyan Mukherjee.....Appellant
Alaktika Housing Estate,
2C/602, Rajarhat,
Kolkata-700156.
[PAN: ADZPM2292C]

vs.

DCIT, Range-2, Asansol.....Respondent

Appearances by:

None appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : March 30, 2022

Date of pronouncing the order : March 30, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.02.2020 of the Commissioner of Income Tax (Appeals), Asansol [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act(hereinafter referred to as the 'Act').

2. No one has put in appearance despite notice through RPAD, therefore, we proceed to decide the appeal on merits after going through the records and after hearing the Id. DR. The assessee in this appeal has taken following grounds of appeal;

"1. For that the additions made are patently illegal, bad in law and devoid of merits and the same may please be deleted, as the appeal hearing was done ex parte.

2. For that the confirmation of adding back of Rs. 5,38,43,862/- is not justified and should be deleted.

3. For that the calculation of Salary and Wages on the basis of ESI/PF of Rs.1,52,930/- paid is entirely bad in law and should be deleted.

4. For that the Ld. Assessing Officer added back of Rs. 4,08,425/- for some genuine expenses made by the Appellant under different heads of accounts and should be deleted.

5. For that the entire Confirmation of appeal is bad in law and should be deleted/modified.

6. For that the assessee Craves leave to add/delete/alter/amend/substitute any ground/document at the time of hearing.”

3. At the outset, the ld. DR has invited our attention to the impugned order of the ld. CIT(A) to submit that even the assessee did not appear before the CIT(A). She has invited our attention to the impugned assessment order to submit that the assessee has introduced capital of Rs.5,38,43,862/-, however, on being asked to explain, the assessee failed to explain the source of the capital introduced. The Assessing Officer, therefore, made the addition of the aforesaid newly introduced capital into the income of the assessee u/s 68 of the Act. The Assessing Officer also noticed that the assessee had paid contribution to PF and ESI contribution after the due date. Therefore, the Assessing Officer made the addition of Rs.1,52,930/- on that account. The Assessing Officer further noted that the assessee has paid certain expenses on account of accounting charges, consultancy fees and legal fees, upon which the assessee did not deduct the TDS, therefore, the Assessing Officer disallowed the aforesaid expenditure.

As noted above, in appeal before the CIT(A), the assessee did not appear, therefore, the CIT(A) confirmed the aforesaid additions made by the Assessing Officer.

4. Even before us, no one has put in appearance on behalf of the assessee. There is even no document on the file to rebut the observations made by the Assessing Officer in the assessment order. Since the assessee did not give any explanation relating to the source of the capital introduced, therefore, in our view, the Assessing Officer was justified in making the aforesaid addition of Rs.5,38,43,862/- into the income of the assessee.

So far the disallowance on account of contribution to PF & ESI is concerned, it is admitted fact that the aforesaid contribution was made by the assessee before due date of filing of the return which can be seen from the table given by the Assessing Officer in the assessment order itself. This issue is settled by the various decisions of the Hon'ble High Courts of the country including the jurisdictional High Court in the case of CIT, Kolkata vs. M/s Vijay Shree Limited 43 taxman.com 396(Cal). In view of the aforesaid discussion, the addition of Rs.1,52,930/- is ordered to be deleted.

So far as the addition relating to the payments made without deducting TDS of Rs.4,08,425/- is concerned, since there is no explanation given by the assessee, therefore, we do not find any reason to interfere with the order of CIT(A). Therefore, the addition of Rs.4,08,425/- for non-deduction of TDS is confirmed.

In view of the above observation, the appeal of the assessee is hereby partly allowed.

5. In the result, the appeal of the assessee stands partly allowed.

Kolkata, the 30th March, 2022.

Sd/-
[Girish Agrawal]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 30.03.2022.

RS

Copy of the order forwarded to:

1. Kalyan Mukherjee
2. DCIT, Range-2, Asansol
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches