

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

श्री अनिकेश बनर्जी, न्यायिक सदस्य
एवं
श्री गिरीश अग्रवाल, लेखा सदस्य
के समक्ष
Before

SRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A. No.: 1275/KOL/2023
Assessment Year: 2017-18

***Bijoy Choudhury*.....Appellant**
[PAN: ACMPC 9297 R]

Vs.

***ACIT, Circle-34, Kolkata*.....Respondent**

Appearances:

Assessee represented by: Sh. Sital Khemka, A/R.

Department represented by: Sh. Rakesh Kumar Das, CIT D/R.

Date of concluding the hearing : February 29th, 2024

Date of pronouncing the order : March 5th, 2024

ORDER

Per Bench:

The instant appeal of the assessee was filed against the order of the Commissioner of Income-tax (Appeals)-NFAC, Delhi [in brevity ld. 'CIT(A)'] dated 18.10.2023 passed u/s 250 of the Income Tax Act, 1961 (in brevity the 'Act') for assessment year 2017-18. The impugned order was emanated from the order of the ACIT, Circle-34, Kolkata (in brevity the 'AO') passed u/s 143(3) of the Act dated 27.12.2019.

2. The assessee has taken the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in sustaining the addition of Rs. 2,70,20,000/- u/s 68 without appreciating the facts, source and identity of such receipt in bank account

of appellant even though genuineness of the said transaction were established during assessment proceeding by filing all the documentary evidences in support of the same.

2. That Ld. CIT (A) erred in sustaining the provisions of section 115BBE to tax the transactions added u/s 68, by applying the provisions w.e.f. 01.04.2017. The rate of tax u/s 115BBE was amended by Taxation laws (second Amendment) Act 2016, which was introduced in Lok Shaba in November 2016 i.e. when 3/4th part of the year under consideration was elapsed.

3. The appellant craves leave to add to, alter, to delete from or substantiate the above grounds of appeal.”

3. Tersely we advert the fact of the case. The assessee was running a business in the name of M/s. Vivek Enterprise under proprietorship. During the demonetization period, the credit entry was found in the bank amounting to Rs. 2,70,20,000/-. The assessee claimed that the entire transaction was related to the party M/s. Amit Gill who is running business under the name and style of M/s. Vaut Trading and bearing PAN: AEMPG3135J. The investigation was started related to the party and the party was non-filer of income tax return. After receiving the detailed data and being curious, the information was passed out to the ld. AO and ld. AO had started enquiry and initiated the assessment against the assessee. The party has made export to African Country. On that basis, the assessee arranged the carriage and forwarding, and the entire amount was received for this transaction. The notice u/s 133(6) of the Act was issued but the identity of the party was not able to prove by the assessee before the AO. The notice u/s 133(6) of the Act was returned unserved and returned as 'left'. Considering the nature of transaction and the missing of identity of the party, ld. AO was being curious, completed the assessment with addition amounting to Rs. 2,70,20,000/- which was credited in the bank of the assessee during the impugned assessment year. Aggrieved, the assessee filed an appeal before ld. CIT(A). Ld. CIT(A) upheld the assessment order. Being aggrieved with the appeal order, the assessee filed appeal before us.

4. Ld. A/R vehemently argued and filed a written submission running into 1228 pages. Ld. A/R first explained that the entire transaction of the export

was genuine and relevant documents for the transactions are duly submitted in **APB page 12 to 93**. Further, the assessee raised the bill against the assessee and the amount was received **APB page '(c1 to c6) to 179'**. Ld. A/R pressed that though the party was non-filer, the assessee filed the return and declared the income as turnover.

5. Ld. D/R was being silent about the evidence related to the identity of the party. The entire transaction was placed before the Bench in the paper book. during the assessment proceedings, ld. A/R claimed that ld. AO has not taken any initiation related to investigation of the business of export from where the assessee earned the freight and forward charges. The assessee further, placed that the assessee is interested to return back the matter to ld. AO for further verification but also prayed that the entire investigation should be restricted only on the basis of the addition made by the ld. AO during the assessment amounting to Rs. 2,70,20,000/-.

6. Ld. D/R vehemently argued and placed our attention in page no. 20 of the appeal order. The relevant paragraphs are inserted as below:

“5.1.4 It is further important to mention that creditworthiness of Shri Amit Gill has already been discussed in detail by the AO in the assessment order. Para 10.6 of the assessment order sums-up the reasons as to why the transaction claimed by the appellant failed the test of genuineness. The appellant has failed to counter any of the observations of the AO and the facts as noted above. Hence, considering the facts of the case in toto, I agree with the observation of the AO that Sh. Gill does not have such financial capacity to incur such expenses at the very first place. It is only the unaccounted money of the appellant which was rotated in a circuitous and prearranged way into his account, as these unexplained cash lying with the appellant suddenly went out of use with the declaration of the demonetization. Accordingly, the addition of Rs. 2,70,20,000/- made by the AO by invoking provisions of section 68 of the Act is upheld. The ground of appeal raised is dismissed.

5.2 Ground No. 2 Vide the said ground of appeal, the contention of the appellant is that the AO erred in applying the provisions of section 115BBE to tax the addition made u/s 68 by applying the rate of tax as applicable from 01.04.2017.”

7. We heard the rival submissions and considered the documents available in the record. On perusal of the documents, the assessee was able

to submit all relevant documents related to export transaction with the assessee and the parties. But it is pertinent that the party is unidentified, and the entire transaction was within a specific limit and entire amount was deposited during the demonetization period. During the assessment, ld. AO has not taken any enquiry about the transaction of the party from where the assessee earned the revenue. In our considered view, we remit back the matter to the file of ld. AO for further verification related to the addition amounting to Rs. 2,70,20,000/-. Related to application of Section 115BBE of the Act, the assessee raised a separate ground, but this is consequential in nature and will be followed after the set aside proceeding. Both ld. A/R and ld. D/R had not made any objection about the set aside proceeding. The prayer of ld. A/R related to limited assessment for verification of the addition is duly accepted and ld. AO is directed to do the same. We are not expressing any views on the merits of the case so as to limit the assessment procedure before the ld. AO. Accordingly, we set aside the appeal order and the assessment order is remitted back to the file of ld. AO as terms are indicated above.

8. In the result, **ITA No. 1275/KOL/2023** is allowed for statistical purposes.

Order pronounced in the open Court on 5th March, 2024.

Sd/-

[Girish Agrawal]

Accountant Member

Dated: 05.03.2024

Bidhan (P.S.)

Sd/-

[Anikesh Banerjee]

Judicial Member

Copy of the order forwarded to:

1. **Bijoy Choudhury, 10th Floor, Room No. 1007, Diamond Heritage, 16 Strand Road, Kolkata-700 001.**
2. **ACIT, Circle-34, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata