

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

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. Nos.1398 to 1402/Kol/2023
Assessment Years: 2012-13 to 2016-17

Mohua Dey
C/o Mahadev Ghosh, Advocate
BF-199, Salt Lake City, Sector-1,
Kolkata-700064.
(PAN: AJVPD5007E)

..... **Appellant**

vs.

ITO, Ward-2(1), Siliguri

..... **Respondent**

Appearances by:

Shri Mahadev Ghosh, Advocate appeared on behalf of the Appellant.

Shri Pradip Kumar Biswas, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing :November 22, 2024

Date of pronouncing the order :November 26, 2024

आदेश / ORDER

Per Bench:

All the captioned appeals have been preferred by the assessee against the separate orders, evenly dated 21.09.2023 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "Ld. CIT(A)" passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Years (AY) 2012-13 to 2016-17.

2. Since facts and issues involved in all these appeals are identical and pertaining to the same assessee, therefore, all these appeals were heard together and are being disposed of by this common order.

3. All these appeals are time barred by 28 days. An affidavit narrating the reasons for the delay has been sworn by the assessee, which is

available on record. Considering the affidavit and the short period of delay and also not finding any objection from the Ld. DR, we condone the delay and admit the appeals for hearing.

4. First, we take up ITA No. 1398/Kol/2023, AY 2012-13, which is taken as the lead case.

ITA No. 1398/Kol/2023

5. The Brief facts of the case are that the Assessing Officer (in short 'AO') during the assessment proceedings noted that there were cash deposits of Rs.1,64,388/- into the bank account of the assessee deposited during Financial Year (in short 'FY') 2011-12 relevant to Assessment Year (in short 'AY') 2012-13. It was further noted by him that the assessee did not file any return of income. He further noted that the assessee could not explain the source of the aforesaid deposits into her bank account. AO, accordingly, treated the said deposit of Rs.1,64,388/- as income of the assessee from unexplained sources.

6. The Ld. CIT(A) confirmed the addition so made by the AO.

7. Before us, at the outset, the Ld. Counsel for the assessee invited our attention to the facts submitted before the lower authorities and explained that the assessee is an individual. That the alleged bank account bearing No. 910010050601692 with the Axis Bank in fact did not belong to the assessee. It was explained that the assessee was an employee of the Lakshmi Distributors. Late Shri Rajesh More was the proprietor of the said concern. After the assessee left the services of Late Shri Rajesh More, Shri Rajesh More had opened a bank account in the name of the assessee and had carried out the transaction of deposit and withdrawals in the said account. The aforesaid deposits did not belong to the assessee. The said amount was deposited and withdrawn by Shri Rajesh More and after his death by his son Shri Akshay More. That even

at the time of opening of the bank account, the Mobile No. mentioned in the account opening form was 9832491931, was phone No. of Shri Rajesh More. Therefore, the messages of transactions of deposit and withdrawal in the bank account were not ever received by the assessee. Therefore, the assessee was not aware of the running of the said bank account in the name of the assessee. That the said facts were duly explained before the Investigation Wing as well as to the lower authorities. That the said facts were also verified by the concerned Income Tax Authorities. However, the impugned addition has been made in the hands of the assessee on protective basis. The Ld. Counsel has further submitted that surprisingly, no addition has been made in the hands of Shri Rajesh More and his son Shri Akshay More, even on substantive basis. The Ld. Counsel, in this respect, has further brought our attention to pages 13 to 17 of the paper book, which is a copy of the report of the Investigation Wing in the case of the assessee. It has been reported in the said Investigation report that the following deposits were found in the bank account of the assessee during different financial years:

Deposits in Financial Year	Amount (in Rupees)
2011-12	1,64,388/-
2012-13	18,99,913/-
2013-14	54,79,692/-
2014-15	31,86,763/-
2015-16	4,24,245/-

8. Further, the averments of the assessee that the bank account did not belong to the assessee and further that all the transactions were done by her employer Late Shri Rajesh More and after his death by his son Shri Akshay More, were duly investigated. The Investigation Wing duly reported that the aforesaid bank account become active after Smt. Mohua Dey (assessee) left her job in 2011 and as on the date of her resignation

the deceased employer Late Shri Rajesh More was alive. It was also reported that the transaction in the account continued even after the death of Shri Rajesh More. Even, it has also been reported by the Investigation Wing that the circumstances suggest that the said bank account was being used by Shri Rajesh More and after his death by his son Shri Akshay More to carry out unaccounted transactions. The Investigation Wing has further reported the following circumstances, which suggest that the account was being operated by Shri Rajesh More and Shri Akshay More.

- (i) *If Smt. Mahua Dey had actually opened the said bank account, then why her Employer Late Rajesh More was mentioned as nominee of the said bank account, instead of her family members?*
- (ii) *Even at the time of obtaining the debit card against the said bank account, the relation of her deceased Employer was mentioned as Brother, who is not so in reality.*
- (iii) *Further, why the Mobile No. of the deceased was registered as the Mobile No. of the Account Holder?*
- (iv) *Why is Mr. Akshay More, s/o the deceased is using the same Mobile No. after the demise of his father?*
- (v) *Why the said Mobile No. is not surrendered knowing that the SMS of so-called unknown bank transactions used to be relayed to this Regd. mobile number.*

9. After examination of the assessee as well as Mr. Akshay More, the Investigation Wing has drawn the following conclusion:

“1. The Bank Account is still in use even after the death of Late Rajesh More. There was total cash deposit of Rs 4,13,870/- after February 2015.

2. The mobile number entered in the KYC against the said Axis Bank Account i.e., 9832491931 is that of the deceased but the said number is still being used by Shri Akshay More, s/o the deceased.

3. All the cash withdrawals are found to be done through ATM only. The address of Shri Akshay More is Charuchaya Apartment, Rajaram Mohan Roy Road, Hakimpura and the cash withdrawals was also found to be made from ATM located in the same locality.

4. All the messages relating to the cash deposits and cash withdrawals are possibly been relayed through Mobile Number 9832491931. No full proof measure was taken by Mr. Akshay More to make any enquiries regarding such transactions or for closure of the said Bank Account. Such gesture or non-action on his part goes to suggests that the said bank account is a Benami Account of his deceased father, which is still been used by him to carry out unaccounted transactions.

5. The fact that the name of the nominee shown as "Rajesh More" in the Account Opening Form as well as the Debit Card Form of the said Bank Account and the mobile number 9832491931 being that of Late Rajesh More and at present being used by Shri Akshay More indicates that this account was used by Late Rajesh More till his demise and after that carried over by his son Mr. Akshay More for making unaccounted transactions in cash to with intention to evade taxes."

10. The aforesaid facts duly investigated and reported by the Investigation Wing duly proves beyond doubt that the deposits in the bank account did not belong to the assessee, therefore, there was no reason for the Income Tax Authorities to make the addition in the name of the assessee even on protective basis. Therefore, the impugned additions are not sustainable in the eyes of law and the same are accordingly, ordered to be deleted.

11. The facts and issue involved in all the captioned appeals i.e. ITA Nos. 1399 to 1402/Kol/2023 are identical. Our findings given above will mutatis mutandis apply to all the appeals. The impugned addition made in all the appeals are ordered to be deleted.

12. In the result, all the appeals of the assessee are, therefore, allowed.

Order is pronounced in the open court on 26.11.2024

Sd/-

[Manish Borad]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 26.11.2024.

JD

Copy of the order forwarded to:

1. **Appellant – Sm. Mohua Dey**
2. **Respondent – ITO, Ward-2(1), Siliguri**
3. CIT(A), NFAC, Delhi
4. Pr. CIT,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches