

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. Nos.1384&1385/Kol/2019
Assessment Years: 2010-11 & 2011-12

Subhash Chandra Gupta.....Appellant
C/o Subash Agarwal & Associates,
Advocates, 1, Gibson Lane,
Suite 213, 2nd Floor,
Kolkata - 700069.
[PAN: ADMPG1360L]

vs.

ITO, Ward-36(2), Kolkata.....Respondent

Appearances by:

Shri Subhas Agarwal, Advocate & Siddharth Agarwal, Advocate, appeared on behalf of the appellant.

Shri Sudipta Guha CIT-DR & Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : July 26, 2022

Date of pronouncing the order : August 29, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders dated 30.04.2019 of the Commissioner of Income Tax (Appeals)-10, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') respectively. Since identical facts and issues are involved in both the appeals hence the same are heard together and disposed off by this common order. The assessee's appeal ITA No.1384/Kol/2019 for the assessment year 2010-11 is taken as the lead case for the purpose of narration of facts.

2. **ITA No.1384/Kol/2019** – The assessee in this appeal has taken the following grounds of appeal:

"1. For that the assessment order dated 27.12.2017 framed u/s. 144/ 147 is void and nullity before law as there are no recorded reasons to believe that the income chargeable to tax has escaped assessment.

2. *Without prejudice to ground no. 1, the recorded reasons is invalid and improper and as such, the assessments framed vide order dated 27.12.2017 is bad before the eyes of law.*
3. *For that the assessment framed u/s 147 r.w. section 144 is liable to be quashed for want of proper sanction as mandated by section 151 of the Act.*
4. *For that THE Ld. CIT(A) erred in confirming the addition of entire cash deposits /transfers amounting to Rs. 6,23,84,979/- into the bank account of the assessee.*
5. *Without prejudice to ground NO. 4, the Ld. CIT(A) ought to have added a small percentage of total deposits and not the entire deposits.*
6. *Without prejudice to ground No. 4 & 5, the Ld. CIT(A) ought to have taken peak credit of the bank balances rather than confirming the entire deposits in the bank accounts.*
7. *The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”*

3. **Ground Nos.1 to 3** – The assessee vide Ground Nos.1 to 3 has agitated against the validity of the reopening of the assessment u/s 147 r.w.s 148 of the Act. The assessee vide Ground No.1 has raised the issue that the reopening is bad in law because no reasons to believe that the income of the assessee has escaped assessment, have been recorded by the Assessing Officer. Further, vide Ground No.2 it has been pleaded that, even otherwise, the reasons recorded were invalid and improper and whereas, vide Ground no.3, the assessee has pleaded that the reopening was bad in law for want to proper sanction as mandated by section 151 of the Act. The attention of the ld. Counsel for the assessee was drawn to the opening paras of the assessment order, wherein, the ld. Assessing Officer has mentioned as under:

“The instant case of Sri Subhash Chandra Gupta for the assessment year 2010-11 was reopened u/s 147 of the Income Tax Act, 1961, in pursuant to approval for reopening u/s 151 of the Act, passed by the then Ld. Pr. CIT-13, Kolkata vide F.No.13/Kol/148/Approval/16-17/9606 dated 31.03.2017. Reason to believe for reopening of the case was that the assessee had deposited to the tune of Rs.2,11,35,000/- in his saving bank account and Rs.39,28,700/- in his current account.

2. *Accordingly, notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) was issued for filing of return for the assessment year 2010-11 through email at the ‘pkluharukaco@gmail.com’ and speed post on 31.03.2017. Since the assessee did not file its return, a letter was again sent on 17.08.2017 to file the return but the assessee did not file its return. Further, 142(1) notice, calling for return, was also issued to the assessee on 16.10.2017 which was duly served upon the assessee but the assessee did not file the return.”*

4. A perusal of the above part of the assessment order reveals that the Assessing Officer has specifically mentioned that the assessment was reopened in this case after taking approval for reopening u/s 151 of the Act from the then Ld. Pr. CIT. Even the date and number of the letter has also been mentioned. Further, the reasons to believe that income of the assessee has escaped assessment have also been mentioned. It has also been mentioned that notice u/s 148 of the Act was issued through email as well as through speed post on 31.03.2017. Since the assessee did not file his return of income, a letter was again sent on 17.08.2017 asking the assessee to file return but the assessee did not file the return. Further, a notice u/s 142(1) calling for return was also issued which was duly served upon the assessee but the assessee did not file the return. The Id. Counsel for the assessee could not rebut the above facts recorded by the Assessing Officer. Even the Id. Counsel for the assessee has not addressed any arguments in respect of the above issue. In view of this, Ground Nos.1 to 3 of the assessee's appeal are hereby dismissed.

5. **Ground Nos.4,5&6** – The issue raised in Ground Nos.4,5&6 is relating to the addition made by the Assessing Officer on account of cash deposits found in the bank account of the assessee. The Assessing Officer noticed that the assessee was maintaining three bank accounts with ICICI bank, wherein, huge cash deposits were found totaling to Rs.6,23,84,979/-. On being asked to explain in this respect, the assessee submitted that accounts were maintained by his brother Shri Ashok Kumar Gupta and that the assessee used to sign the papers on the instruction of Shri Ashok Kumar Gupta. The statement u/s 131 of the Act was recorded of the assessee as well as of his brother Shri Ashok Kumar Gupta who in his statement stated that he worked as an entry operator engaged in providing accommodation entries to various beneficiaries. The assessee and his brother Shri Ashok Kumar Gupta were asked to furnish the details of the beneficiaries on whose behalf the cash amount was deposited. However, the assessee and his brother Shri Ashok Kumar Gupta failed to disclose the name and address of the beneficiaries. The Assessing Officer, therefore, added the entire cash deposits into the income of the assessee treating the same as belonging to the assessee.

6. Being aggrieved by the above order of the Assessing Officer, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A) also, the assessee had taken the same plea that he was earning only commission income and that the cash belong to different beneficiaries. However, the Id. CIT(A) observed that the assessee did not file his return of income. That even the assessee did not disclose any income voluntarily despite reopening of the assessment u/s 147 r.w.s 148 of the Act. No information regarding the bank accounts were disclosed by the assessee to the Assessing Officer. The information was obtained by the Assessing Officer by issuing of necessary notices to the banks and calling for necessary information. The Id. CIT(A) further noted that the claim of the assessee was that the assessee was earning only commission income cannot be accepted as the assessee had not revealed the names and addresses of the beneficiaries of such accommodation entries. That the assessee could not discharge the initial onus cast by law upon him as the assessee had not been able to provide any explanation for the deposits and even the names and addresses of the alleged beneficiaries. He, therefore, dismissed the appeal of the assessee.

7. Being aggrieved by the above order of the CIT(A), the assessee has come in appeal before us. We have heard the rival contentions and gone through the records.

8. The Id. Counsel for the assessee has reiterated his submission as were made before the lower authorities and submitted that the assessee was only an entry provider and had taken a meagre commission for providing accommodation entry to the various beneficiaries whose unaccounted income was deposited into the account of the assessee for the purpose of getting cheque in lieu of that unaccounted money.

9. The assessee, in this case openly and boldly claims that he has done the illegal act of entry provider to defraud the ex-chequer of the Nation. Now the assessee wants to claim the benefit of his own wrong doings. However, for the purpose of determination of the assessee's income tax liability, the assessee was given ample opportunity by the Assessing Officer to disclose the source of the deposits i.e. the names of the concerned beneficiaries to whom the money allegedly belonged. However, the assessee failed to disclose so before the Assessing Officer.

Even, we find that the Ld. CIT(A) has also categorically mentioned in the impugned appellate order that the assessee has not disclosed the source/names of the beneficiaries to whom the assessee allegedly provided the accommodation entries. The relevant part of the impugned order of the Ld. CIT(A) is reproduced hereunder:

“2. The Ld. A.O has clearly put forth that the assessee has not disclosed any income voluntary, and there was a deliberate attempt by the assessee not to disclose the bank accounts and the credits therein. The information was obtained by the Ld. A.O by issue of necessary notices to the banks and calling for necessary information.

3. The Ld. A.O has noted that the claim of the assessee that it was earning only Commission income were blatantly false and that there were no reason to believe the claim of the assessee that he was acting as a conduit for some known accommodation entry provider. It is very clear that the assessee has to reveal the names and addresses of the beneficiaries of such accommodation entries if his story relating to the role played by the assessee was to be believed. It is very apparent that the assessee-appellant has not been able to provide any explanation for the deposits appearing in the bank account and has not discharged the onus cast by law upon him. In the Circumstances, I am not inclined to accept the claim of the assessee that he or his brother did not have any details of the source of cash or the details of actual beneficiaries from the bank account. In my considered view of the matter, unless and until the appellant places cogent material with names and addresses of the intended beneficiaries of the alleged accommodation entries, the onus remains un-discharged. I am therefore in agreement with the Ld. A.O that the source of the credits appearing in the bank accounts was unexplained, and the Ld. A.O was right in law and in facts by making the complete addition.”

10. Now, before this Tribunal also, the Ld. Counsel for the assessee for the assessee was asked in the open court to supply the list before this Tribunal so that the Tribunal may consider the plea of the assessee that he is only an entry provider. But the Ld. Counsel for the assessee at this stage is not able to provide any such list. Neither the assessee has provided the source of cash deposits before the Assessing Officer nor before the First Appellate Authority nor he is ready with such source/name of the beneficiaries during the hearing before this Tribunal. The case involves to Assessment Year 2010-11. The assessee has miserably failed till date to prove his contention or to furnish any details of the source of the cash deposits in his account. Therefore, there is no merit in this appeal and the same is accordingly, hereby, dismissed.

11. Since the facts and issues involved in **ITA No.1385/Kol/2019** are identical, in view of our observation made above the assessee's appeal for assessment year 2011-12 is also dismissed.

12. In the result, both the appeals of the assessee stand dismissed.

Kolkata, the 29th August, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated:29.08.2022.

RS

Copy of the order forwarded to:

1. Subhash Chandra Gupta
2. ITO, Ward-36(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches