

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

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

I.T.A. No.1713/Kol/2024
Assessment Year: 2020-21

Deputy Commissioner of Income Tax, **Appellant**
Central Circle-2(2), Kolkata

vs.

Narendra Gopal Singhal
Hanuman Charai, G. T. Road **Respondent**
Barakar, Asansol, Paschim Burdwan-713324.
(PAN: AJBPS9321E)

Appearances by:

Smt. Archana Gupta, Addl. CIT, Sr. DR appeared on behalf of the appellant.

N o n e appeared on behalf of the Respondent.

Date of concluding the hearing :October 03, 2024

Date of pronouncing the order :October 03, 2024

आदेश / ORDER

Per Shri Sanjay Awasthi, Accountant Member:

The present appeal has been preferred by the revenue against the order dated 27.02.2024 of the Ld. Commissioner of Income Tax (Appeals), Kolkata-27 (hereinafter referred to as the "Ld. CIT(A)" passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

2. No one was present on behalf of the assessee despite notice.
3. There is a delay of 107 days in filing this appeal. A separate application for condonation of delay has been filed. Considering the shortness of delay and the averments made in the application and taking the liberal view the delay in filing the appeal is hereby condoned.
4. The sole issue raised in this appeal is relating to the action of the Ld. CIT(A) in deleting the addition made by the Assessing Officer (in

short “the AO”) of Rs. one Cr. in respect of the cash found and seized from one Bivas Kedia, which was owned up by the assessee.

5. Brief facts of the case are that a search and seizure action was carried out in the case of Shri Kishan Kumar Kalyani & Anr. On 04.04.2019. During the course of search action, a cash of Rs.2,51,50,000/- was seized wherein, he stated that out of the said cash, an amount of Rs.1,99,00,000/- belonged to the assessee. Statement of the assessee was recorded u/s. 131 of the Act during the assessment proceedings, wherein, he admitted that the said cash belonged to him. The assessee further stated that during the Assessment Year 2019-20, he had already offered an amount of Rs.2.90 Cr. for taxation, which included aforesaid amount.

6. Further, cash amounting to Rs. 1 Cr. was seized from one Shri Bivas Kedia. He also stated that he was an employee of the assessee and the cash belonged to the assessee. During his statement recorded u/s. 131 of the Act, the assessee also admitted that the said cash belonged to him and stated before the AO that the same has also been included in income offered of Rs. 2.90 Cr. for AY 2019-20 and Rs.15,00,000/- for AY 2020-21. The AO, however, observed that the assessee had failed to establish the direct nexus of the cash seized of Rs. 1 Cr. from one Bivas Kedia and the income offered in the return of income.

7. The Ld. CIT(A), however, considering the submissions of the assessee and overall facts and circumstances of the case, deleted the impugned addition made by the AO, by observing as under:

“6.2. Discussion and decision:

6.1.1. I have gone through the assessment record as well as the submission of the assessee. It is noticed that there were two search & seizure operations conducted on two different persons namely Shri Kishan Kumar Kalyani & Mr. Bivas Kedia on 04.04.2019 & 27.05.2019 respectively during the AY 2020-21

and seized cash amounting to Rs.2,51,50,000/- & Rs.1,00,00,000/- respectively. During the statement recorded u/s 132(4) of the Act, both the persons had pointed towards the assessee- regarding the ownership of the cash i.e. Rs.1,99,00,000/- in the case of Mr. Kalyani & Rs.1,00,00,000/-. The assessee had also admitted the same facts in his sworn statements recorded u/s. 131 the Act and owned up the cash. The assessee had offered these amounts of Rs.2.90 Cr. for the AY 2019-20 & Rs.15 lakhs for the AY 2020-21 and filed returns of income by paying due taxes there on.

6.2.2. The assessee has stated that he earned these incomes from speculative business. The AO has assessed the assessee's income of Rs.2.90 Crores for the AY 2019-20 and passed the assessment order. Again, the AO has added Rs.1,00,00,000/- in the AY 2020-21 without taking into consideration that the assessee has already offered to tax Rs.1,00,00,000/- in the AY 2019-20. The AO has argued that the assessee failed to prove reasons for keeping cash of Rs.1,00,00,000/- at the office premises Instead of his residence. The AO further argued that the assessee has not filed cash flow statement for the said Rs.1,00,00,000/- and also not proved nexus between Rs.1,00,00,000/- & Rs.1,99,00,000/- etc. But, the AO ignored that the assessee has already admitted these amounts of Rs.3.05 Crores as his income from speculative business and offered to tax by filing the return of income. The assessee had offered these amounts of Rs.2.90 Crore for the AY 2019-20 & Rs.15 lakhs for the AY 2020-21 and filed returns and paid taxes on it.

6.2.3. Reliance was placed by the assessee to support his contention on the judgment of the Hon'ble Income Tax Appellate Tribunal. Vishakhapatnam in the case of DEPUTY COMMISSIONER OF INCOME TAX & ANR. VS VEMURI VENKATA RAO & ANR. (ITAT) wherein the appeal was filed by the revenue against the order of the CIT(Appels), Guntur. The extracts of the judgement is produced hereunder :-

"These appeals are filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Guntur for the Assessment Year (A. Y.) 2010-11 and 2009-10 and by the assessee for the A. Y. 2004-05 to 2008-09. For the sake of convenience, these appeals are clubbed, heard together and a common order is being passed as under.

Assessee had offered sum as income for the A. Y.2009-10 representing the profit on sale of lands. The assessee also explained that he kept the said sum in lockers and did not carry on any business activity during the year. As per section 69A the cash found in the possession of the assessee for which the assessee fails to offer any explanation required to be taxed. In the instant case the assessee had explained the source of cash found in his possession and also offered the same for taxation in the A. Y.2009-10. The AO made the addition of same amount which was a/ready taxed by the AO for the A. Y.2009-10 and taxing the same amount in 2010-11 is nothing but double taxation which is not permitted by the law. The department also did not place any evidence, to show that the cash seized does not represent the income offered for the A. Y. 2009-10. Therefore, court do not find any reason to interfere with the order of the Ld. CIT(A).

6. Appeal of the revenue for the A. Y. 2010-11 is dismissed."

6.2.4. In view of the aforesaid discussions and the pronouncement of ITA T, Vishakhapatnam it can be inferred that the said cash amount of Rs,1,00,00,000/-is a part of the income earned by the assessee in his speculative business offered in the FY 2019-20 and the same was also accepted by the AO. Hence, again same amount cannot be taxed in AY 2020-21 because it leads to double taxation of the same amount. Therefore, the said addition of Rs.1,00,00,000/- is to be deleted. Hence, these grounds of appeal raised by the assessee are allowed.”

8. On perusal of the order of the Ld. CIT(A), it reveals that the Ld. CIT(A) has held that the assessee duly offered to tax the amount in cash seized from Bivas Kedia and that the AO was not supposed to make double addition of the said amount. After hearing the Ld. DR, we do not find any infirmity in the order of the Ld. CIT(A) and the same is upheld. Since there is no merit in the appeal of the revenue, the same is hereby dismissed.

9. In the result, the appeal of the revenue stands dismissed.

Order is pronounced in the open court.

Sd/-
[Sanjay Garg]
न्यायिक सदस्य/**Judicial Member**

Sd/-
[Sanjay Awasthi]
लेखा सदस्य/**Accountant Member**

Dated: 03.10.2024.

JD

Copy of the order forwarded to:

1. Appellate – DCIT, Central Circle-2(2), Kolkata
2. Respondent – Shri Narendra Gopal Singhal
3. CIT(A), Kolkata-27.
4. Pr. CIT,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

