

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

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

SRI SONJOY SARMA, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 435/KOL/2024
Assessment Year: 2014-15

Subhash Sharma.....Appellant
[PAN: ALTPS 5888 E]

Vs.

ACIT, Cir.-47, Kolkata.....Respondent

Appearances:

Assessee represented by: Anil Kochar, Adv. And Aryan Kochar, Adv.

Department represented by: Prabir Gupta Choudhury, Addl. CIT.

Date of concluding the hearing : September 5th, 2024

Date of pronouncing the order : November 6th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case, the return of income was filed on 30.03.2015 declaring total income of Rs. 3,61,860/-. The first-round assessment proceedings culminated with an order dated 29.12.2016 u/s 143(3) of the Act Income Tax Act, 1961 (in short the 'Act') assessing the income of Rs. 14,70,757/-. Thereafter proceedings u/s 147 of the Act was initiated by the Assessing Officer (hereinafter referred to as ld. 'AO') on the ground that an account number 11012150005800 maintained with Oriental Bank of Commerce was allegedly used by the appellant to transfer money to different entities. It was noticed that a sum of Rs. 15,50,000/- was shown as a receipt from this bank

account by the assessee allegedly without a justifiable reason. It is seen from the ld. AO's order that there were a number of notices issued for eliciting a response regarding this transaction (impugned transaction). However, it is recorded by the ld. AO that this assessee made only a part submission vide letter dated 09.03.2022. Through this communication, the assessee is seen to have filed an order u/s 263 of the Act in the name of Smt. Kalawati Devi (Mother of the assessee). In this order u/s 263 of the Act, the transactions in the Oriental Bank of Commerce account (*supra*) have been taken adverse note of and certain directions have been issued to the AO of Smt. Kalavati Devi. Thereafter, the ld. AO has recorded that the assessee did not provide any plausible reason to believe that the impugned funds were obtained in the course of normal lending of funds between mother and son. Needless to say, the addition of Rs. 15,50,000/- was made, leading to the filing of an appeal before the first appellate authority.

1.1. Before the ld. CIT(A), the appellant is seen to have relied on the proceedings in the case of Smt. Kalawati Devi but apparently this did not find favour with ld. CIT(A) and he has confirmed the addition after recording in para 8.2 of the impugned order that the unaccounted funds of Rs. 15,50,000/- of the appellant were routed through the bank account of mother and received by way of transfer in the bank account of the appellant. The ld. CIT(A) disbelieved the appellant's claim that he was creditor of his mother and his own money was received back by way of transfer. The Ld. CIT(A) has recorded that in support this claim, no evidence whatsoever was filed before him. With this recording of fact, the addition made by the ld. AO was confirmed.

2. Aggrieved with the action, the appellant has approached the ITAT with the following grounds of appeal:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT (A) erred in treating the amount of Rs. 15,50,000/- received by the appellant from his mother Smt. Kalawati Devi Sharma

towards repayment of loan as unexplained money u/s 69A of the Act on alleged grounds.

3. For that the appellant having adduced evidences and details thereof in respect of amount of Rs. 15,50,000/- the Ld. CIT (A) ought not to have treated the same as unexplained money.

4. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

Ground nos. 2 & 3 are substantive grounds and the same are taken up for adjudication.

2.1. Before us, the Ld. AR furnished a copy of the order dated 28.03.2019 passed u/s 263 of the Act in the case of Smt. Kalawati Devi through which the transactions recorded in the Oriental Bank of Commerce account (*supra*) have been adversely taken note of and the ld. AO is seen to have been directed to carry out fresh enquiries and thereafter complete the assessment. The ld. A/R also submitted a copy of order u/s 143(3)/263 of the Act dated 23.12.2019, passed after the order u/s 263 of the Act was issued. The ld. A/R has also supplied a copy of the bank statement owned by Smt. Kalawati Devi in which it is shown that there are two debit amounts dated 25.04.2013 and 05.05.2014 amounting to Rs. 9.50 la and 6 la respectively to show that the amounts received by the appellant were from this very same bank account. It has also been averred that the creditworthiness of Smt. Kalawati Devi and the genuineness of the transaction would stand proved with the assessment orders in her name and bank account maintained by her.

2.2. The ld. D/R relied on the orders of authorities below.

3. We have carefully considered the documents and the arguments advanced by the ld. AR/DR. It is seen that in this case, the ld. AO has recorded that the assessee had filed his return of income in ITR-2 which is to be furnished by "*those assessees who did not have any income from business and profession*". The ld. AO has further recorded that in spite of filing return of income the assessee has claimed to furnish balance sheet having sales and purchase turnover, even though only income from other sources is visible. Considering the totality of facts and circumstances, it appears that the

appellant has merely relied on the order u/s 263 of the Act and subsequent order u/s 143(3)/263 of the Act in the case of the mother to attempt justifying the impugned transaction. However, it is also noticed that there has been no desirable level of compliance to notices fixing the case for hearing before the authorities below by this appellant. Without expressing any opinion on the merit of the case, it would be in the fitness of things that this case goes back to the Id. CIT(A) for adjudication on merit after considering the facts surrounding the impugned transaction. With these remarks, we set aside the impugned order and send this file back to the file of Id. CIT(A) for fresh adjudication.

4. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 6th November, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 06.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Subhash Sharma, 322, Flat-3E, Tirupati Building, G.T. Road, Block-1, Belurmath, 711 202.**
- 2. ACIT, Cir.-47, Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.
- Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata