

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 39/GAU/2020
Assessment Year: 2017-2018**

**Mr. Pulak Chakraborty,..... Appellant
S/o. Sunil Chakraborty,
Ward-03/162, Shantiniketan para,
Dakshin Jolaibari,
Tripura-799041
[PAN:AJUPC4717C]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-2, Agartala,
Office of the Income Tax Officer,
Aayakar Bhawan,
Mantribari Road,
Agartala, Tripura-799001**

Appearances by:

*N o n e, appeared on behalf of the assessee
Shri Amit Kumar Pandey, JCIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : January 31, 2023

Date of pronouncing the order : March 29, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), Shillong dated 14.11.2019 passed for A.Y. 2017-18.

2. The assessee has taken two grounds of appeal, out of which Ground No. 2 is a general ground, which does not call for recording of any specific finding.

3. In Ground No. 1, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the addition of Rs.12,24,644/-, which was added by the ld. Assessing Officer with the aid of section 69A of the Income Tax Act on the ground that the assessee has deposited cash in his loan account and hence it is an unexplained investment.

4. In response to the notice of hearing, the assessee filed an application for adjournment. However, after going through the record with the assistance of ld. D.R., we do not deem it necessary to adjourn the hearing and heard the appeal *ex-parte qua* the assessee.

5. Brief facts of the case are that the assessee was employed in Kotak Mahindra Life Insurance Company Limited. He has filed his return of income electronically on 06.02.2018 declaring total income at Rs.3,12,650/-. According to the ld. Assessing Officer, his case was selected for scrutiny on account of large value of cash deposits during the demonetization period. Thus it was selected for limited scrutiny through CASS. The ld. Assessing Officer has issued a questionnaire under section 142(1) and

observed that on verification of assessment record, it revealed that the assessee has been maintaining an account in State Bank of India, ONGC Colony Branch, Badharghat, Agartala. In this account, a sum of Rs.12,24,644/- was deposited in cash, therefore, he asked the explanation of the assessee about the source of this cash. In response to this query, the assessee has given an explanation alongwith the documents. The explanation is verbatim as submitted in the statement of facts before Id. CIT(Appeals). Such explanation reads as under:-

“BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS) - SHILLONG

Name of the appellant: Pulak Chakraborty
KANHANPALLY, ONGC, AGARTALA

PAN: AGUPC4717C
Assessment Year : 2017-18

Previous Year : 2016-17

Order appealed against: Order U/s. 143(3) passed on 28.05.2019 by Ld.
ITO W- 2,

Statement of Facts

I deposited for an amount of Rs. 12,24,644/- in cash in my bank account maintained with State Bank of India bearing a/c No.10788997886 during the demonetization period in the Financial Year 2016- 17. Hence an amount of Rs.12,24,644/- is added back u/s 69A of the Income -Tax Act, 1961 to the total income by Ld. ITO.

Ground of Appeal

I entered into an "agreement for sale " for purchase of Residential unit (Name of Building - " Hari Nivas" Grond Floor, G- 2, Area of Flat - 925 Sq. Ft. Super Built Up area) with M/s B. B. Developer (A registered Partnership Firm, represented by Balaraj Dey) on 01.06.2013 under Revenue Village - Odalbakra, Mouza - Beltola, Dist:- Kamrup, Assam. For purchase of that property I paid Rs. 14,20,000/- from taking home loan from SBI Bank - Account No - 1078899786, ONGC Colony Branch and Rs. 7,00,000/- from HDFC Bank - Account No - 01861140002440, Total paid Rs. 21,20,000/- .But due to unavoidable circumstances I cancelled my "agreement for sale" on 23.12.2015 vide deed of cancellation / Agreement No - 20566 dated 23.12.2015. On cancellation of this agreement, I received Total amount of Rs. 23,65,000/- received on 29.04.2016 (Out of this Rs. 11,36,491/- received from BALARAJ DEY,

partner of Firm) vide Cheque No - 000040 - Rs. 3,00,000/- Cheque No - 000041 - Rs. 3,00,000/- Cheque No - 000042 - Rs. 3,00,000/- Cheque No - 000043 - Rs. 2,36,491/- and Rs. 12,28,509/- received in cash) .All cheque deposited in my HDFC Bank Account No - 01861140002440 dated 29.04.2016 and 17.05.2016. Cash which was also received on 29.04.2016 from Developer against cancellation of agreement deposited on 21.11.2016 of Rs 12,20,344.00 and on 21.11.16 of Rs. 4,300.00 respectively. Therefore total cash amount deposited in SBI Account of Rs.12,24,644.00 (Rs.12,20,344.00 + Rs.4,300.00) genuinely from my sale proceeds o Flat which was received before demonetization period and deposited during demonetization period. Cash received from legal source of income, it cannot be added back by Ld ITO u/s 69A of the Income -Tax Act, 1961 since only it was deposited during demonetization period. Therefore Ld. ITO erred in law and should be vacated.

Thanking You,

*Yours faithfully,
Sd/-*

*[PULAK CHAKRABORTY]
26.06.19”*

6. The ld. Assessing Officer did not accept this explanation on the ground that the assessee failed to submit a confirmation from M/s. B.B. Developer. According to the ld. Assessing Officer, he has issued a notice to the developer but he did not respond to his notice, therefore, the ld. Assessing Officer has treated such deposit as unexplained investment by the assessee during the demonetization period.

7. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

8. Before the Tribunal, the assessee has filed a paper book running into 53 pages. In this paper book, the assessee has placed on record the notice issued under section 143(2), certified copies of the order-sheet, copy of agreement to sell, details of

payment made by the assessee to the developer, Bank statement of the Savings Bank Account with SBI, copy of House Building Loan Account with SBI, copy of the House Building Insurance Loan Account, copy of Deed of Cancellation etc. On page no. 19, he placed on record details of payment to M/s. B.B. Developer against booking of flat vide registered agreement, such details read as under:-

“Sri Pulak Charkraborty Agartala
Details of Payments of Rs. 20,98,000/- made to M/s.
B. B. Developers against booking of Flat Vide
Registered Agreement dated 01.06.2013 for Rs.
21.20.000/-:-

From Saving Account No. 1078 899 7886 maintained with State Bank of India :

Date	Mode	Amount	
18.05.2013	NEFT	50,000	
25.05.2013	NEFT	1,50,000	
27.05.2013	NEFT	2,00,000	
05.06.2013	NEFT	20,000	
24.07.2013	Ch. No. 282 301	1,60,000	
11.12.2013	Ch. No. 282 305	1,00,000	
13.01.2014	Ch. No. 282 306	1,00,000	
16.01.2014	Ch. No. 282 307	40,000	8,20,000/-

(Relevant Bank Statements annexed)

From House Building Loan A/c No. 3314 687 8123 with State Bank of India :

Date	Mode	Amount	
31.07.2013	Transfer	6,79,000	
08.08.2013	Transfer	3,00,000	
21.10.2013	Transfer	1.92.500	
13.12.2013	Transfer	<u>1.06.500</u>	12,78,000/-
		Grand Total	20,98,000/-

(Relevant Bank Statements annexed)”

9. With the assistance of Id. D.R., we have gone through the record carefully. A perusal of the record would suggest that the assessee has entered into a purchase agreement with the

developer on 1st day of June, 2013. He made payments started from 2013 to 2014. Thereafter on 23.12.2015, he cancelled the purchase of agreement and received the payments upto April, 2016. The case of the assessee is that he received part payment by cheque and part payment by cash. Since demonetization was declared, therefore, he deposited the cash balance in the Bank account. These facts were not accepted by both the revenue authorities on the ground that-

- (a) the payments were received somewhere in April and deposits in the Bank account in November;
- (b) the assessee has failed to file confirmation from the developer that he has made repayment in cash.

10. On due consideration of the material placed before us and the reasoning of both the revenue authorities, we are of the view that the revenue authorities have failed to appreciate the facts and circumstances of the assessee in right perspective. It is to be kept in mind that he is a salaried employee in Insurance Company. He took loan of more than Rs.20 lakhs and made payments to the builder. There cannot be a doubt of availability of the funds because such funds have come through banking channel, i.e. through Housing Loan Account in the hands of the assessee. All these amounts were paid to the builder through the banking channel and the revenue authority is not disputing these

facts and cannot dispute about the genuineness of these details. It is to be appreciated that purchase of flat was cancelled. Part payment was received by cheque. Sometime it is very difficult for a layman like assessee to get complete payment from the builder. If litigation is commenced, then it will take 15 to 20 years. In such situation, an ordinary person would always prefer whatever is coming in whatever manner, let it be accepted. In this type of cases before rejecting the claim of assessee, it is for the revenue authority to demonstrate if this is not the source then what can be the possible source in the hands of the assessee. Whatever type of money was lying in the hands of assessee before demonetization, he deem it appropriate to deposit such amount in the Bank account. These facts are to be appreciated by keeping in mind that assessee is not an organized business house from whom details could be expected with mathematical precision because he must not be maintaining any details in his day-to-day life, therefore, these facts are to be appreciated with that mind set, which both the authorities have failed to look into. Taking into consideration of the details on the record, we allow this ground of appeal and delete the addition.

11. On page no. 53 of the paper book, the assessee has placed on record an application, whereby he has raised an additional ground and in this additional ground, he has submitted that no valid notice under section 143(2) was issued by the Id. Assessing Officer having jurisdiction over the assessee. According to the Id. Assessing Officer, the notice under section 143(2) was issued by

the ld. ITO, Ward-1(3), whereas assessment order has been passed by the ITO, Ward-2, Agartala. The ld. Assessing Officer has observed that original notice was issued by the ITO, Ward-1(3), however, later on case was transferred to ITO, Ward-2, Agartala. According to the observation of the ld. Assessing Officer, the jurisdiction was transferred to him. However, from the available record, it is not ascertainable where the jurisdiction of the assessee lies, namely what is the jurisdiction in his PAN data or in his return of income. In the absence of such details, it is difficult to adjudicate this ground of appeal. However, we would have called for the assessment record and the details in this connection but considering our finding on Ground No. 1 whereby we have deleted the addition, we do not deem it necessary to carry out such a detailed exercise, hence for the time-being, this ground is being treated as redundant.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 29.03.2023.

Sd/- (Manish Borad) Accountant Member Kolkata, the 29th day of March, 2023	Sd/- (Rajpal Yadav) Vice-President
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*Copies to :(1) Mr. Pulak Chakraborty,
S/o. Sunil Chakraborty,
Ward-03/162, Shantiniketan Para,
Dakshin Jolaibari,
Tripura-799041*

- (2) ***Income Tax Officer,
Ward-2, Agartala,
Office of the Income Tax Officer,
Aayakar Bhawan,
Mantribari Road,
Agartala, Tripura-799001***
- (3) *Commissioner of Income Tax (Appeals),
Shillong,*
- (4) *Commissioner of Income Tax- ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.