

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 रakesh मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 2223/KOL/2024
Assessment Year: 2018-19**

ACIT, Central Circle-4(1), Kolkata	Vs.	Ritu Kejriwal
(Appellant)		(Respondent)
PAN: AFMPK8907R		

Appearances:

Department represented by : Archana Gupta, Addl. CIT, Sr. DR.

Assessee represented by : None.

Date of concluding the hearing : February 13th, 2025

Date of pronouncing the order : February 18th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax (Appeals)- 27, Kolkata [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 AY 2018-19 dated 12.07.2024, which has been passed against the assessment order u/s 147/144 of the Act, dated 15.02.2023.



1.1. The Registry has informed that the appeal is barred by limitation of time by 56 days. It is mentioned in the authorisation issued by the Pr. CIT, Central-2, Kolkata that the Appellate Order dated 12.07.2024 dated 12.07.2024 was received in her office on 19.07.2024 and the appeal has been e-filed on 05.11.2024. At the outset, Ld. DR made submissions explaining the reasons for the delay in filing the appeal. After examining the same, we find force in the reasons mentioned and are satisfied that the Revenue was prevented by sufficient cause from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

1.2. None appeared on behalf of the assessee and the case was heard with the assistance of the Ld. Sr. DR.

2. The Revenue is in appeal before the Tribunal raising the following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the Ld. CIT(A), Kolkata has erred in deleting the addition of Rs.9,76,961/- out of Rs. 14,65,442/- Undisclosed income by earning commission on accommodation entries.

2. That on the facts and in the circumstances of the case and in law, the amount of Rs. 9,76,961/- out of Rs. 14,65,442/- Undisclosed income by earning commission on accommodation entry is in the nature of case related to accommodation entry falling within the exceptional clause (h) of the para no.3.1 of further filing of appeal as per CBDT circular No.5/2024 vide F.No. 279/Misc.142/ 2007/ ITJ(Pt), dated- 15.03.2024.

3. That the dept, craves leave to add, modify or alter any of the ground(s) of appeal and/or adduce additional evidence at any time during the appeal proceedings.”

3. Brief facts of the case as culled out from the records are that a search and survey operation u/s 132 of the Act was conducted in the



case of Shri Sanjeev Kejriwal and his group concern on 24.10.2017 by ADIT (Inv), Unit-2 Panaji. In the course of search, the statement on oath of Shri Sanjeev Kejriwal was recorded u/s 132(4) of the Act on 26.10.2017. In the statement on oath, he disclosed the name of Sri Krishna Trading Co. which is a proprietorship concern of Smt. Ritu Kejriwal (wife of Shri Sanjeev Kejriwal). In the statement, he admitted that he was engaged in Jama Kharchi i.e. accommodation entry business and mainly two types of accommodation entries were being provided through the group concerns viz. M/s. Rajputana General Commercial Corporation Pvt. Ltd., M/s. Arvind Trading Co. and Sri Krishna Trading Company in lieu of commission varying from 0.25% to 0.5%. He admitted that these concerns are solely controlled and managed by him. The Assessing Officer (hereinafter referred to as the ld. 'AO') tabulated the sundry creditors and sundry debtors and worked out the total accommodation entry of Rs. 32,56,53,692/- through M/s Sri Krishna Trading Co. and since the commission charged was ranging from 0.25% to 0.50%, he applied the rate of 0.45% and made the addition of Rs. 14,65,442/- in the hands of Sri Sanjeev Kejriwal on substantive basis and in the hands of Ms. Ritu Kejriwal on protective basis. Since income amounting to Rs. 14,65,442/- had escaped assessment, a notice u/s 148 of the Act was issued but as no return of income was filed, hence the commission income of Rs. 14,65,442/- was added on protective basis in the hands of the assessee. Aggrieved with the assessment order the assessee filed the appeal before the Ld. CIT(A) who relied upon the decision of Hon'ble Supreme Court in the case of **Raymond Woollen Mills Ltd. v. ITO And Others [1999] 236 ITR 34 (SC)/[1999] 152 CTR 418 (SC)** and in the case of **Nickunj Eximp Enterprises (P.) Ltd [2014]**

48 taxmann. com 20 (Bombay)/ [2015] 229 Taxman 99 (Bombay)/ [2014] 270 CTR 494 (Bombay) and upheld the reopening of the assessment. As regards the quantum of addition, since the assessee himself in its sworn statement recorded u/s 132(4) of the Act had admitted that he was engaged only in the business of providing entry to different parties and the Ld. AO had worked out the total of the accommodation entry provided on the basis of sundry creditors and sundry debtors, he applied the net profit rate of 0.15% instead of 0.45% by relying on **PCIT vs. Alag Securities Pvt Ltd 315 CTR 905 (Bom.)**. The relevant finding in the appeal order for upholding the reopening is extracted as under:

“6.2.2. In view of the above judicial pronouncements, it can be inferred that in the case of the assessee as there are several seized incriminating materials which depicts the fact that income for the current AY may had escaped assessment, the reopening of the assessee’s case even after expiry of four years from the end of relevant assessment is legitimate. Hence, the contention of the assessee is not accepted. Therefore, these grounds of appeal filed by the assessee are dismissed”

4. Aggrieved with the order of the Ld. CIT(A), the Revenue has filed the appeal before this Tribunal. At the outset, it was informed that the tax effect was below the monetary limit as it was only Rs. 1,08,554/-. The Ld. Sr. DR relied upon ground no. 2, as per which this is a case of exception under clause (h) under para 3.1 for filing appeal as per the CBDT Circular No. 5/2024 dated 15.03.2024. We have gone through the Circular and it mentions cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries. The Bench was of the view that the case of the accommodation entry provider does not come under the exception as the exception relates to cases of organized tax

evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries i.e. the cases of the beneficiaries. Hence, the appeal is liable to be dismissed on account of low tax effect. However, it is also seen that the assessment in this case was made on protective basis and the Ld. CIT(A) has reduced the addition in the case of the assessee from Rs. 14,65,442/- to Rs. 4,88,481/- and granted relief of Rs. 9,76,971/-. Since substantive addition has been made in the case of the husband of the assessee, the protective addition could not be reduced and thereafter be sustained in the case of the assessee and was liable to be deleted. It has been held in the case of **Dayabai v. Commissioner of Income-tax** [1985] 23 Taxman 377 (MP) that while the Ld. AO may be justified in making a protective assessment but once a substantive assessment has been made, the protective assessment cannot survive in the appeal. The relevant extract from the order is as under:

7. Similar question was considered by the Supreme Court in Lalji Haridas v. ITO [1961] 43 ITR 387 , where their Lordships observed as under:

"... If in the proceedings taken against Lalji it is finally decided that it is Lalji who is responsible to pay tax for the income in question it may not become necessary to make any order against Chhotalal. If, however, in the said proceedings Lalji is not held to be liable to pay tax or it is found that Lalji is liable to pay tax along with Chhotalal it may become necessary to pass appropriate orders against Chhotalal. When we suggested to the learned counsel that we propose to make an order on these lines they all agreed that this would be a fair and reasonable order to make in the present proceedings." (p. 393)

Similarly, the Allahabad High Court also had an occasion to consider similar questions in the case reported in Smt. Hemlata Agarwal v. CIT [1967] 64 ITR 428 .

8. It is, therefore, clear that the protective assessment made against Smt. Dayabai only to meet a situation that in case the assessment of Vinit Talkies is not made, this assessment could become operative, cannot now be



maintained as the same income has already been assessed as the income in the hands of the firm Vinit Talkies, Jabalpur.

5. Since in the instant case only a protective assessment was made in the case of the assessee and substantive assessment was made in the hands of the husband, in the appeal a clear finding had to be given as to in whose hand the income is liable to be assessed. Since substantive assessment has been made in the hands of the husband therefore, the protective assessment in the hands of the assessee becomes infructuous and the same is liable to be cancelled.

6. Hence, on both the counts i.e. on account of tax effect as well as on the facts of the case, the addition in the hands of the assessee is not liable to be sustained and the appeal is not maintainable and is hereby dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 18th February, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 18.02.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **ACIT, Central Circle-4(1), Kolkata.**
2. **Ritu Kejriwal, 33B, Sarat Bose Road, Kolkata, West Bengal, 700020.**
3. CIT(A)-27, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata