

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.1258/Kol/2016

(निर्धारण वर्ष / Assessment Year :2009-2010)

Smt. Jharna Saha, CB1/13, Deshbandhu Nagar Baguihati Kolkata-700059	Vs.	ITO, Ward-40(1), 3, Government Place (west) Kolkata-700001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AURPS0095A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Anil Kumar Pande,Addl-CIT

निर्धारिती की ओर से /Assessee by : Shri Manoj Kataruka, Adv.

सुनवाई की तारीख / Date of Hearing : 17/04/2017

घोषणा की तारीख/Date of Pronouncement 19/04/2017

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM

The captioned appeal filed by the Assessee, pertaining to the assessment year 2009-2010, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-13, Kolkata, in appeal No.202/CIT(A)-13/Wd-40(1)/2014-15/Kol, dated 19.02.2016, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 11.11.2011.

2. Brief facts of the case qua the assessee are that the assessee has submitted his return of income on 30.03.2010 disclosing total income of Rs.2,05,250/-. The return of income of the assessee was processed U/s 143(1) of the Act on 15.12.2010. Later on, the assessee's case was selected for scrutiny u/s.143(3) of the Act and the AO made addition of

Rs.8,00,213/- on account of assets undisclosed and Rs.8,10,000/- on account of undisclosed fixed deposits.

3. Aggrieved from these two additions made by the Assessing Officer, the assessee filed an appeal before the Id Commissioner of Income Tax (Appeals) who has confirmed both the additions. The Id CIT (A) observed that the assessee did not submit any bills, vouchers and evidences of stitching & embroidery work. The assessee did not produce invoices for purchases of raw materials and failed to prove the identity of customers. The Id CIT(A) further held that assessee had merely created documents and returns of Income Tax were filed to create capital. This way, the Id CIT(A) confirmed the addition made by the AO at Rs. 8,00,213/-.

4. Regarding addition of Rs. 8,10,000/- which relates to 50% of the fixed deposits (FD), the Id.CIT(A) observed that assessee`s total income is more than her husband`s income and her husband`s source of income was also not established therefore, 50% fixed deposits may belong to her. During the assessment proceedings the assessee denied having any relation with bank account No.02601010025852 and explained to the AO that her husband maintains the said account but her statement should not be relied because the assessee`s return of income, of past years, had not been scrutinized under section 143 (3) of the Act and therefore, the Id CIT(A) confirmed the addition of Rs. 8,10,000/-.

5. Dissatisfied with the order of Id CIT (A), the assessee is in further appeal before us and has taken the following grounds of appeals:

1. That on the facts and circumstances of the case, the action of the Id CIT(A) to uphold the addition made by the Assessing Officer in adding back the entire assets as undisclosed income of Rs.8,00,213/- in contrary to the facts and material evidences on record and is bad in law.

2. That on the facts and circumstances of the case, and material evidences on record, the action of the Id CIT(A) to uphold the addition of the Assessing Officer to add back an amount of Rs. 8,10,000/- on account of 50% of the fixed deposits as investment from undisclosed sources is contrary to the material evidences on record and the addition made is bad in law.

3. That on the facts and circumstances of the case, the additions made by the Assessing Officer and upheld by the Id CIT(A) is arbitrary, illegal and excessive.

6. The First ground relates to addition on account of undisclosed assets Rs.8,00,213.

6.1 The Ld AR for the assessee has submitted before us that assessee files regular income tax return and prepares profit and loss account and Balance Sheet every year. The Balance Sheet of the assessee as on March 31,2009 shows the total assets at Rs.8,00,213/- and total liabilities at Rs. 8,00,213/-, and this way the Balance Sheet of the assessee has fully agreed and does not contain any error. But the Assessing Officer made addition of Rs.8,00,213/- (Grand total of assets side of the Balance Sheet). Assets side of the Balance Sheet of the assessee contains land, Flat, Loans and Advances, Gold & ornamentals and Cash and Bank balance. The Assessing Officer did not point out any mistake in any of the assets mentioned in the Balance Sheet therefore, the addition made by the Assessing Officer is totally arbitrary and without any logic. In the Balance Sheet of the assessee the capital account of the assessee does agree with the previous years` Balance Sheet. The Id AR for the assessee

has submitted before us the Balance Sheets of the assessee as on 31.03.2008, and 31.03.2007 where opening and closing balances of assets and liabilities do not contain any error. Moreover, the assessee has been filing return of income since last many years and assessments were completed under section 143(1) of the Act.

6.2 On the other hand, the Id DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6.3 Having heard the rival submission and perused the material available on record, we noticed that assessee under consideration has been filing return of income and preparing profit and loss account and Balance Sheet since last many years. The assessment of the assessee had been completed under section 143 (1) of the Act in past years. The closing balances of the previous years have been carried forward in subsequent years. It is not clear from either of the order (AO Order and CIT(A) order) that on what material this addition was based. The addition made by the AO and confirmed by the Id CIT(A) is without any base. Therefore, we delete the addition of Rs.8,00,213/-

6.4 In the result, the appeal filed by the assessee on ground No.1, is allowed.

7. Second ground raised by the assessee relates to addition of Rs.8,10,000/- (50% of Fixed Deposits), as investment from undisclosed sources.

7.1 The Id AR for the assessee has submitted before us that all the fixed deposits were disclosed in the return of income of the assessee's husband. The Husband of the assessee has ownership of all the fixed deposits. The assessee denied to the Assessing Officer that no any fixed deposit relates to her. She has not shown these fixed deposits in her return of income. These fixed deposits were made out of Joint bank account and husband of the assessee is disclosing the interest income of these fixed deposits in his return of income and paying taxes thereon. The Id AR for the assessee submitted before us the Balance Sheet of assessee's husband and proved that all fixed deposits were in the name of husband and these fixed deposits were made out of the earning of the husband.

7.2 On the other hand, the Id DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7.3 Having heard the rival submissions and perused the material available on record, we noticed that all fixed deposits were shown by the assessee's husband. These are made out of the income earned by the husband. The assessee's husband has been filing the return of income since past many years and has been paying taxes on the interest income of these fixed deposits. It is not clear from either of the order (Order of AO and Order of CIT(A)) that on what material this addition is based. It is very much clear that all fixed deposits were made out of the income earned by assessee's husband and husband has been disclosing them in

his return on income and paying taxes on accrued interest, therefore, considering the factual position the addition made by the Assessing Officer and confirmed by the Id CIT(A) needs to be deleted. Accordingly, we delete the addition.

7.4 In the result, the appeal filed by the assessee on ground No., 2 is allowed.

Order pronounced in the open court on this 19/04/2017.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 19/04/2017

प्रकाश मिश्रा/Prakash Mishra,Sr.PS.

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

1. अपीलार्थी / The Appellant- *Smt. Jharna Saha*
2. प्रत्यर्थी / The Respondent.-ITO Wd-40(1), Kolkata
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