

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T(SS)A. Nos.87&88/Kol/2023
Assessment Years: 2019-20 & 2020-21

Gopal Banik.....Assessee
20, A.P.C. Road,
Kolkata – 700009.
[PAN: AEGPB1186E]

vs.

ACIT, Central Circle-4(1), Kolkata..... Revenue

I.T(SS)A. No.92/Kol/2023
Assessment Year: 2020-21

ACIT, Central Circle-4(1), KolkataRevenue

vs.

Gopal Banik..... Assessee
20, A.P.C. Road,
Kolkata – 700009.
[PAN: AEGPB1186E]

Appearances by:

Shri K. K. Khemta, AR, appeared on behalf of the assessee.

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Revenue.

Date of concluding the hearing : June 19, 2024

Date of pronouncing the order : September 02, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned appeals arise out of separate orders dated 29.03.2023 and 30.03.2023 of the Commissioner of Income Tax (Appeals)-21, Kolkata [hereinafter referred to as 'CIT(A)']. ITA Nos.87/Kol/2023 and has been preferred by the assessee against the order of the CIT(A) dated 29.03.2020 pertaining to assessment year 2019-20, whereas, ITA Nos. 88/Kol/2023 & 92/Kol/2023 are cross

appeals, one by the assessee and other by the Revenue against the order of the CIT(A) dated 30.03.2023 relevant to assessment year 2020-21. Since, common facts and issues are involved in all the three appeals, hence the same were heard together and are being disposed of by this common order. ITA Nos.87/Kol/2023 for assessment year 2019-20 is taken as lead case for the purpose of narration of facts.

2. The brief facts of the case are that a search and seizure action was carried at the business premises of the assessee on 23.04.2019. During the search action, cash amounting to Rs.1,72,500/- was found from the premises of the assessee. Apart from that various incriminating documents were also found and seized depicting unaccounted business receipts. Thereafter, a further cash amount of Rs.80,20,000/- was recovered from the car of the assessee by the police on 21.08.2019.

Assessment by the Assessing officer: Consequent to the said search action, assessments u/s 153A of the Act were framed in the case of the assessee for assessment year 2014-15 to 2019-20. The present appeals arise out of the said assessments framed u/s 153A of the act pursuant to the said search action. The following additions were made by the Assessing officer pertaining to the seized material and cash found during the search action for both the assessment years:

(i) Seized document: AGH/1:

(a) Addition: Rs.20,83,667/- : Assessment year : 2019-20

(b) Addition of Rs.3,48,054/- Assessment Year: 2020-21

The Assessing Officer noted from the said seized document that there were unaccounted cash receipts on different dates. The assessee in this respect explained that the seized documents contained date-wise receipts and payments of his fishery business from 06.12.2018 till 23.04.2019. He further submitted that each page contained details of total receipts and also expenditure incurred. It was further submitted whatever amount was collected, the same had been kept as cash in hand by the assessee, Gopal Banik, for further payment to supplier. The Assessing Officer, however added entire receipts as undisclosed income of the assessee. An amount of Rs.20,83,667/- was added as unexplained income for assessment year 2019-20 and further an amount of Rs.3,48,054/- was added in assessment year 2020-21.

(ii) Seized Document: AGH/2: Addition: Rs.656386/-:
Assessment year 2019-20

This document showed that assessee had incurred personal construction expenditure of Rs. 1,50,000/- and of another of personal expenditure of Rs. 5,06,386/- totalling Rs. 6,56,386/-. Since the assessee failed to explain the source of the said expenditure, the Assessing Officer made the impugned addition on account of unexplained expenditure in the assessment for assessment year 2019-20.

(iii) Seized Document: AGH/3- Addition: Rs.3,20,000/-:
Assessment year: 2019-20

This document showed cash transaction of Rs. 3,20,000/- claimed as security deposit collected and refunded to and from booking party. The Assessing officer treated the said amount as undisclosed business income of the assessee.

(iv) Addition of cash found of Rs.1,72,500/- Assessment Year: 2020-21

During the search action at business premises Abhinandan Guest House, cash amounting to Rs.1,72,500/- was found. The assessee accepted the said amount as his undisclosed business income, however, the Assessing Officer held that the assessee failed to explain the source of the said cash, he, therefore, made the addition of the aforesaid amount as unexplained income of the assessee u/s 69A of the Act.

(v) Addition of cash found by police of Rs.80,02,000/- Assessment Year: 2020-21

On 20.08.2019, Shri Gopal Banik-assessee was travelling in car and a cash amount of Rs.80,02,000/- was found in his possession by the police. Information was given to the Income Tax authorities. The assessee admitted the said amount as out of his undisclosed business income, however, the Assessing Officer held the assessee could not give satisfactory answer relating to the source of the said cash, therefore, he added the said amount as unexplained income of the assessee u/s 69A of the Act.

(vi) Application of provisions of section 115BBE :

The Assessing Officer held that the aforesaid income added was income of the assessee from undisclosed sources. He, therefore, applied the provisions of section 115BBE and taxed the same at the higher rate.

3. Proceedings before the ld. CIT(A):

The main issue raised by the assessee before the ld. CIT(A) was that certain income was assessable in assessment year 2019-20 and not in

assessment year 2020-21 and further that the assessee is entitled to the telescopic benefit of the unaccounted business income of assessment year 2019-20 towards the cash seized/income assessed for assessment year 2020-21. The ld. CIT(A) thoroughly examined the relevant details mentioned in the seized documents and noted that the seized documents depicted much more unaccounted business income for assessment year 2019-20 and further held that since the said amount was offered for taxation for assessment year 2019-20, therefore, the source of the said amount stood explained in respect of cash found and assessed as income for assessment year 2020-21. The findings of the ld. CIT(A) in respect of the seized documents/issues are summed up as under:

(i) Seized document: AGH/1: The ld. CIT(A) noted that the Assessing Officer had only picked up the receipts and ignored the expenditure figures mentioned in the seized document AGH/1. It was also explained that the assessee had been conducting two businesses, one that of running guest house and the other was fishery business at Sealdah wholesale fishery market. The assessee explained before the CIT(A) that the seized documents recorded the proceeds as well as expenses, in cash, from these businesses, however, the Assessing Officer only picked up the receipts and ignored the expenditure side. The ld. CIT(A), thereafter, called upon a remand report from the Assessing Officer in this respect. The assessee also furnished his comments on the said remand report sent by the Assessing Officer. After considering the explanations and submissions of the assessee, the ld. CIT(A) observed that the assessee had provided detailed explanations with reference to various entries to the seized materials. The assessee explained that the word 'GB' mentioned upon the seized material was

the acronym of 'Gopal Banik'. It was also explained that the assessee had been receiving room rent for his guest house which was in cash and had been entered in the seized material. Even the date-wise room rent along with room number was also mentioned in the seized documents. It was also shown that the cash in hand was getting modified after intervals on account of inflow and outflow of room rent received and expenses. The Id. CIT(A) examined each of the document/seized material minutely. The Id. CIT(A) thereafter observed that the closing balance for earlier day was added to the receipts of the next day and from this, the expenses were subtracted for that day to arrive at the closing balance of the said day. The Id. CIT(A), thereafter, calculated the receipts of each day, expenditure incurred and closing balance etc. The assessee also gave the reconciliation/details of the receipts and expenditure as well as cash in hand mentioned in the seized material. It was explained from the seized document that closing balance of cash-in-hand with the assessee on 06.12.2018 was Rs.61,42,084/- and as on 22.04.2019 was Rs.73,79,786/-. Apart from that there were some cash given to some parties which was not included in the closing balance which was explained by the assessee as Rs.3,16,167/- for assessment year 2019-20 and Rs.60,660/- for assessment year 2020-21. The total closing balance as on 22.04.2019 was, thus, calculated at Rs.77,56,613/-. Out of the said amount, the assessee offered Rs.7498841/- as his unexplained business income for assessment year 2019-20 and a sum of Rs.257772/- for assessment year 2020-21.

The Id. CIT(A), after thorough analysis of the seized document accepted the contentions of the assessee except that he found some mismatch/discrepancies in relation to some figures small figures of

small amounts. He noted that instead of the cash amount of Rs.3,16,167/- which was not included in the closing balance for assessment year 2019-20, the amount was coming out at Rs.4,74,952/-. He therefore held that in respect of seized document AGH/1, instead of total amount offered of Rs.74,98,841/- for assessment year 2019-20, it should be Rs.76,57,626/-. The ld. CIT(A), therefore, assessed additional income of Rs.1,58,785/- for assessment year 2019-20 as against offered by the assessee in respect of seized document AGH/1. In the result, there is an enhancement of income which was assessed at Rs.76,57,626/- as against assessed by the Assessing officer of Rs. Rs.20,83,667/- by the assessing officer for assessment year 2019-20.

Further, the Ld. CIT(A) found the discrepancy/different of Rs.1,10,878/- in respect of the entries relating to the period 01.04.2019 to 22.04.2019 relevant to assessment year 2020-21. He, therefore, held that the total additional cash balance generated in the assessment year 2020-21 was Rs.3,07,999/- as against offered by the assessee of Rs. Rs.2,57,772/- and as against the addition made by the assessing officer of Rs. 3,48,054/-.

(ii) **Seized document: AGH/2** : In respect of personal expenditure of Rs.6,56,386/-, the assessee explained that these expenditure was incurred out of the additional business income generated in cash as discussed above in respect of seized documents AGH/1 and since the same was offered to taxation, therefore, the source of the aforesaid expenditure stood explained.

The ld. CIT(A), however, did not accept the aforesaid contention of the assessee. He held that the aforesaid explanation of the assessee was an afterthought. That the closing balance of the each day was duly

mentioned in seized documents AGH/1. He, therefore, rejected the contention of the assessee and upheld the addition of Rs.6,56,386/- made by the Assessing Officer in respect of document AGH/2 for assessment year 2019-20.

(iii) Seized Document: AGH/3- : In respect of addition made by the Assessing Officer of Rs.3,20,000/- claimed as security deposit and refund from booking party, the assessee explained before the CIT(A) that the said amount was received for Rani Tower whose proprietor was Rani Banik, wife of the assessee. It was, therefore, submitted that the said amount did not belong to the assessee. The Id. CIT(A), however, did not accept the aforesaid contention for want of necessary evidence and confirmed the addition for assessment year 2019-20.

(iv) Addition of Cash found of Rs.1,72,500/ for assessment year 2020-21:

The Id. CIT(A), after considering the submissions of the assessee and considering the remand report of the Assessing Officer and the comments of the assessee thereupon, held that as per his discussion in respect seized document AGH/1, the undisclosed cash balance amounting to Rs.76,57,626/- was assessed as on 31.03.2019. It was also explained before the CIT(A) that in addition to the above unreported cash balances, as per the audited balance sheet of the assessee, the available cash balance from the reported business activities of the assessee as on 31.03.2019 was Rs.14,56,789/- and Rs.95,994/- as on 31.03.2020. He noted that even it is to be assumed that there was some depletion of cash even then there was more than Rs.9,00,000/- of disclosed cash in hand as per books as on 31.03.2019. He further observed that the search action was carried out

in the premises of the assessee on 23.04.2019 and the cash in box as on 22.04.2019 was Rs.2,77,404/- as per seized material AGH/1 and that this amount was sufficient in itself to explain the cash found of Rs.1,72,500/- as on the date of search. He, therefore, deleted the impugned addition of Rs.1,72,500/-.

(v) Addition of cash of Rs.80,02,000/- Assessment Year: 2020-21:

As noted above, the ld. CIT(A) observed that the assessee had enough cash balance as on the date of search to explain the aforesaid cash found from the assessee. The ld. CIT(A) noted that as per the addition made in respect of undisclosed business income as per seized document AGH/1, coupled with the disclosed income/cash in hand by the assessee, the cash in hand available with the assessee as on the date of search was more than Rs.83,00,000/-. This figure was arrived at even after applying the daily depletion rate. The ld. CIT(A) held that no case was made out for further addition of the aforesaid amount of Rs.80,02,000/-.

(vi) Application of provisions of section 115BBE :

The ld. CIT(A) held that since the undisclosed income found and assessed in respect of seized document AGH/1 was apparently business income of the assessee, therefore, the aforesaid income did not fall within the provisions of section 68, 69, 69A, 69B, 69C or 69D of the Act. He, therefore, held that the provisions of section 115BBE of the Act were not applicable to the aforesaid income. He, however, observed that in respect of addition of Rs.6,56,386/- in respect of seized AGH/2, since the assessee has failed to explain the source of the said expenditure, therefore, the provisions of section 115BBE will be applicable to the aforesaid addition of Rs.6,56,386/-.

4. **Before the ITAT:**

The revenue did not prefer any appeal against the order of the CIT(A) for assessment year 2019-20. The assessee, however, has agitated against the action of the CIT(A) in further adding Rs.1,58,785/- in respect of undisclosed business income as per seized document AGH/1. The assessee has also contested the addition of Rs.6,56,386/- in respect of seized document AGH/2 and application of provisions of section 115BBE to the said addition. The assessee has also contested the addition of Rs.3,20,000/- in respect of seized document AGH/3.

For assessment year 2020-21, the assessee has contested the action of the CIT(A) in adding Rs.50,128/- to the already disclosed of income of Rs.2,57,772/- in respect of seized document AGH/1.

The revenue, on the other hand, has contested the action of the CIT(A) in deleting the addition of Rs.80,02,000/- on account of cash found in car and addition of Rs.1,72,000/- on account of cash found at Abhinandan Guest house. Apart from that the revenue in general has also contested the action of the CIT(A) in accepting the cash balance of Rs.73,79,786/- as on 22.04.2019 as per document AGH/1 and further allowing the expenditure of Rs.2,97,942/- against receipts of Rs.3,48,054/- as mentioned in seized document AGH/1.

5. We have heard the rival contentions and gone through the record.

IT(SS)A No.87/Kol/2023 - Assessment year 2019-20

5.1 **Ground No.1:** The assessee through Ground No.1 has agitated the action of the CIT(A) in further adding Rs.1,58,785/- to the disclosed figure of Rs.74,98,841/- while appreciating seized document AGH/1. At the outset, the ld. Counsel for the assessee has submitted that the

assessee does not dispute the observation of the Id. CIT(A) in respect of transaction/entry on page no.3, 4, 17, 31, 45 and 59 total amounting to Rs.53,362/-. However, he has disputed the addition of the remaining amount of Rs.1,05,423/-. The Id. Counsel for the assessee has submitted a chart and further explained that some of the amount was already taken care of in the closing balance and that this addition made by the CIT(A) amounts to double addition of the same amount. The Id. Counsel in this respect has relied upon the following chart:

Page No. of AGH/1	Paper Book Page No.	Date	As per Assessee	As per CIT(A)	Difference	<u>CIT(A)'s Apparent Mistake</u>
<u>A.Y. 2019-20</u>						
6	12	15.12.2018	–	2000	2,000.00	The amount paid to Bijoy 2000/- is included in Closing Balance (see left hand side)
7	13	17.12.2018	–	1000	1,000.00	Paid to Dipankar included in Closing Balance (see left hand side)
15	17	02.01.2019	5000 (included & offered t tax in written submission 40000/- +5000/- =45000/-) (See Page ____ of PB)	7000	2,000.00	Paid to Bijoy. Balance Rs.7,000/-, including 2000/- old Balance, included in Closing Balance (see left hand side)

43	31	26.02.2019	-	30300	30,300.00	It is refund to GB(Assessee) and as such double addition
57	38	27.03.2019	-	50000	50,000.00	Paid to Borda included in Closing Balance (see left hand side)
58	38	28.03.2019	-	20000	20,000.00	The amount is actually 2000/- and NOT 20000/- . It is included in Closing Balance in the name of Bijoy =Rs. 1000/- & Dipankar=Rs.1000/-
					Total= 1,05,300/ -	

We have examined the relevant entries which have been reproduced in the impugned order of the CIT(A). We find that the discrepancies noted are in relation to minor amounts. The assessee has duly accepted the various entries of cash transactions, which has also been largely accepted by the CIT(A). The ld. DR could not rebut the aforesaid explanation given by the assessee. Therefore, the addition made by the CIT(A) to the extent of Rs.1,05,300/- is ordered to be deleted. The addition to the extent of Rs.53,362/- is confirmed out of the additional addition of Rs.1,58,785/-.

5.2 **Ground No.2**

The assessee through ground no.2 has agitated against the confirmation of addition of Rs.656386/- in respect of personal expenditure as found noted in seized document AGH/2 The Ld. AR has claimed that the aforesaid expenditure of Rs. Rs.656386/- was incurred by the assessee out of the cash available with the assessee. The ld. Counsel in this respect has submitted that the seized document AGH/1 contained the detail of unaccounted business income and expenditure and whereas the figures mentioned in the document AGH/2 was personal expenditure which was in fact application of the aforesaid income.

Recasted Cash Flow

(Business receipts both disclosed & undisclosed)

(Prepared after appellate order)

Position of Cash Balance in earlier year:

Asst.Yr. 2018-19 to 2020-21

Year ending	Cash in hand as per Balance Sheet	See Page of Paper Book	Business Cash Available (not taxed by AO but Assessee offered to tax before Ld. CIT(A)	comments	Total Cash available
31.03.2018	1,58,215.00	100	X	X	1,58,215.00
31.03.2019	14,56,789/- (after drawings of Rs.2,00,000/-)	101	Rs.74,98,841/- 53,362.00	Admitted before CIT() Add: amount further admitted	

			7552503.00	Total amount admitted	
		Less:	-	Expenditure as per	
			6,56,386.00	AGH/2	
		Net	6896117.00		8352906.00

5.3 The Id. DR could not point out any discrepancy in the aforesaid chart given by the Id. AR. Since sufficient cash was available with the assessee and the nature of the expenditure is personal in nature and is independent of the figures mentioned in seized document AGH/1, hence, the said expenditure can safely be said to be application of income out of the funds available with the assessee. The impugned addition made by the lower authorities of Rs.656386/- is ordered to be deleted. Ground No.2 of the assessee's appeal is allowed.

5.4 **Ground No.3:** The assessee and vide Ground No.3 has agitated the confirmation of addition of Rs.3,20,000/- as per the transaction noted in seized document AGH/3. It was explained that the said document did not belong to the assessee at all. That the amount of Rs.3,20,000/- was received as security deposit and refund from booking party for Rani Tower whose proprietor was Rani Banik, wife of the assessee. That all notings in the said sheet were from 20.01.2019 to 07.04.2019 only. it was noted in respect of all the items as repaid and figure was cut off, which itself showed that the amount was received as security deposit and repaid. We note that no income in respect of Rani Towers has been assessed in the hands of the assessee. The assessee

has duly explained that the said document was in respect of Rani Towers, the income from which has been assessed in the name of Rani Banik, wife of the assessee. The assessee has duly explained about each and every document and Ld. CIT(A) has also noted that the explanation offered by the assessee was almost correct except minor instances of mismatch of certain figures, which the Ld. AR has duly reconciled before us. Moreover, the said document contains noting of receipt of the amount and the said amount paid back, hence the explanation that the said amount was security deposit which was refunded to the parties seems to have force, hence the said amount can not be assessed as income and even otherwise did not belong to the assessee. Therefore the impugned addition of Rs. 320,000/- is ordered to be deleted.

5.5 **Ground No.4:** The assessee through Ground No.4 has agitated against the application of section 115BBE in respect of the addition of Rs.656386/- agitated vide Ground No.2 of the appeal. Since, we have ordered the deletion of the aforesaid addition, therefore, there is no question of application of section 115BBE of the Act on the said amount. This ground, therefore, has become infructuous.

5.6. **Ground No.5** is general in nature.

IT(SS)A No.88/Kol/2023 for assessment year 2020-21:

The sole issue raised by the assessee in this appeal is relation to the further addition made by the CIT(A) of Rs.50128/- over and above the amount offered by the assessee of Rs.2,57,772/-.

The Ld. Counsel for the assessee has submitted that the assessee does not dispute the entry at page no.63 of AGH/1 of amount of Rs.120/-, however, in respect of the entry at page no.60 of Rs.50,000/-, the Ld. AR has explained from the document that amount of Rs.70,000/- was old

balance with Borda out of which Rs.50000/- was received and remaining amount of Rs.20,000/- has been shown balance with Borda which has been duly taken into account in the closing balance. As observed above, the assessee has duly explained all the entries of the seized documents. In view of this, the impugned addition of Rs.50,000/- out of total addition of Rs.50,128/- is ordered to be deleted. The minor difference of Rs.8/- is ignored. This appeal is accordingly partly allowed.

IT(SS)A No.92/Kol/2023 for assessment year 2020-21:

The revenue through various grounds of appeal has agitated against the action of the CIT(A) in accepting the closing balance and cash in hand with the assessee after appreciation of various entries mentioned in seized document AGH/1. As noted above, the ld. CIT(A) has duly discussed each of the transaction. The ld. Assessing Officer had only taken the receipt mentioned in the document but totally ignored the corresponding expenditure. The ld. AR of the assessee has demonstrated that the cash in hand as per chart given above as on 31.3.2019 was Rs. 83,52,906.00/- further the assessee has offered additional income of Rs.2,57,772/- and further admitted during the proceedings before us an income of Rs. Rs.53,362/- for A.Y. 2019-20 and an amount of Rs.120/- for A.Y. 2220-21. There was cash available in the books of account of the assessee also.

Moreover, the ld. CIT(A) while deciding the appeal for assessment year 2019-20 has duly discussed the cash in hand position of the assessee. The revenue has not preferred any appeal against the findings of the CIT(A) for assessment year 2019-20. Therefore, the benefit of the cash in hand available with the assessee has been duly given by the ld.

CIT(A) in the assessment year 2020-21. Moreover, it has been held time and again that the seized document is to be read in whole and the Assessing Officer cannot be said to be justified in picking upon only the receipts and ignoring the expenditure. We, therefore, do not find any infirmity in the order of the CIT(A) in this respect. In view of our findings given above, we do not find any merit in the appeal of the revenue and the same is accordingly ordered to be dismissed.

6. In view of the above discussion, appeals of the assessee in IT(SS)A Nos.87 & 88/Kol/2023 stand partly allowed, whereas the appeal of the revenue in IT(SS)A No.92/Kol/2023 is hereby dismissed.

Kolkata, the 2nd September, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 02.09.2024.

RS

Copy of the order forwarded to:

1. Gopal Banik
2. ACIT, Central Circle-4(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches