

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
&
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 250/KOL/2024
Assessment Year: 2013-14

DCIT, Circle 3(2), Gangtok, Aaykar Bhavan, Bhanupath, Near White Memorial Hall, Gangtok-737103	Vs	Bishnu Prasad Agarwal, Ranipoor Pakyong Road, Gangtok, Sikkim-737135 [PAN : APFPA1550B]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Vinay kumar Shraff & Shri Dev Kumar Agarwal, ARs
Revenue by :	Shri P.P. Barman, DR

सुनवाई की तारीख/**Date of Hearing** : 24.10.2024
घोषणा की तारीख /**Date of Pronouncement** : 20.11.2024

आदेश/O R D E R

Per Shri Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Department agitating against the action of the Id. CIT (A) in allowing the appeal of the assessee and thereby giving exemption u/s 10(26) AAA of the Income-tax Act, 1961 (the Act).

2. The assessee is a Sikkimese resident and his income is exempt under 10(26)AAA of the Act. There is no dispute raised before us regarding the fact that the assessee is a Sikkimese resident and is entitled to exemption u/s 10(26)AAA of the Act.

3. The only ground raised by the Department is to the effect that the assessee could not prove that the source of bank deposits was out of known-sources earned by the assessee in the State of Sikkim.

4. The brief facts of the case are that the ld. AO found a cash deposit of ₹2,70,11,870/- into the bank account of the assessee and he made the addition u/s 69A of the Act, treating the same as unexplained income of the assessee. The ld. CIT (A), however, deleted the addition which was made by the ld. AO, observing that since the assessee was a Sikkim's resident, therefore, he was entitled to get exemption in respect of income earned by him from known sources of income in the state of Sikkim. The Revenue however, has stated that has not been established on record that the said amount was earned by the assessee from known sources of income earned in the State of Sikkim. However, the ld. counsel has invited our attention to the opening paras of the assessment order, to submit that it is the own case of the department that assessee has business turnover of ₹5,43,53,194/-. That the said fact was also verified by the Department from the Sales Tax / VAT Tax return of the assessee. The ld. Counsel has submitted that the aforesaid cash deposits in the bank account were out of the receipts/ sales turnover of the assessee. That the department having accepted that the assessee has a sales turnover of 5.43 crores, there was no question for the department to add the said amount under the income tax treating the same as income from undisclosed sources

5. Prima facie, argument advanced by the ld. Counsel for the assessee in this respect seems to have force, however, the fact that the said amount of ₹2,70,11,870/- was a part of the sales turnover of the assessee needs to be verified. We accordingly, set aside the issue to the file of the ld. AO for the limited purpose that the AO will verify as to the aforesaid bank deposits/ cash deposits were part of the sales turnover of the assessee, if it is found so, no addition will be warranted.



6. The Id. Counsel for the assessee at this stage has submitted that since the assessee is in the business of cement and therefore, the sales receipts were received in cash only and that the said cash was deposited in the bank account of the assessee. He in this respect has also relied upon the earlier year order of the CIT (A) dated 11th December, 2023, relating to A.Y. 2012-13 and further the order dated 13th December, 2023, for A.Y. 2014-15 and order dated 13th December, 2023 for A.Y. 2015-16 and another order dated 13.12.2023 for A.Y. 2016-17 and further another order of the same date for A.Y. 2017-18, to submit that under similar circumstances, the cash deposits of the assessee in the bank account have been accepted by the Id. CIT (A) as out of sales turnover. That the Department has not preferred further appeal against the said orders. It is directed that the Id. AO will consider the aforesaid orders / documents relied upon by the counsel for the assessee and thereafter will decide this limited issue to the effect that whether the said cash deposits were out of sales turnover or not, and if the assessee's claim is found correct, the impugned addition will not be made.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Court on 20th November, 2024 at Kolkata.

Sd/-

(SANJAY AWASTHI)

ACCOUNTANT MEMBER

Kolkata, Dated 20.11.2024

*SS, Sr.Ps

Sd/-

(SANJAY GARG)

JUDICIAL MEMBER



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata