

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 1324/Kol/2019
Assessment Year: 2010-11

ITO, Ward-37(4), Kolkata	Vs.	Sunita Sharma (legal heir of Shri Shyam Sunder Sharma) (PAN: ARJPS 0713 L)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	19.03.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05.04.2024
For the Appellant/ निर्धारिती की ओर से	None
For the Respondent/ राजस्व की ओर से	Shri S Dutta, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-11, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 28.03.2019 for the AY 2010-11.

2. At the time of hearing, the Ld. CITDR informed the Bench that as desired by the Bench the AO tried to serve the notice of hearing upon the Smt. Sunita Sharma, w/o legal heir of Shri Shyam Sunder Sharma however all the efforts failed to serve the

notice on the legal heir of assessee and finally the notice was served by affixture and placed report as sent by ITO, Ward-37(4), Kolkata. The ITO, Ward-37(1), Kolkata stated in the report that the notice was sent to serve the notice however he returned bank when legal heir was failed to accept the notice. It was also mentioned in the report that inspectors report to ITO was also served the notice on Shri Sunita Sharma situated at 4th Floor, Munipara, Manicktala, Kolkata. It was under lock and key and there is no reasons from deciding despite several knocking and finally the notice was served by affixture on 25.10.2014. The Ld. CITDR therefore prayed that the case may be proceeded ex-parte on the basis of facts available on record.

3. After perusing the facts on record and the report of ITO, Ward-37(4), Kolkata, we observe that the assessee is not interested in pursuing the appeal filed against it by the Department as all the attempts to serve the notice on the assessee have proved futile and in vain. Therefore we are disposing the appeal with the assistance of Ld. CITDR after going through the orders passed by the authorities below.

4. The only issue raised by the revenue in the various grounds of appeal is against the order of Ld. CIT(A) directing the AO to charge commission @ 0.5% of the total deposits on the basis of next year assessment by ignoring the fact that the principal of res-judicata does not apply to the income tax proceedings.

5. With the assistance of Ld. CITDR, we have perused the facts before us and observe that the AO has made addition of Rs. 1,33,22,17,440/- as undisclosed income of the assessee in the assessment framed u/s 143(3)/147 of the Act on 27.12.2017.

6. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by observing and holding as under:

“The Ld. A.R stated that in the subsequent AY, while assessing the appellant’s income on the same facts, the Ld. AO had accepted that the appellant was an accommodation entry provider and he assessed the appellant’s income at Rs. 0.50% of the total deposits treating the said amount as commission earned by him. He furnished a copy of the assessment order passed by the Ld. AO, i.e. ITO, Ward-37(4), Kolkata for the AY 2011-12 on 27.12.2018 u/s 147/143(3) of the Act. It is observed from the said assessment order for the AY 2011-12 that the appellant

had explained before him that he had allowed his bank account to be utilized by certain persons in lieu of commission of 0.25%. The AO observed as under:

"The submission of the assessee is perused. Notice u/s 133(6) was issued to M/s DCB Bank Ltd. for verification of bank account of the assessee. In response to notice u/s 133(6), DCB Bank Ltd. furnished the copy of bank statement of the assessee for the period 01.04.2010 to 31.03.2011. Perusal of bank statement of the assessee reveals that the assessee has not only received unaccounted money from M/s. Kusum Fashions but from other parties as well which are subsequently transferred to different parties. The total amount of deposit in the bank account of the assessee amounts to Rs. 91,12,79,888/- and the total withdrawals amount to Rs. 91,03,07,312. Further, from the return of income of the assessee's own submission, it can easily be inferred that the assessee has taken the deposits/ transaction in his bank account in lieu of commission only. The assessee himself has offered that the commission may be taken @ 0.23% of the deposits.

However, in case of similar nature in charge of ITO, Wd 13(1), Kolkata in the case of Ms. Anubhav Infrastructure Ltd., the commission is assessed at 0.3%. Taking a similar view, the commission is assessed (a) 0.3% on total deposits in the account of the assessee i.e. Rs. 91,12,79,888. Therefore, the commission received is assessed at Rs. 45,56,399/-. It is also seen from the return of income that the assessee has shown Rs. 1,32,240/- as income from other sources. Therefore, the difference amount of Rs. 44,04,199 is treated as undisclosed income of the assessee in form of commission income and added to the total income of the assessee. Penalty proceedings u/s 27i(i)(c) initiated separately for concealment of income."

10. The assessment order referred to you in the previous paragraphs makes it amply dear that the issue of the appellant being an entry provider working for a Commission in lieu of the deposits made in his bank accounts by certain unscrupulous persons has been looked into by the assessing officer. Since the facts of the case for the assessment year 2010-11 and 2011-12, therefore, there should be uniformity in the approach of the assessing officer. In any case adding back the entire amount of deposits to the taxable income of the opulent is an incorrect way approaching the situation. When there are frequent deposit and withdrawal rules in a bank in which has been held to be not genuine, the courts have held that taking the peak credits should be the best way. However, as the appellant has stated that he has worked as an accommodation entry provider and since this fact has been looked into and accepted by the assessing officer in the subsequent assessment year, I find no reason not to accept the appellants plea that he has just allowed his bank account to be used by other persons in return ascertain amount of commission. Therefore, appellant has earned commission at 0.5% the total amount deposited in his bank accounts. The Id. AO is directed to give effect to this order accordingly, and compute income of the appellant at 0.5% of the total deposits of Rs. 1,33,22,17,440.

11. With this, the Appeal is partly allowed."

7. We observe from the appellate order that the Ld. CIT(A) has noted in the appellate order for AY 2011-12 under similar facts commission @0.25% of the total in the books and assessee was added to the income of the assessee on the ground that the assessee was an entry provider and allowed his bank accounts to be used by other persons in lieu of commission at 0.25% of the deposits. Having observed so the Ld.

CIT(A) applied @.5% of the total deposits on the same reasoning in the current year as well which we do not find in any way to be wrong and in consistence with the facts of the case. Accordingly we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

8. In the result appeal of the revenue is dismissed.

Order is pronounced in the open court on 5th April, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)
Vice-President / उपाध्यक्ष

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 5th April, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-37(4), Kolkata
2. Respondent – Smt. Sunita Sharma, Legal Heir of Shri Shyam Sunder Sharma (deceased)
3. Ld. CIT(A)-11, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata