

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA  
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.928/Kol/2016

(निर्धारण वर्ष /Assessment Year:2010-2011)

Md. Faizul Islam, 86, Canning Street, Kolkata-700001	Vs.	ITO Ward-26(2), Kolkata-700071
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AARPI 9461 L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri S.L.Kochar & Anil Kochar, Advocates  
राजस्व की ओर से /Revenue by : Shri Sallong Yaden, ADDL.CIT

सुनवाई की तारीख / **Date of Hearing** : **23/11/2016**

घोषणा की तारीख/**Date of Pronouncement** **30/11/2016**

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the assessee, pertaining to assessment year 2010-2011, is directed against an order passed by the Id. Commissioner of Income Tax (Appeals)-19, Kolkata, in Appeal No.92/CIT(A)-19/Kol/2014-15, dated 11.03.2016, which in turn arises out of an assessment order passed by the Assessing Officer (AO) Under Section143(3) of the Income Tax Act 1961, (in short the 'Act'), dated 28.03.2013.

2. The brief facts of the case qua the assessee are that the assessee has electronically filed its return of income for the A.Y.2010-11 on 27.06.2010 declaring total income of Rs.4,27,090/-. The return was processed u/s 143(1). Later on, the case was selected for scrutiny through CASS and the AO has completed the assessment by making the addition of Rs.15 lakhs treating the same as unexplained cash credit

u/s.68 of the I.T.Act. Since the assessee did not prove the creditworthiness of the cash deposit, therefore, the AO has added Rs.15 lakhs to the total income of the assessee.

3. Aggrieved from the order of AO, the assessee filed appeal before the Id. CIT(A), who has confirmed the addition made by the AO observing the followings :-

*“5. In the appellate proceedings the appellant has chosen not to avail the several opportunities provided. In the absence of any cogent argument or material to overturn the finding of the assessing officer, I am unable to provide the relief prayed for. The action of the assessing officer in making the disallowances is confirmed”.*

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

*1. For that the Ld. CIT(A) erred in dismissing the appeal of the appellant on the alleged grounds.*

*2. For that the Ld. CIT(A) has erred in observing that the appellant has chosen not to avail the opportunities provided to the appellant.*

*3. For that the appellant had submitted all relevant details with written submissions before the Ld. CIT(A) and that there was no such default on the part of the appellant that would tantamount to non-availing of opportunity of hearing.*

*4. For that the Ld. CIT(A) who has noted the facts about the case of the appellant ought to have concluded that the appellant had explained the source of the amount of Rs.15,00,000/- along with relevant evidences and accordingly the Ld. CIT(A) ought to have properly appreciated the facts of the case of the appellant and ought not to have confirmed the order of the A.O.*

*5. For that the Ld. CIT(A) ought to have accepted the contentions raised by the appellant which were on record and ought to have accepted the source of the amount of Rs. 15,00,000/-.*

*6. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.*

5. Although, in this appeal, the assessee has raised multiple grounds of appeal but at the time of hearing the main grievance of the assessee

has been confined to ground No.4 only and other grounds were not pressed by the assessee.

6. Ground No.4 relates to addition of Rs.15 lakhs (on account of cash deposited by the assessee in bank) U/s.68 of I.T.Act.

6.1. Ld. AR for the assessee has vehemently submitted before us that the assessee has explained the source of Rs.15 lakhs before the AO. The assessee has produced the relevant document before the AO through Md. Nurul Islam, S/o Md. Niaz Hussain, where Md. Nurul Islam (vide para 4.1 of the assessment order) stated that:

*"I Md. Nurul Islam son of Md. Niaz Hussain of Kaji Para Sekedda, Suri Birbhum do hereby state and declare that I used to supply building materials to M/s Gems Construction, Saldah more Birbhum & that against my dues, I was given an amount Rs.20 lacs by bearer Cheque No.3149 which I encashed and got the amount of Rs.20 lacs from Union Bank of India 09.01.2010. I handed over the said amount to my brother Mr. Faijul Islam for safe custody. I am to state that it is neither a loan nor an advance to my brother. It is kept with him on my behalf for safety. I enclose a copy of identity card, ration card, and a copy of bank account maintained by said gems Constructions with Union Bank of India in support of my withdrawals of Rs. 20 lacs on 09-01-2010."*

Therefore, Ld AR for the assessee stated that Md.Nurul Islam submitted before the AO, identity card, ration card, and copy of bank account and by submitting these documents the assessee has proved the identity, capacity and creditworthiness of the Lender.

6.2. On the other hand, the Id DR for the revenue has submitted that the assessee has neither produced any evidence before the AO nor before the CIT(A) to prove the creditworthiness and genuineness of the transaction of Rs.15 lakhs cash deposited in the bank account of the assessee. The assessee did not appear before the Id. CIT(A) vide para 2 of order of the Id. CIT(A) where Id. CIT(A) had fixed the hearing on several

occasions i.e. on 01.06. 2015, 17.12.2015 and 26.02.2016 but there had been non-appearance on all occasions. The assessee never appeared before the Id. CIT(A) to explain the genuineness and creditworthiness of the cash deposit in the bank.

6.3. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the Id. DR for the revenue, as the propositions canvassed by the Id. DR for the revenue are supported by facts narrated above by him. The assessee has given opportunity by the CIT(A) to appear before him on three occasions but the assessee never appeared before the CIT(A), therefore, the CIT(A) passed the ex-parte order. The Ld AR requested the bench to send the case back to CIT(A) in the interest of justice. Considering the above factual position, we are of the view that an opportunity should be given to the assessee in the interest of justice. Even Id DR has agreed on this. Hence, we are of the view to remit the case back to the Id. CIT(A) to adjudicate the case afresh by giving proper opportunity of being heard to the assessee. Accordingly, we remit the case back to the Id. CIT(A).

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

Order pronounced in the open court on this 30/ 11/2016.

**Sd/-**

**(S.S.VISWANETHRA RAVI)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**कोलकाता /Kolkata; दिनांक Dated 30/11/2016**

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-ITO Ward-26(2), Kolkata
2. प्रत्यर्थी / The Respondent.-Md. Faizul Islam
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata