

। आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA
BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 2221/Kol/2019
Assessment Year: 2016-17

Asstt. Commissioner of Income Tax, Circle-47, Kolkata	Vs	Sanjay Jaiswal 43-44/1, Bhairab Dutta Lane Kolkata - 711106 [PAN : ACTPJ7533N]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri P.S. Bhadra, Advocate
Revenue by :	Shri Vijay Kumar, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 27/09/2022
घोषणा की तारीख/Date of Pronouncement : 23/11/2022

आदेश/ORDER

PER MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is directed at the instance of the revenue against the order of the learned Commissioner of Income Tax (Appeals) - 14, Kolkata (hereinafter the "ld. CIT(A)") dt. 05/07/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 2016-17 on the following grounds:-

"1. On the facts and circumstances of the case and in law the CIT(A) has erred in accepting new evidences, including copy of conveyance deed, statement of loan from ICICI Bank & rom M/s. Hotel Shivam, copy of bank statement, loan sanction letter, confirmation of accounts etc. in violation of Rule 46A of I.T Rules, 1962, without even any remand to the A.O. for verification of new evidences.

2. On the facts and circumstances of the case and in law the CIT(A) has erred in deleting the addition of Rs.2,95,40,000/- made u/s.68 by the A.O holding that it was investment in property to be u/s.69, overlooking the fact that the A.O has added unexplained sources of credits in the books in the form of unconfirmed loans and unsecured advances for which no evidences were filed before the A.O.

3. That, the Ld.CIT(A) grossly erred in deleting addition made u/s.69C Rs.16,08,767/- being unexplained registration cost on the basis of details furnished by the assessee and without observing the

fact that such expenses has not been included in the amount of investment shown in the personal balance sheet.

4. That, the CIT(A) has erred in accepting fresh evidence which were never been produced before the assessing officer, and accepted it without verification of such transaction and without providing any opportunity to the A.O. to examine it, and thus, grossly violated provisions of Rule 46A of the I.T. Rule 1961.

5. I may add, alter, amend or withdraw any ground of appeal on or before the date of hearing."

2. Brief facts of the case and that the assessee is an individual and income of Rs.13,21,850/- declared in the e-return filed on 17/02/2017 for assessment year 2016-17. Case selected for scrutiny for the reason "whether investment and income relating to property are duly disclosed" which was followed by service of notice u/s 143(2) & (1) of the Act. During the course of assessment proceedings, the assessing officer noticed that the assessee had made investment in property amounting to Rs.2,95,40,000/-. When the assessee was asked to explain the source of such huge investment the submission filed by the assessee was not found satisfactory and the assessing officer made the addition for unexplained cash credit u/s 68 of the Act at Rs.2,95,40,000/-. Addition was also made for unexplained expenditure towards registration fee and stamp duty at Rs.16,08,767/- and the total income of the assessee was assessed at Rs.3,24,70,620/-.

2.1. Aggrieved the assessee preferred an appeal before the Id. CIT(A) and succeeded. The Id. CIT(A) held that firstly the assessing officer erred in making the addition u/s 68 of the Act which refers to unexplained cash credit whereas in the case of the assessee it was investment in property. Secondly, the Id. CIT(A) observed that the assessee took loan from ICICI Bank for investing in the said property and since the source was explained no addition was called for.

3. Aggrieved the revenue is now in appeal before this Tribunal challenging the finding of the Id. CIT(A) deleting the addition made u/s 68 of the Act at Rs.2,95,40,000/- and u/s 69C of the Act at Rs.16,08,767/- and also taken a ground that the Id. CIT(A) grossly violated the provisions of Rule 46A of the Income Tax Rules, 1962 ('Rules') and proper opportunity was not granted to the assessing officer. The Id. D/R vehemently argued supporting the order of the assessing officer.

3.1. The Id. Counsel for the assessee, on the other hand, heavily relied on the finding of the Id. CIT(A) and also took us through various documents placed in the paperwork containing 83 pages.

4. We have heard the rival contentions and perused the record placed before us.

5. The revenue has primarily challenged the finding of the Id. CIT(A) in deleting the addition made u/s 68 of the Act at Rs.2,95,40,000/- and u/s 69C of the Act at Rs.16,08,767/-. We observe that the assessee during the year made an investment in property amounting to Rs.2,95,40,000/-. Since the submissions made by the assessee were not acceptable to the assessing officer, he made the addition invoking the provisions of Section 68 of the Act.

6. We find that the source of the said investment in property is loan taken from ICICI Bank and the same is verifiable from paper book page no. 34 showing an offer letter dt. 29/12/2015, issued by ICICI Bank sanctioning loan of Rs.2,05,48,500/-. Further page no. 35 of the paper book provides for the repayment schedule and shows the property value at Rs.2,95,40,000/-. Various other documents including loan confirmation certificate and deed of conveyance are sufficient enough to prove that the source of investment in property is loan taken from ICICI Bank and, therefore, on merits also the addition made by the assessing officer u/s 68 of the Act at Rs. 2,95,40,000/-

and u/s 69C of the Act at Rs.16,08,767/- do not stand. We, therefore, fail to find any infirmity in the order of the Id. CIT(A) and thus Ground Nos. 1, 2 & 3 of the revenue are dismissed.

7. As far as Ground No. 4 is concerned it is regarding the violation of Rule 46A of the Rules. It is not discernible from the records nor referred to by the Id. D/R as to what were the documents filed by the assessee before the assessing officer and what new documents were filed before the Id. CIT(A) and without being able to lay our hands on these specific documents, we fail to find any merit in this ground raised by the revenue. Also the facts of the case as discernible from the records and the paper book filed by the assessee, there is sufficient force in the contention of the assessee explaining the source of investment in property and since the factual aspects have been examined by us, we fail to find any merit in this ground of the revenue and hence dismiss the same.

8. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 23rd November, 2022 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 23/11/2022

**SC Sp/8*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, **आयकर अपीलीय अधिकरण न्यायपीठ**, कोलकाता/DR,ITAT,
Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ **BY ORDER,**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata