

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

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय गर्ग, न्यायिक सदस्य
एवं
डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष
Before

**SH. SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 98/GTY/2020
Assessment Year: 2016-17**

***Rajib Saikia.....Appellant
[PAN: ALHPS 6980 K]***

Vs.

ACIT, Circle-3, Guwahati.....Respondent

Appearances:

***Assessee represented by: Sh. Kush Kanodia for Sh. Akkal
Dudhewala, Adv.***

Department represented by: Sh. Chandan Dutta, D/R.

Date of concluding the hearing : September 20th, 2023

Date of pronouncing the order : October 16th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2016-17 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), Guwahati-2, Guwahati [in short Id. ‘CIT(A)’] dated 04.02.2020 arising out of the assessment order framed u/s 144 of the Act dated 13.12.2018.

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

“1. For that on facts and circumstances of the case and in law, the Id. CIT(A) was not justified while dismissing the case and upholding the addition of Rs. 2,03,87,383/- u/s 68 of the Act on account of difference in capital.

2. For that your appellant craves leave of your honour to take additional ground or grounds of appeal or to modify any ground(s) of appeal at or before the time of hearing.”

3. Brief facts of the case as culled out from the records are that the assessee is an individual and declared income of Rs. 38,21,440/- in the e-return for AY 2016-17 filed on 21.01.2017. Case selected for limited scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. Various opportunities were given to the assessee by the Assessing Officer (in short Id. 'AO') but the same were not availed as the assessee did not appear on any of the occasions. Ld. AO had no other option except to proceed for best judgment assessment. For doing so, Id. AO examined the income tax return Form 4S and noticed that the assessee has shown capital of Rs. 2,78,84,492/-. Ld. AO also observed that the assessee is a contractor and the turnover is less than Rs. 1 Crore and because there was no balance sheet available in the preceding financial year, Ld. AO gave benefit of the income earned during the year and the preceding year against the capital balance of Rs. 2,78,84,921/- and finally made an addition of Rs.

2,03,87,383/- as unexplained capital u/s 68 of the Act and assessed the income at Rs. 2,42,08,824/-.

4. Aggrieved, the assessee preferred appeal before Id. CIT(A). Written submissions were filed by the assessee which reads as follows:

“SUBMISSION OF APPELLANT

I have filed return of income for the year under appeal by filing the data of Balance Sheet and Profit & Loss Account. The return for immediately preceding year i.e. F.Y. 2014-15 A.Y. 2015-16 was filed u/s 44AD of LT. Act, 1961 as my contract Receipts were only Rs. 60,85,500/-. As provided in the LT. Rules I was eligible to File ITR-4S (Sugam) and in the said form there was no provision to file Profit & Loss Account and Balance Sheet and as such data of Balance Sheet & Profit & Loss Account could not be filed. For the A. Y. 2014-15, I have filed ITR-4 in which I have uploaded the figures of my Balance Sheet as at 31.03.2014 and also the Profit & Loss Account for that year. The capital Account shows Rs. 3,01,97,501/- as my Capital as on 31.03.2014. I am assessed to income tax since last more than twenty five years and all these returns and more particularly returns after introduction of e-filing my data were available with the A.O. at the time of framing the assessment but he has not taken the same into consideration. If capital as computed by the A.O. taking into consideration my already disclosed capital as at 31.03.2014 Rs. 3,01,98,501/- is to be calculated than as at 31.03.2016 it would have been Rs. 3,76,95,039/- (Rs. 3,01,97,501 + Rs. 35,16,097/- + Rs. 39,81,441/-) whereas I have shown Rs. 2,78,84,921/- as my Capital as on 31.03.2016.

In support of my disclosed Capital as on 31.03.2014 I am enclosing herewith copy of return of income (ITR-4) and in support of further accretion I am enclosing herewith Computation of Income together with financial statements as at 31.03.2015 and 31.03.2016 which are self explanatory.

The question of undisclosed income would not have arose in the mind of learned A.O. had he also seen my online return for the F.Y. 2013-14 A.Y. 2014-15. As during the F.Y. 2015-16 A.Y. 2016-17 there is no increase of Capital rather there is deficit due to more expenses as compared to income by Rs. 22,42,984.60 which is apparent from

Capital as on 31.03.2015 Rs. 3,01,27,905.84 (-) Capital as on 31.03.2016 Rs. 2,78,84,921.24 there is no question of any addition.

5. However, ld. CIT(A) was not convinced and he confirmed the addition observing that for want of evidence and explanation these additions have been made and the assessee has been unable to explain the source of the opening capital.

6. Aggrieved, the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee placed on record the copies of income tax returns and financial statement for AY 2014-15, AY 2016-17 stating that the assessee was having sufficient capital and books of accounts have been maintained. However, it was submitted that the source of opening capital balance as on 01.04.2015 is the closing capital balance as on 31.03.2015 which stood at Rs. 3,01,27,905.84. Therefore, prayer was made to delete the impugned addition as it is not a case of fresh capital earned during the year but it is a mere brought forward balance from preceding year.

7. On the other hand, ld. D/R vehemently argued supporting the orders of both the lower authorities.

8. We have heard rival contentions and perused the records placed before us. The addition for unexplained capital u/s 68 of the Act 2,03,87,383/- has been challenged by the assessee. We notice that the assessee is a civil contractor and in the ITR-4 filed for AY 2016-17, in Part A-BS proprietor's fund is stated at Rs. 2,78,84,921/-. As the assessee did not appear on various dates of hearing, ld. AO after giving the benefit of income earned during the year as well as the preceding assessment year and made the

impugned addition. We notice that the assessee is civil contractor and is regularly filing the income tax return. For AY 2014-15 on the gross turnover of Rs. 1,09,34,850/- the assessee declared net income at Rs. 18,73,246/-. The balance in the proprietor's capital account as on 31.03.2014 is Rs. 3,01,97,500.54. This closing capital balance is duly reflected in the ITR-4 prepared by the assessee on 31.03.2015 and claimed to have been filed. Similarly, for AY 2015-16 against the turnover of Rs. 60,85,500/- income declared is Rs. 35,91,027/- and in the proprietor's capital account placed at page 37 of the paperbook the closing capital balance is Rs. 3,01,27,905.84. This closing balance is duly shown in the balance sheet as on 31.03.2015 placed at page 36 of the paperbook but the same was not indicated in the income tax return because for AY 2015-16 the assessee opted for presumptive taxation scheme and once the assessee opts for such presumptive taxation scheme then there is no column for filing the details of profit and loss and balance sheet except for mentioning the figures of turnover and profit percentage. So far as the year under consideration is concerned the assessee has declared profit of Rs. 40,52,988/- on the turnover of Rs. 98,89,954/-. Proprietor's capital account as on 31.03.2016 available at page 47 of the paperbook provides the details of opening and closing capital balance. The closing capital balance as on 31.03.2016 is Rs. 2,78,84,921/-. The source of this capital balance is from the opening capital balance as on 01.04.2015 and the preceding years as discussed above.

9. We therefore, under the given facts and circumstances are of the considered view that there is no justification in the impugned

addition because the same has been made merely for non-availability of information at the end of the AO but it is surprising to note that when the assessee filed details before Id. CIT(A), he having co-terminus power to that of the AO ought to have taken note of these details and should have given relief to the assessee. We thus, find that the assessee has explained the source of opening capital balance as on 01.04.2015 and the same is from the capital balance of the preceding financial years for which the assessee has properly maintained the financial statement and records. Thus, the finding of Id. CIT(A) is set aside and the impugned addition of Rs. 2,03,87,383/- u/s 68 of the Act is deleted. Ground no. 1 raised by the assessee is allowed.

10. Ground no. 2 is general in nature which needs no adjudication.

11. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 16th October, 2023.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 16.10.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Rajib Saikia, C/o Rahul Raj Jain & Co., H. No. 15, 1st Floor, Bye Lane-2 Shaktigarh Path, Bhangagarh, G.S. Road, Assam-781 005.**
- 2. ACIT, Circle-3, Guwahati.**
3. CIT(A)- Guwahati-2, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata