

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

**Before Dr. Manish Borad, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 30/Gau/2021
Assessment Year: 2016-2017**

***Mukesh Chokhani,.....Appellant
C/o. Rahul Raj Jain & Ci,m
H. No 15, 1st Floor, Bye Lane-2,
Shaktigarh path, Bhangagarh, G.S. Road,
Assam-781005
[PAN: ACYPC2810L]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-3, Guwahati,
Office of the Addl. Commissioner of Income Tax,
Range-3, Guwahati, Aayakar Bhawan,
Christian Basti, G.S. Road, Assam-781005***

Appearances by:

*Shri Miraj D. Shah, Advocate, appeared on behalf of the
assessee*

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

Date of concluding the hearing : May 16, 2023

Date of pronouncing the order : June 14, 2023

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal at the instance of assessee for assessment year 2016-17 is directed against the order of Id. Commissioner of Income Tax (Appeals), Guwahati-2,

Guwahati dated 27.01.2020, which is arising out of the order under section 153A/143(3) of the Act on 31.12.2017 framed by ld. DCIT, Circle-3, Guwahati.

2. The assessee has raised the following ground of appeal:-

“For that on the facts and in the circumstances of the case and in law, the ld. CIT(A) was not justified while dismissing the case and upholding the addition of Rs.18,95,000/- made by the Assessing Officer u/s 69A of the I.T. Act, 1961”.

3. At the outset, ld. Counsel for the assessee submitted that the ld. CIT(Appeals) erred in upholding the addition of cash found during the course of search at Rs.18,95,000/- made by the ld. Assessing Officer under section 69A of the Income Tax Act, 1961 without considering the fact that the said sum has already been offered to tax by the Group Concern M/s. Agrim Infra Project Pvt. Limited during the year 2016-17 and the same has duly been assessed to tax and, therefore, confirming the said addition would tantamount to double addition. In support of this, reference was made to the statement of Shri Vishnukant Chokhani, cash book, audited accounts and books of account of M/s. Agrim Infra Project Pvt. Limited.

4. On the other hand, ld. D.R., though supported the order of the lower authorities, but failed to controvert the submissions of the ld. Counsel for the assessee.

5. We have heard the rival contentions and perused the material placed before us. The addition under section 69A made by the ld. Assessing Officer at Rs.18,95,000/- is now challenged before us. We notice that the search and seizure action was conducted under section 132 of the Act on 17.09.2015 at the office premises of M/s. Agrim Infra Project Pvt. Limited and also at the residential premises of the Directors. During the course of search at the premises of assessee, i.e. Shri Mukesh Chokhani, cash of Rs.18,95,000/- was found and out of which Rs.18,00,000/- was seized. The assessee stated that the sum belongs to his wife Smt. Rohini Chokhani, but could not furnish any evidence in support of his claim. Subsequently another Director Shri Vishnu Kant Chokhani stated in his statement recorded on 13.11.2015 under section 132(4) of the Act that the alleged cash of Rs.18,95,000/- belongs to the Company, namely M/s. Agrim Infra Project Pvt. Limited and stated to offer it to tax in the income tax return of M/s. Agrim Infra Project Pvt. Limited. However, the ld. Assessing Officer made the addition in the hands of assessee and the same was confirmed by the ld. CIT(Appeals) also.

6. We, however, on perusal of the statement of Shri Vishnu Kant Chokhani appearing at pages no. 1 to 4 of the paper book observe that in reply to question no. 6, Shri Vishnu Kant Chokhani has stated on oath that the said sum of Rs.18,95,000/- belongs to M/s. Agrim Infra Project Pvt. Limited

and the same was kept for safe custody at the residence of the Director Shri Mukesh Chokhani. We further notice that in the cash book of M/s. Agrim Infra Project Pvt. Limited for the month of September 2016 placed at page no. 37, a sum of Rs.18,00,000/- seized by the Income Tax Department has been included. Further in the assessment order framed under section 143(3) of the Income Tax Act on 31.12.2017 in the case of M/s. Agrim Infra Project Pvt. Limited, an amount of Rs.18,41,550/- has been added to the income and the same was on account of cash surrendered during the course of search. Under the given facts and circumstances, we are of the view that since the alleged cash of Rs.18,95,000/- belongs to the company M/s. Agrim Infra Project Pvt. Limited and the said sum has been taxed in the hands of M/s. Agrim Infra Project Pvt. Limited in A.Y. 2016-17, the impugned addition made in the hands of the assessee is uncalled for. We, therefore, delete the addition under section 69A of the Act at Rs.18,95,000/- and allow Ground No. 1 raised by the assessee.

7. Ground No. 2 is general in nature, which does not call for recording of any reason.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 14th June, 2023.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 14th day of June, 2023

- Copies to :*(1) *Mukesh Chokhani,*
C/o. Rahul Raj Jain & Ci,m
H. No 15, 1st Floor, Bye Lane-2,
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Assam-781005
- (2) *Deputy Commissioner of Income Tax,*
Circle-3, Guwahati,
Office of the Addl. Commissioner of Income
Tax,
Range-3, Guwahati, Aayakar Bhawan,
Christian Basti, G.S. Road, Assam-781005
- (3) *CIT(Appeals), Guwahati-2, Guwahati*
- (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.