

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

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 685/Kol/2023
Assessment Year: 2013-14

Manju Agarwal 80G, Sarat Bose Road Bhowanipore Kolkata - 700025 [PAN : AHYPA5486D]	Vs	Income Tax Officer, Ward - 29(2), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Rip Das, C.A.
Revenue by :	Shri Subhro Das, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 26/09/2023
घोषणा की तारीख /Date of Pronouncement: 02/11/2023

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 "ld. CIT(A)") dt. 09/06/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14.

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

"1. That your appellant submits that the arbitrary disallowance of Expenses made by the Ld. CIT (A), NFAC without proper appraisal of facts and necessity of the circumstances for incurring such expenditure, and other disallowances, may please be reduced to Rs. NIL as below;

- (a) "Conveyance Expenses" disallowed by the Ld. CIT (A), NFAC Rs. 10,977/- is prayed to be reduced to Rs. NIL. (Relief claimed - deletion of disallowance of Rs. 10,977/-).
- (b) "Travelling Expenses" disallowed by the Ld. CIT (A), NFAC Rs.8,300/- is prayed to be reduced to Rs. NIL (Relief claimed - deletion of disallowance of Rs.8,300/-).
- (c) "Office Maintenance" disallowed by the Ld. CIT (A), NFAC Rs. 14,500/- is prayed to be reduced to Rs. NIL (Relief claimed - deletion of disallowance Rs. 14,500/-).

- (d) "**Guest Entertainment**" disallowed by the Ld. CIT (A), NFAC Rs.82,500/- is prayed to be reduced to Rs. NIL (Relief claimed - deletion of disallowance Rs.82,500/-.
- (e) Disallowance of Opening Capital of Rs.4,00,000/- out of Rs.9,57,114/- is not based on **proper appraisal of facts and based on an estimation & surmise** is prayed to be deleted. (Relief claimed - deletion of disallowance Rs.4,00,000/.
- (f) Disallowance of cash deposit into her Savings Bank Account Rs.8,00,000/- is not based on proper appraisal of facts, hence, it is prayed that suitable direction be given to delete the addition. (Relief claimed - deletion of addition of Rs.8,00,000/-).")

3. Facts in brief are that the assessee is an individual and derives income mainly from commission and brokerage. E-return for Assessment Year 2013-14 was furnished on 01/03/2014 disclosing total income of Rs.5,13,110/-. Case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act, which were duly served. During the course of assessment proceedings, the ld. Assessing Officer noticed that against the gross commission receipts of Rs.13,00,000/-, assessee has declared income of Rs.5,13,112/- which was more than 50% of the gross commission. Further perusal of the profit and loss account indicates that various expenses have been claimed. The ld. Assessing Officer was not satisfied with the said claim and made proportionate disallowance of certain expenses on an *ad hoc* basis incurred towards various heads. Further the ld. Assessing Officer observed that the assessee has shown opening capital balance of Rs.9,57,114/- but since no return was filed for preceding year, the ld. Assessing Officer made addition of Rs.4,00,000/- for unexplained opening capital. Further, the ld. Assessing Officer noticed that during the year, the assessee deposited cash of Rs.8,00,000/- and when asked about the source of the said deposit, it was stated that it is from past

savings. The Id. Assessing Officer was not satisfied with the submissions and made an addition thereof and accordingly assessed income at Rs.20,93,609/-.

3.1. The assessee challenged the said addition before the Id. CIT(A) and partly succeeded .

4. Now, the assessee is in appeal before this Tribunal raising various grounds of appeal *supra*.

5. The Id. Counsel for the assessee vehemently argued referring to the detailed written submissions as well as details of various expenses out of which *ad hoc* disallowance has been made by the Id. Assessing Officer assessee and the same were appearing in page no. 1 to 21 of the paper book. It was also submitted that on the one hand, the Id. Assessing Officer has made an addition for unexplained initial capital and simultaneously he has also made addition for unexplained cash which the assessee has claimed to be from accumulated savings and it tantamounts to double addition.

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

7. We have heard rival contentions and perused the record placed before us. The first common issue raised in Ground Nos. 1(a), 1(b), 1(c) and 1(d), pertains to *ad hoc* disallowance of expenses incurred under various heads. We notice that the Id. Assessing Officer has made certain

disallowances which were partly conferred by the Id. CIT(A). So far as the disallowance on account conveyance expenses at Rs.10,977/-, travelling expenses at Rs.8,300/- and office maintenance expense at Rs.14,500/- are concerned, we notice that the same has been made merely on *ad hoc* basis without pointing out any error in the details filed by the assessee. On perusal of the details placed before us, we fail to find any merit in the alleged disallowance under the heads conveyance expenses, travelling expenses and maintenance expenses and the same are hereby deleted.

8. So far as the disallowance mentioned in Ground No. 1(d) towards guest entertainment which the Id. Assessing Officer has made at 100% and confirmed by the Id. CIT(A) also though no specific detail has been filed by the assessee except placing a ledger account, we, however, considering the fact that against the gross commission receipt of Rs.13,00,000/-, assessee had offered income at Rs.5,13,112/-, which is almost around 40% and incurring of such expenditure towards guest entertainment cannot be ruled out. However, considering the fact that they all have been incurred by cash and the same has been not substantiated by the assessee, we sustain the disallowance at 20% of the guest maintenance and confirm the disallowance at Rs.16,500/- as against Rs.82,500/- made by the Assessing Officer. Accordingly Ground No. 1(d) is partly allowed.

9. Ground Nos. 1(e) and 1(f) relate to disallowance of opening capital and cash deposited in savings bank account. The Id. Assessing

Officer has made the addition for unexplained capital at Rs.4,00,000/- out of the opening capital shown at Rs.9,57,114/- and on the other hand, addition has been made for unexplained cash deposit at Rs. 8,00,000/-. It remains an uncontroverted fact that the assessee did not file any return of income in the past stating that her income was less than the taxable income limit. We further notice that on the liability side the assessee has shown opening capital of Rs.9,57,114/- and on the asset side has shown opening cash in hand at Rs. 8,30,450/-. This opening cash in hand has been deposited during the year by the assessee on 06/03/2013 and the source of the same is stated to be opening cash balance. From perusal of the cash flow statement placed at page 6, 7 & 8 of the paper book, we notice that cash in hand had risen to Rs.10,08,453/- on 04/04/2012 and the alleged sum of Rs.8,00,000/- has been deposited on 06/03/2013. Thus, apart from the opening cash in hand at Rs.8,30,450/-, further cash income of Rs.1,74,903/- was available as cash in hand.

9.1. Now considering these facts, so far as the disallowance of opening capital of Rs.4,00,000/- is concerned, which is raised by the assessee in Ground No. 1(e) we find that the same deserves to be deleted because the addition has also been made by the Assessing Officer towards unexplained cash of Rs.8,00,000/- source of which was claimed to be from opening cash. Since double addition has been made by the Assessing Officer, we delete the addition made for unexplained capital of Rs.4,00,000/- and allow Ground No. 1(e). Now, so far as Ground No. 1(f) is concerned, where Rs.8,00,000/- has been confirmed towards

unexplained cash, we find that Rs. 1,79,403/- is the cash available with the assessee apart from the opening cash in hand and the assessee deserves the benefit. Further considering that in the past, the assessee had accumulate savings and even though return was not filed and assessee did not earn income more than the taxable limit, we further give benefit of Rs.1,50,000/- on account of cash in hand available from past savings. So in total, the assessee deserves relief of Rs.3,24,403/-. Accordingly, addition of Rs.8,00,000/- for unexplained cash deposit raised in Ground No. 1(f) is sustained to Rs. 4,75,597/- and ground no. 1(f) is partly allowed.

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

Order pronounced in the Court on 2nd November, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

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

Kolkata, Dated 02/11/2023

SL 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