

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 192/Kol/2023
Assessment Year: 2017-18

Oinidri Chakraborty Ozone Block 3 24A, 2060 Eastern Metropolitan Bypass Kolkata - 700103 (Opposite Pepsi factory) [PAN : ARGPC1817Q]	Vs	Income Tax Officer, Ward-25(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Akkal Dudhewala, FCA
Revenue by :	Smt. Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/**Date of Hearing** : 15/05/2023
घोषणा की तारीख /**Date of Pronouncement**: 22/06/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, (hereinafter the "Id. CIT(A)") dt. 27/01/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18 which is arising out of the assessment order framed u/s 143(3) of the Act dt. 09/12/2019.

The assessee has raised the following grounds of appeal:-

"1. For that on the facts and in the circumstances of the case, the lower authorities were grossly unjustified in law and on facts in dismissing the appeal ex-parte.

2. (a) For that on the facts and in the circumstances of the case and in law, the lower authorities grossly erred in treating the cash deposits of Rs.78,809/- in the bank account maintained with State Bank of India as unexplained money u/s 69A

without appreciating that the deposits was out of the assessee's own income which was reported in the return of income and offered to tax.

(b) For that on the facts and in the circumstances of the case and in law, the lower authorities grossly erred in treating the deposits aggregating to Rs.4,18,77,888/- in the bank accounts maintained with Boral Union Co-operative as Bank Limited unexplained money u/s 69A, without appreciating that these banks were operated and beneficially held by the assessee's partnership firm, and the receipts/payments therein formed part of the regular books of accounts of the Partnership Firm, M/s Champahati C.S. Shop and in that view of the matter, the impugned addition made u/s 69A of the Act in the hands of the appellant deserves to be deleted in full.

3. *For that on the facts and in the circumstances of the case, the orders of the lower authorities assessing the deposits aggregating to Rs.4,19,56,697/- as unexplained investment u/s 69A of the Act may kindly be set aside.*

4. *For that the appellant craves leave to submit additional grounds and /or amend or alter the grounds already taken either at the time of hearing of the appeal or before."*

2. Brief facts of the case are that, the assessee is a partner in partnership firm, Champahati C.S. Shop, which holds liquor license and is engaged in the business of trading in liquor. The assessee had filed return of income u/s 139(1) of the Act for AY 2017-18 on 13.02.2018 declaring total income of Rs.6,80,020/-. Case selected for scrutiny through CASS for verification of cash deposited during demonetization period followed by issuance of notice u/s 143(2) & 142(1) of the Act. In the course of the assessment, the AO noted that the assessee inter alia held Savings Bank Account with State Bank of India A/c No.322443377778, Current Account No.034905003599 with ICICI Bank, and a Current Account bearing No. 20654 and Overdraft Account bearing No. 724 with Boral Union Cooperative Bank Ltd in which substantial cash deposits were made. According to the AO, the cash deposits in these bank accounts did not form part of the books of

accounts of the assessee and therefore required the assessee to explain the same.

2.1. The assessee filed submission dated 05/03/2021, and brought to the notice of the AO that the bank accounts held with ICICI Bank & Boral Union Cooperative Bank were owned and operated by M/s. Champahati CS Shop, a partnership firm in which the assessee is a partner. To substantiate its claim, the assessee had filed the copy of the Trade License issued in the name of the partnership firm and a declaration from the Banks stating that the account was held in their branch as a partnership account of M/s Champahati CS Shop and not a proprietorship account of the assessee. The AO accepted the affirmation provided by the ICICI Bank but held the assessee to be the owner of the monies held with Boral Union Cooperative Bank. The AO held that the cash deposits of Rs.78,809/- appearing in SBI and cash deposits of Rs.66,93,728/- & Rs.3,51,84,160/- appearing in the two bank accounts held with Boral Union Cooperative Bank were found not recorded in the books of the assessee and therefore treated the aggregate sum of Rs.4,19,56,697/- as unexplained cash credit u/s 69A of the Act in the hands of the assessee.

2.2. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who dismissed the same.

3. Aggrieved the assessee is now in appeal before this Tribunal.

4. At the time of hearing the Ld. Counsel for the assessee for the assessee brought to our notice the synopsis of the cash deposits in the bank accounts held with SBI Bank & Boral Union Cooperative Bank

wherein it was explained that only the savings bank account held with SBI beneficially belonged to and was owned by the assessee and that the cash deposits of Rs.78,809/- therein formed part of her books of accounts and was duly considered while calculating the income of Rs.6,80,020/- earned by her during the year. In respect of the bank account held with Boral Union Cooperative Bank, it was stated that all the transactions recorded in the bank accounts held with Boral Union Cooperative Bank comprised of the transactions undertaken by her partnership firm, M/s Champahati CS Shop and that all the deposits and withdrawals including the bank balance were recorded in the books of M/s Champahati CS Shop for the year ended 31st March, 2017. In support of the same, the Ld. AR brought to our notice the copy of the partnership deed dated 31.08.2016 between the assessee and her sister, Smt. Oishi Chakraborty which was formed pursuant to the joint inheritance of the liquor license and the Champahati CS Shop upon the demise of their mother on 29.07.2016. The Ld. AR further invited our attention to the copy of bank statements placed at Pages 45 to 81 of the Paper Book to show that the account was held in the name of M/s Champahati CS Shop and not the assessee. Boral Union Cooperative Bank in their declaration, which is placed at Page 10 of the paperbook had also confirmed that the bank account is owned and held by the partnership firm. Upon query from the Bench, the Ld. AR also placed before us the audited financials of the partnership firm M/s Champahati CS Shop to show that the cash deposits made in the Bank Account Nos. 20564 & 724 represented the deposit of proceeds

on sale of liquor and that the sales reported by the said partnership firm is Rs.12,85,49,570/- which was far in excess of the cash deposited in the Bank Accounts held with Boral Union Cooperative Bank. The assessee also placed before us the Bank ledgers of M/s Champahati CS Shop at Pages 12 to 18 which evidenced that the cash deposits in these bank accounts belonged to M/s Champahati CS Shop and the source of alleged cash is sales made in the business of trading of liquor. To further buttress his submission, the Ld. Counsel for the assessee placed on record the assessment order passed in the case of M/s Champahati CS Shop for the subsequent AY 2018-19 to show that the monies transacted in the Bank Account held with Boral Union Cooperative Bank had been considered and assessed in the hands of the partnership firm by the ld. CIT(A).

4.1. The Ld. AR, therefore, pleaded that the impugned addition made in the hands of the assessee was unjustified as the Bank accounts held with Boral Union Cooperative Bank did not belong to her. Further as the cash deposited therein had already been credited and formed part of the regular books of her partnership firm, M/s Champahati CS Shop, it was claimed that the impugned addition tantamounts to assessment of the same amount twice.

5. On the other hand, the Ld. DR vehemently argued supporting the order of the ld. AO.

6. We have heard rival contentions and perused the material placed before us. Addition of Rs.4,19,56,697/- made by ld. AO u/s 69A of the Act for unexplained cash deposits confirmed by ld. CIT(A)

is in challenge before us. We notice that the case of the assessee was selected for scrutiny for the reason of large cash deposits. In the income tax return filed by the assessee during FY 2016-17, she has reported a total income of Rs.6,80,020/-. It is also noted that the assessee is a partner along with her sister in a partnership firm, M/s Champahati CS Shop through which they conduct business of trading in liquor. It was brought to our notice that this liquor license under the trade name M/s Champahati CS Shop was earlier held by the mother of the appellant, Smt. Rama Chakraborty who passed away on 29.07.2016. Thereafter, the assessee and her sister inherited the license and they continued the trade under the same name & style of M/s Champahati CS Shop by way of a partnership firm. From the audited financials of the partnership firm, it is noticed that the total turnover is Rs.12,85,49,570/- and the net profit reported is Rs.4,02,133/- after claiming partner's salary at Rs.6,20,000/-. The partnership firm had filed return of income on 07.11.2017. The Ld. AR also pointed out that the partnership firm operated bank accounts with ICICI Bank and Boral Union Cooperative Bank and that the aggregate cash deposits in these bank accounts being Rs.3,94,92,930/- & Rs. 8,19,62,890/- respectively commensurate with the sales of the partnership firm, M/s Champahati CS Shop.

6.1. During the course of assessment proceedings, the ld. AO noted that the bank accounts held with SBI, ICICI Bank & Boral Union Cooperative Bank were appearing in the AIR details of the assessee and required her to explain the same. Before the AO, the assessee is

thus, decide to adjudicate the issue in light of the facts available before us.

8. From the confirmation issued by Boral Union Cooperative Bank, it is noted that the bank account held with them was the partnership account and not the proprietorship account of the appellant. Also, the bank statement of Boral Union Cooperative Bank reveals that the account was held in the name of M/s Champahati CS Shop which is noted to be a partnership firm having separate identity and PAN AADFC1592L. The assessee has also furnished the bank ledgers which show that the entries found in the bank accounts held with Boral Union Cooperative Bank were accounted for in the books of M/s Champahati CS Shop and the cash deposits therein represents sale proceeds from liquor sale conducted by the partnership firm at the shop and the same was utilized to make payments to the suppliers for purchase of liquor. Also, the audited financials as well as the income-tax return of M/s Champahati CS Shop shows that these cash sales deposited in the bank account held with Boral Union Cooperative Bank formed part of the total turnover of Rs.12,85,49,570/- declared in the regular books of accounts. On these facts, we find sufficient merit in the submission of the assessee that the addition of Rs. 4,19,56,697/- made by the AO u/s 69A of the Act in relation to the cash deposited in Boral Union Cooperative Bank was unjustified as the same did not relate to her but belonged to her partnership firm M/s Champahati CS Shop in which both the bank accounts and the cash deposits from cash

sales had been duly accounted in the regular books of accounts. We, therefore, direct the Ld. AO to delete the same.

9. Now coming to the cash deposit of Rs.78,809/- found in the State Bank of India, it is noted that the assessee had reported business income under the presumptive taxation scheme of Rs.6,97,237/- which is indeed sufficient to justify the cash deposits of Rs.78,809/- found in her personal bank account held with State Bank of India. Hence, the aforesaid addition is also held to be untenable and the Id. AO is directed to delete this addition made u/s 69A of the Act as well.

10. Accordingly, all the grounds of appeal raised on merit by the assessee are allowed as per the terms indicated above. Other grounds being infructuous and general in nature need no adjudication.

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

Order pronounced in the Court on 22nd June, 2023 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 22/06/2023

**SC S.P.*

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata