

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA "A" BENCH, KOLKATA**

**BEFORE SHRIS.S.VISWANETHRA RAVI, HON'BLE JUDICIAL
MEMBER AND
DR.A.L. SAINI, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 2670/KOL/2013
(Asst. Year: 2007-08)**

Ajay Kumar Mahapatra EE-82, Flat No.9, Salt Lake City Kolkata-700 091	Vs.	ITO, Ward-51(4), Uttarapan Complex, Ultadanga, Manicktala Civic Centre, Kolkata-700054
PAN No. AEZPM0434K (Appellant)		(Respondent)

Assessee by : ShriSubash Agarwal-Adv.
 Department By : ShriSallongYaden, Addl. CIT-DR
 Date of hearing : 08/11/2016.
 Date of pronouncement 25/11/2016.

ORDER

PerDr. Arjun Lal Saini, A. M.

The caption appeal filed by the assessee pertaining to Assessment Year (AY) 2007-08, is directed against the order passed by Commissioner of Income Tax (Appeals)-XXXII, Kolkata in appeal No.66/XXXII/12-13/51(4)/Kol,dated 06.08.2013, which in turn arises out of an order passed by Assessing Officer u/s. 143(3)/263 of the Income tax Act, 1961 (in short 'the Act') dated 31.12.2012.

2. The brief facts *qua* the assessee are that the original assessment u/s. 143(3) of the Act was completed on 31.12.2009 on a total income of ₹29,88,250/-.After completion of assessment u/s. 143(3) of the Act, the Ld. CIT Kolkata-XVIIvide its order u/s. 263 dated 20.02.2012, set

aside the assessment and directed the Assessing Officer to do the assessment afresh as per law after carried out necessary verification in respect of cash deposit of ₹3,05,000/- made during the period from 05.07.2006 to 14.08.2006 in the bank account of assessee with HDFC bank. The AO made the addition by observing the following:-

"1) In course of hearing on 12.11.2012 the assessee was requested to explain the source of cash deposits in his savings bank account with HDFC Bank. In reply to the above query the assessee simply stated that cash was withdrawn from the bank account of M/s Spak Enterprises Pvt. Ltd. in which the assessee is a director and deposited in his personal bank account. The assessee also furnished a written submission explaining the above issue. The explanation of the assessee is as under:-

'I would like to submit the statements of my business account maintained in the name and style of Spak Enterprises Pvt. Ltd. having accounts in several banks mainly that in United bank of India, Overseas branch, Kolkata (bearing current deposit a/c no. 5756), ICICI Bank Ltd., 20, R.N Mukherjee Road and Standard Chartered Bank, 19, N.S.Road, where from the cash has been withdrawn for payment to the farmers or Mandi (Market) brokers for procurement of rice, dal, vegetables, onion and other agricultural items, which we were exporting to mainly Bangladesh.

Due to my sickness and absence from active business deals, my staff members out of ignorance and sometimes out of negligence on their part have utilised the current account of the company and my personal account for business purpose. As HDFC Bank is a new generation private bank and they had all India fund transfer & net transfer facility, most of my business payments are made through my personal account by my staff members & manager, whom I gave a power of attorney also.'

Considering the above the assessee was asked to furnish the books of account of M/s Spak Enterprises Pvt. Ltd. The assessee failed to produce the books of account of M/s Spak Enterprises Pvt. Ltd. The assessee expressed his inability to furnish the books of account. Again, the explanation as filed by the assessee is not accepted, because it is hardly acceptable that due to ignorance and sometimes out of negligence of the staff members of the company have utilised the personal bank account of the assessee for business purpose. In his submission the assessee stated that cash has been withdrawn from the company's bank account for payment to the farmers or Mandi (Market) brokers for procurement of rice, dal, vegetables, onion and other agricultural items. Here the assessee stated in his submission dt. 14.12.2012 that cash has been withdrawn from the company's bank account and deposited into his personal account. In view of the above, it is found that the assessee tried to justify his claim by offering different views in his submission. Moreover, the assessee could not justify his claim by producing documentary evidences in relation to the source of cash deposits of Rs.31,31,800/- during the F.Y 22006-07.

Hence, it is clear that the entire money was in the possessions of the assessee. The assessee was not disclosing the true picture of how he came into possession of such huge amount of money. Since, the entire amount was deposited in assessee's account and the assessee was not prepared to disclose the source of its receipt. It was for the assessee, to prove that the money does not belong to him.

Therefore, it can be concluded that the cash deposited in HDFC Bank for the FY 2006-07 is the assessee's unexplained money. {M.Sundaram vs. Assistant Commissioner of Income Tax [2006] 287 ITR 145 (Mad)}. Therefore, the sum so credited is charged to income tax as the income of the assessee of the FY 2006-07 relevant to the AY 2007-08. Considering the above, Rs.31,31,800/- is added with the total income of the assessee as unexplained money U/s 69 of the I.T.Act,1961"

3. Aggrieved from the order of the Assessing Officer, assessee filed an appeal before Ld. CIT(A) who has confirmed the order passed by the Assessing Officer observing the following:-

"The assessee filed a copy of his bank account with HDFC bank, Stephen House (BBD Bag) branch and it is seen that between 05/07/2006 to 14/08/2006, the following cash deposits have been made:-

<i>05.07.2006</i>	<i>....</i>	<i>Rs.1,70,000/-</i>
<i>07.08.2006</i>	<i>....</i>	<i>Rs. 50,000/-</i>
<i>14.08.2006</i>	<i>....</i>	<i>Rs. 85,000/-</i>
		<i>Rs.3,05,000/-</i>

These sums have been transferred out by cheque to other bank accounts or to entities like India Bulls Pvt. Ltd.

Decisions:

After carefully considering the facts of the case, it is held that the assessee has not been able to prove the nature and source of the cash deposit of Rs.3,05,000/-. The addition deserves to be so sustained for a number of reasons:-

- (1) The assessee did not file any copy of Bank statement of the company M/s Spak Enterprises (P) Ltd for the period 05.07.2000 to 14.03.2006.*
- (2) The assessee has not even alluded to any possible dates when the sums were withdrawn from any other source.*
- (3) Even for the rest of the period, the assessee could file bank account statement of M/s Spak Enterprise (p) Ltd as under:*

(i) A/c No CD/5756 with UBI, Overseas Branch for the period 07.09.2006 to 10.10.2006.

(ii) A/c No. CA-000605011874 with ICICI Bank for the period 01.11.2006 to 31.12.2006, and for the period 01.03.2007 to 31.03.2007 only. Even when these were checked to find whether the same can seemingly suggest that the claim of the assessee during original assessment proceedings could be true and the entries of cash withdrawal were sought to be compared to entries of cash deposits in the assessee's HDFC bank account statement [though it is not a subject matter of the present appeal] the claim of the assessee cannot be verified at all. There are no simple transaction of to & fro between the company & personal bank accounts.

(iii) The claim of the assessee that cash is withdrawn from the company's account and by mistake deposited in his SB account on the same date and later on reversed is not observed anywhere and is held not correct at all.

(4) Before the Assessing Officer, the assessee had filed a letter dt. 12.11.2012 where the assessee had claimed that the cash amounting to Rs.3,05,000/- was deposited in his bank by some senior executive of the company and this could be best explained by such senior executive, who is not traceable. This explanation is only fit to be rejected.

(4) The fact that there are no books of account of the so called company has not been rebutted at all during appellate proceedings also.

In view of the above the ground of appeal in respect of the addition of Rs.3,05,000/- is dismissed."

4. Not being satisfied with the order of the Id CIT (A), the assessee is in further appeal before us and has taken the following grounds of appeal:

"1) That the Hon`ble CIT(A) was wrong in conforming the Assessing Officer`s order regarding the addition as un-explained cash credit the cash deposits in the bank accounts of the assessee. That in the facts and in the circumstances of the case, the addition of Rs. 31,31,800/- on account of un-explained cash credit in the bank account are wrong, illegal and basis and the additions so made should be reversed.

2) That the appellate order, as passed is against the facts and bad in law.

3) That the appellant craves leave to add, alter further ground (s) of appeal before or at the time of hearing.

4.1 Ld. Authorized Representative (AR) appeared for the assessee has submitted that assessee was not keeping well and was out of Kolkata due to his sickness, the banking transactions were done by the staff member. The said amounts were withdrawn to make payment to sellers who were agriculturists. The amount withdrawn from one of the current accounts of assessee-company, the unutilized amounts were to be deposited back. However, the staff members being ignorant and semi-literate, did not differentiate between accounts of the director and that of the assessee-company, thinking both accounts belonged to Mr. Ajay Kr. Mahapatra and hence, they deposited the amount in the bank a/c of the assessee. This ignorance lead to the deposit in the present account

of the assessee. However, the same account was personal a/c of the company, hence, the amount deposited cannot be treated as unexplained cash credit. The Assessing Officer when passing his order has mentioned that assessee could not show the source of such deposits, however, vide letter of the assessee dated 07.12.2012, the assessee has explained the same and submitted the bank statement of the company. The Ld. AR further stated that Assessing Officer did not give sufficient opportunity to explain the figure of ₹ 3,05,000/-. Ld. AR also pointed out that cash amounting to ₹3,05,000/- was deposited in his bank by some executives of the company and this could be best explain by these executives, who are not traceable. The Ld. AR for the assessee requested us to remit the matter back to the file of Assessing Officer to examine the cash deposit of ₹ 3,05,000/- afresh.

4.2. On the other hand, Ld. DR for the Revenue has primarily relied on the order passed by Assessing Officer and the stand taken by AO which we have already noted in the earlier part of this order, and is not being repeated for the sake of brevity.

4.3. Having heard the rival contentions and perused the materials available on record, we are of the view that this issue, that there is merit in the submission of the assessee, as proposition canvassed by Ld. AR of the assessee are supported by the facts narrated above. The Ld. AR explained before us, that AO did not give sufficient opportunity to explain the cash deposit in bank of ₹ 3.05 lakh and said cash was deposited by his staff member/executive staff who was not traceable at the time of assessment proceedings. He also pointed out that cash deposited amounting to ₹ 3.05 lakh has not been properly examined by AO. Therefore, considering the above factual position, we are of the view that this issue requires fresh examination at the end of the AO. Therefore, we remit the case back to the file of the AO to examine cash deposit of ₹ 3.05 lakh afresh. The Ld AR for the assessee, during the

course of hearing requested the Bench not to adjudicate the original addition made by the Assessing Officer, U/s 143(3) of the Act at Rs.28,26,800/-. Therefore, the assessee is not in appeal before us against the original addition made by the Assessing Officer u/s 143(3) of the Act at ₹28,26,800/-. Therefore, by this order, we are not directing the AO to examine the original addition made at ₹28,26,800/-. We direct the AO to examine only ₹3.05 lakh afresh after taking into account the evidence and explanation, if any, submitted by assessee.

4.4. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced in open Court on 25/11/2016.

Sd/-

(S.S.VISWANETHRA RAVI)

Judicial Member

Dated : 25 November, 2016.

Sd/-

(A.L. SAINI)

Accountant Member

Dkp.Sr.PS/-

आदेशकीप्रतिलिपिअग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Ajay Kr. Mahapatra, EE-182, Flat No.9, Salt Lake City
Kolkata-91
2. प्रत्यर्थी/Respondent-ITO Ward-51(4), Uttarapan Complex, Ultadanga, Manick-
Tola Civic Centre, Kolkata-54
3. संबंधितआयकरआयुक्त/ Concerned CIT
- 4.आयकरआयुक्त- अपील / CIT (A)
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरणकोलकाता/ DR, ITAT, Kolkata
6. गार्डफाइल / Guard file.

By order/आदेशसे,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण,कोलकाता