

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1716/Kol/2019
Assessment Year : 2007-08

Binod Kumar Yadav	vs	ITO, Ward-45(4), Kolkata
PAN: ABHPY 6956 F		
Appellant		Respondent

Date of Hearing	15.11.2022
Date of Pronouncement	09.02.2023
For the Assessee	Shri Sunil Surana, FCA
For the Revenue	Smt. Ranu Biswas, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the assessee against the order of Ld. CIT(A)-13, Kolkata (hereinafter referred to as the "ld. CIT(A)" dated 11.11.2016 for A.Y. 2007-08. The assessee has taken the following grounds of appeal:

i. For that the Assessment Order passed by the Ld. Assessing, Officer is bad in law as well as on facts.

ii. For that the reassessment proceedings being initiated on borrowed satisfaction is null and void.

iii. For that the Ld CIT(A) erred in confirming the order of Ld. AO even when the reassessment proceedings being initiated without proper sanction is bad in law. Sanction, if at all granted, was granted mechanically.

iv. For that the Ld. CIT(A) erred in confirming the order of Ld. AO even when the Assessment Order itself is bad in law for the reason that the Ld. AO did not provide the appellant the copy of the "reasons to believe" recorded by it before issuing of notice u/s148.

v. For that the Ld CIT(A) erred in confirming the action of AO while the assessment order passed by the Ld. AO is totally alien to the information received from DDIT(Inv) whereas the Ld.

AO without going through the statement of the appellant recorded by the DDIT (Inv) Unit 1(1)/Kolkata proceeded to consider the entire deposits as unexplained cash credit. As the very information based upon which the reassessment proceedings were initiated have not been relied upon by the AO himself, the entire reassessment proceedings are null and void.

vi. For that the Ld. CIT(A) erred in confirming the action of Assessing Officer in making ad hoc addition of Rs. 17,16,91,393/- as undisclosed income.

vii. For that the Ld CIT(A) erred in confirming the action of the Ld AO whereas the addition made by the Ld. Assessing Officer is arbitrary and excessive. The Ld Assessing Officer did not consider the submission of the appellant that he is a person of no means and that he is hardly able to earn livelihood for his family and that forget 18 Crores even Rs. 1 Lac is too big for him. The appellant made a true statement regarding his earning from name lending for accommodation entry.

viii. For that the Ld CIT (A) erred in confirming the action of Ld. AO merely for non production of party whereas after lapse of about 8 years it was not possible on the part of the appellant to locate the party who long back had settled elsewhere in some other State and had no contact with the appellant.

ix. For that the ld. CIT(A) erred in confirming the entire additions made by the Ld. AO on the ground that the address given by the party could not be located whereas there was merely a small typographical error occurred due to haste in which the appellant was put into by the Ld. Assessing Officer.

x. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”

2. Brief facts of the case are that in this case information was received from the office of the DIT(Inv.), Kolkata that the present assessee had done a high volume of cash transactions during the financial year 2006-07. The ld. AO

immediately verified the data of the assessee and came to know that the assessee has not filed any return for the assessment year in question. The ld. AO on the basis of information received from the competent authority initiated the proceedings u/s 147 of the Income Tax Act, 1961 stating the reasons that the assessee made certain transactions which were the part of his undisclosed income which had escaped assessment for the assessment year 2007-08. Accordingly, notice u/s 148 of the Act was issued and served upon the assessee. In response to the said notice, assessee filed a written submission and a copy of return filed by him disclosing a total amount of Rs. 1,90,000/-. The ld. AO during the assessment proceeding reasons for reopening of the case is communicated to the assessee and notices u/s 143(2) and 142(1) were issued which were duly served upon the assessee. In response to such notice, ld. AR of the assessee appeared from time to time before the AO to represent the case and the assessee during the course of hearing had filed a written submission on 20.02.2015 stating that he had opened a bank account in the name of M/s. Shakti Agency and it was used merely for providing accommodation entries whereby the cash/cheques were received from the parties were deposited in the said bank account and those cheques were issued in such names as desired by the said parties on whose behest such account were opened. The assessee also submitted that assessee did not maintain any books of account for such transaction

during the course of assessment proceedings before the ld. AO. The ld. AO receiving such information and another show cause notice was issued upon the assessee through which the AO asked the assessee to furnish such names of person for the whom the assessee has been working along with their PAN and postal address with pin. In response to such notice issued by the AO, the assessee had filed a written submission by stating that the account was opened at the instruction of one Mr. Arun Agarwal and provided his address known to the assessee. On the basis of such information, the ld. AO depute departmental inspector to serve the notice u/s 131 issued to Mr. Arun Agarwal for his personal deposition, the Department Inspector appended by the ld. AO several times attempt to furnish the copy of the same to Mr. Arun Agarwal but he could not succeed. In such a situation, the ld. AO viewed that the contention of the assessee was not acceptable and assessment was completed taking the total deposit in bank account as assessee's undisclosed income and added Rs. 17,16,91,393/- in the hands of assessee and assessed total income at Rs. 17,18,81,393/-.

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A). However, the appeal of the assessee was dismissed.

4. Aggrieved by the aforesaid order, the assessee preferred an appeal before the Tribunal raising multiple grounds of appeal. The grounds of appeal taken by the assessee 1 to 5

are inter-connected, we are going to decide all the five grounds together. At the time of hearing, ld. counsel for the assessee submitted before the bench that the order passed by the ld. AO is bad in law as the assessment proceeding was initiated by the ld. AO on borrowed satisfaction besides that re-assessment proceedings initiated upon the assessee without proper sanction of law and while doing so, ld. AO did not even provide the copy of the "reason to believe" to the assessee before issuing of such notice u/s 148 of the Act. The ld. AR further contended that the ld. CIT(A) by confirming the action taken by the ld. AO is totally alien information received from DDIT(Inv.) without going through the statement of appellant recorded by the DDIT(Inv.), Kolkata and taken the entire deposit as unexplained cash credit in the hands of assessee. On such issues, the ld. DR vehemently opposed the submission made by the AR of the assessee and he supported the orders passed by the authorities below.

5. We after hearing the rival submission of the parties and material available on record. The alleged issue challenged by the assessee has been dealt by the ld. CIT(A) in his order at page no. 14 stating that the ld. AO has followed the procedure laid down in the Act and recorded the reasons which had linked with the material in proposition. Therefore, contention made by the assessee was rejected. Similarly, the ld. CIT(A) on the issue of sanctioning of reassessment proceeding, the

ld. CIT(A) in his order at page no. 16 categorically stated that sanction has been granted relevant portion as stated below:

“As regard the appellant contention of sanctioning of reassessment proceeding by the higher authority is concerned it is seen that the reason recorded by the AO has been sent to the office of the concerned authority along with its annexure which are part of record. The entire file was send to the concerned authority along with letter of ITO Burdwan dated 06-03-2012 which was supported by letters of investigation wing from where it was clear that the reasons recorded by the AO was based on concrete material which was received from FIU and then inquired by investigation wing. As a matter of fact no return was filled by the appellant for the year where as transaction reported from single party was of Rs.40,59,435/- which itself is sufficient to accord sanction for reopening of the case. Therefore the grounds of the assessee that the sanction of reopening was given mechanically is not true. The sanction has been granted in the back ground of the facts and information which were part of the approval folder. Hence the ground of the appellant is hereby dismissed.”

6. Similarly regarding the information providing of reasons recorded, the ld. CIT(A) stated in his order that order-sheet of ld. AO dated 19.02.2015 shows that the copy of reasons recorded has been provided to the AR of the assessee. The ld. CIT(A) also stated that there was no restriction in making assessment for transaction which are relied to the reasons recorded as per the provision of Explanation 3 was added to section 147 by the Finance Act (2) of 2009 with effect from 01.04.2089. Further regarding the addition of Rs. 17,16,91,313/- reiterated the contention of the assessee wherefrom it finds that the ld. AO had given sufficient opportunity to the appellant to provide the details of

beneficiary and to produce so called Mr. Arun Agarwal rather than producing the profit detail and persons, he simply stated that the impugned transactions were 8 years old since he had not attached with such person, therefore, he could not provide the present address where the person so alleged. The ld. CIT(A) also stated in his order that the appellant stated before the ld. AO that he had received 1% commission on the aforesaid transaction and he was merely signatory to the account of M/s. Shakti Agency which was opened on the instruction of Mr. Arun Agarwal and the cash deposit was made in account of assessee but he failed to produce Mr. Aurn Agarwal and provide his correct address and the details of the beneficiary who had been given accommodation entry. Therefore, the ld. CIT(A) upheld the order passed by the ld. AO in respect of impugned addition of Rs. 17,16,91,313/- and ground was rejected.

7. We after hearing the rival submission and perused the records. We note that the ld. AO in his recorded reasons as clearly stated that the appellant had filed his return of income for the relevant assessment year which itself was sufficient for framing the reasons to believe that the assessee has escaped from assessment and the ld. AO on the specific information received from the Investigation Wings of the Department and information was not vague but was a specific information pertaining to the transaction made by the appellant by stating details of accommodation entry received by the assessee. We also note that the sanction has been granted in the

background of facts and information which was part of the approval of the folder from the findings of the ld. CIT(A)'s order. We also gainful to state to the fact that the ld. AO did not provide the assessee, the copy of reasons to believe recorded by him before furnishing notice u/s 148 of the Act to the assessee was not correct as the ld. CIT(A) in his findings stated that as per order-sheet of ld. AO dated 09.02.2015, copy of the reasons recorded has been provided to the ld. AR. Therefore, we are of the considered view that ground nos. 1 to 5 are taken by the assessee are not sustainable accordingly we dismiss the ground taken by the assessee.

8. The remaining ground 6 to 10 are inter connected, therefore, we are going to consider the same all the five grounds together. The ld. counsel for the assessee submitted that the action of the AO in making adhoc addition of Rs. 17,16,91,393/- is arbitrarily and excessive and the authorities below did not consider the submission of the assessee that assessee has no means and he has hardly able to earn his livelihood for his family and in such circumstances to earn Rs. 1 lakh is too big for him. Besides that the ld. AR also submitted before us that the appellant has made a true statement before the ld. AO stating the name of landing for accommodation entry. Therefore, the addition made in the hands of assessee needed to be deleted. On the other hand, the ld. DR relied upon the orders passed by the ld. CIT(A) stating that he has passed a well reasoned order which needs to be upheld by the Tribunal.

9. We after hearing the rival submission of the parties, the issues are involved that during the assessment proceedings the appellant himself stated before the ld. AO by stating that he had opened bank account in the name of M/s. Shakti Agency and the said account opened for providing the accommodation entry to deposit various cash/cheques from the parties, in such names as desired by them and he did not get any record as to the person from whom cash/cheques were issued. The assessee also stated that he had used to received commission @ 0.10% but to substantiate his claim he could not able to provide desirable proof to whom such accommodation entry were provided and such benefits were made, assessee further stated before the AO in his statement that he had opened the bank account under the instruction of Shri Arun Agarwal but the the ld. AO issued notice u/s 131 of the Act to the names of the person as stated by the assessee but it was unserved on the given address provided by the assessee. During the assessment proceedings, the ld. AO had given ample opportunity to the assessee but the assessee in his reply stated that now about 8 years have lapsed and he was not in touch with the beneficiaries, therefore, he could not provide the exact address of the parties. All the facts narrated above and the ld. CIT(A) categorically stated while passing his order by which he confirmed the addition made by the ld. AO. He after considering the facts of the case in our hand, we are of the considered view that the order passed by the ld. CIT(A) need

not required to be interfered any more by this Tribunal and accordingly, we affirm the order passed by the ld. CIT(A) and set aside the grounds taken by the assessee.

10. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 09.02.2023

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 09.02.2023

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Binod Kumar Yadav, C/o. Rajesh Mohan & Associates, Unit No. 18, 5th floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata-700 013.
2. Respondent – ITO, Ward-45(4), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata