

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोर्ड, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT (KZ)

&

DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 172/GTY/2019

Assessment Year: 2009-10

Pallob Das.....Appellant
[PAN: AFRPD 3370 C]

Vs.

Joint CIT (OSD), I/C ACIT, Circle-2, Guwahati.....Respondent

Appearances by:

Sh. A. B. Das, Adv., appeared on behalf of the Assessee.

Sh. N.T. Sherpa, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : December 19th, 2022

Date of pronouncing the order : February 20th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2009-10 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the

“Act”) by Id. Commissioner of Income-tax (Appeals)-1, Guwahati [in short Id. “CIT(A)"] dated 28.02.2019 arising out of the assessment order framed u/s 153C/143(3) of the Act dated 29.12.2011.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“(A) For that on the facts in the circumstances of the case the learned CIT(A) erred in sustaining additions of Rs. 20,99,398/- made by the learned ITO.

“(B) For that the learned CIT(A) erred in stating that the appellant has not furnished yearwise and headwise break up of the amount disclosed had been made available both before the learned AO and the learned CIT(A).”

3. The only grievance of the assessee is that the Id. CIT(A) erred in sustaining the addition of Rs.20,99,398/-.

4. The Ld. Counsel for the assessee vehemently argued supporting the written submissions filed before the Id. CIT(A).

5. On the other hand, the Ld. Departmental Representative vehemently argued relying on the findings of the Id. CIT(A).

6. We have heard the rival contentions and perused the records placed before us. The addition of Rs.20,99,398/- is in dispute before us. Facts relating to the said issue are that a search u/s. 132 of the Act was conducted in the case of assessee on 26-03-2009. In the course of search bank account in the name of Smt. Soma Bose held with Union Bank of India, Paltan Bazar was found. Since Soma Bose was examined u/s. 131 on 17-04-2009 and she is disowned the said bank account stating that she just used to sign cheques as directed by Shri Pallab Das (assessee herein), the

ld.AO after going through the said bank account calculated peak credit during financial year 2008-09 at Rs. 35,90,398/- and the said sum was disclosed by the assessee u/s. 132(4) of the Act as a part of total disclosure of Rs. 1 crore but did not offered to tax in the return and thus, ld. AO made the addition for the said gain.

7. Thereafter, the assessee challenged the above before the ld. CIT(A) and partly succeeded as the ld. CIT(A) after considering the submissions of the assessee sustained the addition at Rs. 20,99,398/- observing as under:

“From the above submissions of the appellant it would be seen that during AY 2008-09, the appellant had considered peak amount of Rs. 14,91,000/- and had offered the same for taxation. During the above assessment year, the appellant contends that he had deposited cash to the tune of Rs.33,45,600/- into the said account and withdrawn cash Rs. 37,87,150/- from the said account. The appellant has further stated that during the year AY. 2009-10, he had deposited cash into the said bank account out of the cash withdrawn made from the said account on the various dates on and before the cash deposit into the bank account.

Be that as it may be, the appellant has not furnished any proof, such as cash flow statement duly highlighting the date wise cash available, cash deposited, cash withdrawn and cash re-deposited. Therefore, while being in consonance with the submission of the appellant as regards the cash withdrawals being available for being re-depositing, in the absence of any cash flow furnished before me, I find myself constrained to reject the above contention of the appellant.

However, I find force in the submission of the appellant that the appellant has already offered an amount of Rs. 14,91,000/- on account of peak credit and the further addition, if any, has to consider the earlier peak credit balance. Thus, the peak credit of Rs. 35,90,398/- as added during the above assessment year would be inclusive of earlier peak of Rs. 14,91,000/- and thus to this extent of Rs. 14,91,000/-, the addition warrants deletion. I accordingly, hereby, delete an amount of Rs. 14,91,000/- out of the total amount of Rs.35,90,398/-. The balance addition of Rs. 20,99,398/- (i.e. Rs.

35,90,398/- Less Rs. 14,91,000/-) is hereby sustained. This ground of appeal is therefore partly allowed.”

8. The above findings of the ld. CIT(A) remains uncontroverted by the Ld. Counsel for the assessee. He failed to controvert this fact that said bank account was a benami account held by the assessee operated in the name of his employee, Smt. Soma Bose and all the transactions referred in the said bank account are of assessee. Thus, the ld. CIT(A) has rightly given the benefit/relief sum of Rs. 14,91,000/- being the peak credit amount of preceding financial year 2007-08 and given telescopic benefit in the year under appeal. It is also pertinent to observe that this was only relief which the assessee prayed before the ld. CIT(A) and the same was accepted. Therefore, under the given facts and circumstances of the case, we fail to find any merit in the grounds raised by the assessee. Thus, no interference is called for in the finding of ld. CIT(A) and the same is hereby upheld. All the grounds raised by the assessee are dismissed.

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

Kolkata, the 20th February, 2023

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 20.02.2023

PP/SPS, Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Pallob Das, C/O M/S Ratna Kuber (Gems & Jewellery)
Manipuribasti, G. S. Road, Guwahati.**
- 2. Joint CIT (OSD), I/C ACIT, Circle-2, Guwahati.**
3. CIT(A)-1, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata