

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
KOLKATA**

Before : **Shri M.Balaganesh, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

I.T.A. No. 473/KOL/2015
A.Y: 2011-12

Md. Samsuddin
PAN: BKBPS2842A
(Appellant)

Vs.

I.T.O., Ward 3, Malda
(Respondent)

Appearances by:

Shri Subash Agarwal, AR for the assessee
Shri Debasis Banerjee, JCIT, Sr.DR for the revenue

Date of hearing : 07-11-2016
Date of pronouncement : 25-11-2016

ORDER

Shri S.S. Viswanethra Ravi, JM:

This appeal by the assessee is directed against the order dated 27-02-2015 passed by the Commissioner of Income Tax(Appeals), Jalpaiguri for the assessment year 2011-12.

2. In this appeal, the Assessee has raised the following grounds of appeal:-

1.(a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in making an enhancement of Rs.55,05,355/- by giving a direction to the AO to add the entire cash deposits of Rs.28,07,000/- and Rs.44,98,355/- into the Axis Bank and Union Bank of India respectively by wrongly treating the same as undisclosed income.

(b) For that the direction of enhancement by the Ld. CIT(A) is invalid in the eye of law as the due process of law was not followed by him before giving such directions.

2. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the entire addition of Rs.18,00,000/- made by the AO by applying the peak credit theory in respect of cash deposits into the Axis Bank and Union Bank of India.

(b) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have considered the facts that the entire cash deposits into the Axis Bank and Union Bank of India were made by the appellant's employer for the purpose of payments to the labourers.

3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.

3. The only question in this appeal is to be decided as to whether the CIT-A justified in enhancing the addition in terms of jurisdiction as provided to him u/s. 251 of the Act.

4. The assessee is an individual and derives his income from salary working as Sr. Engineer under Kalpataru Power Transmission Ltd in its unit at Dehradun. The assessee filed his return of income disclosing total income of Rs.1,95,098/-. Under scrutiny notice u/s. 143(2) of the Act was issued. In response to such notice the assessee along with his advocate appeared.

5. According to AO, the assessee was maintaining two savings bank accounts, one in Axis Bank, Malda Branch having account no. 389010100060996 and another in Union Bank of India, Rishikesh Branch having account no. 306902010051240 and found that deposits were in such two accounts of Rs.28,07,000/- and Rs.44,98,355/- respectively for the FY 2010-11 relevant to AY under consideration. In explanation, the assessee submitted a written submission as under:-

During the course of assessment proceedings the assessee submitted a written explanation and stated that:-

"I beg to lay before you the following facts for favour of your kind and sympathetic consideration:-

1. That, I Md. Samsuddin (PAN-BKBPS2842A) of Vill-Mahishbathani, Post-Barkol, Dist:Malda,732128, West Bengal, working as a salaried employee (Sr. Engineer) for the Assessment year 2011-12 of M/s Kalpataru Power Transmission Limited, 101, Part-III,G.I.D.C., Estate, Sector-28, Gandhinagar-382028.

2. That, as a salaried, employee, I have submitted my Income-tax Return in form ITR-1, on 12.07.2011, vide no. 01092 before the I. T.O., Ward-1, Rishikesh for the A. Y. 2011-12.

3. That, during the A.y. 2011-12, my company i.e. M/s Kalpataru Power Transmission Limited, had made' a cash payment in several times to my Company Salary/Savings Bank account for distribution of company's labour on behalf of the Company. In this connection, I also beg to inform you that, I have a joint account with my wife (Laily Begum) in SBI- Arapur, Malda and the few amount of deposits in that account done my wife and family.

4. That, at the time hearing (Scrutiny assessment proceedings for the, A. Y. 2011-12 before ITO/Ward-3, Malda you asked me to produce sources of cash deposits in my savings Bank account (which was paid by my Company M/s Kalpataru Power Transmission Ltd.). And with reference to your queries, the company did not yet, provide me till now the information regarding payment for which I asked for.

5. That, as working as a salaried employee(Sr. Engineer) the company cannot provide me any such amount other than my salary, into my salary/savings bank account but company transferred such amount into my account to do the payments to the company's labour/concerned persons on behalf of company and for that reasons the company did not deduct any TDS.

6. That, the company kept me completely in dark while these all things had been going on and I want to confess that I have no proper and sufficient knowledge regarding these things and all the works done due to my ignorance of Rules and laws. Under the above circumstances, I would request you to be kind enough to excuse me for this unintentional activity and exempt me from any penal proceedings, for which I shall be thankful to you and may get a chance of rectifying myself. Expecting your kind favour and co-operation in this matter.

6. Considering the above the AO issued notice u/s. 133(6) of the Act to employer of Assessee, M/s. Kalpataru Power Transmission Limited. Accordingly, the AO adopted the peak credit on above said two bank accounts and added the amount of Rs.13,00,000/- Rs.5,00,000/- as peak credit of Union Bank

account and Axis Bank respectively as unexplained money u/s. 69A of the Act.

7. Questioning the assessment order u/s. 143(3) of the Act the assessee submitted before the CIT-A that all the amounts were deposited in his bank accounts by his employer for the purpose of payment to labourers, who were from Malda. The CIT-A observed that the assessee could not able to produce the evidence or confirmation whatsoever from his employer in support of his contention. The CIT-A directed the AO to add the entire deposits as found by him in the said two bank accounts. Thereby, the CIT-A enhanced the income of the assessee.

8. Aggrieved by such order of the CIT-A, now the assessee is in appeal before us by raising the aforementioned grounds of appeal.

9. Before us the Ld.AR submits that the CIT-A has failed to follow the procedures as contemplated u/s. 251 of the Act in issuance of notice. He further submits that the assessee was paying the payments to labourers on receiving the said payments from his employer, M/s. Kalpataru Power Transmission Ltd through his bank accounts. The said bank accounts are jointly maintained by the assessee and his wife. In his absence, she was paying the payment to labourers, who were working with this employer, Dehradun, but they actually hail from Malda, West Bengal. In support of his contention, the Ld.AR field details of additional evidences page no.1 to 15 and drew our attention to page nos.7 to 13, wherein details of attendance sheet of employees/workers of the employer are disclosed. He also referred to page nos. 14 & 15 regarding EPF

deposits for the years 2009-10 & 2010-11 of Md. Sahidula Islam, an employee of the said employer, page nos. 2 to 5 to show the correlation with deposits and withdrawals thereon from assessee's account.

10. Without prejudice, he urged before us to treat the same as peak credit. In support of his contentions, relying on the order of the 'C 'Bench, Kolkata dated 16-7-2010 in the case of Uday Shankar Mahawar in ITA No. 1903/Kol/2009 and decision of the Hon'ble Supreme Court in the case of CIT Vs. Smt. P.K Noorjahan reported in (1999) 103 Taxman 382(SC) argued that the AO cannot treat the source of investment as income of the assessee when the explanation offered by the assessee is not found satisfactory. The Ld. AR further argued that the assessee has offered explanation to the Respondent revenue and referred to page no-31 of the paper book, wherein the assessee has wrote a letter to his employer seeking clarification/certificate of payments made to him in his bank accounts.

11. On the contrary, the Ld. DR raised his doubt about the probability of existence of business and abnormality in deposits as found in saving bank account of the assessee. He also raised his suspicion with regard to payments made to labourers for Malda, whereas in the assessment order mentioned as Rishikesh. The Ld. DR also argued how the big corporate paying the salaries in cheque and thereafter paying the payments to labourers through cash disbursements. He submitted that in present day big corporate are disbursing the salary through bank to bank and not by cheque. He submitted before us that the issue may be sent back to the AO for verification of the additional evidence as filed by the assessee before the Tribunal.

12. Heard rival submissions and perused the material available on record including the details of additional evidence as available in the paper book before us. We find that the Id.AR of the assessee submitted before us four fold arguments. One is with regard to adoption of peak credit to that effect he filed the documents by way of additional evidence to show the peak credit on the basis of deposits and withdrawals made in the said two bank accounts. He worked out the peak credit at Rs.8,12,500/-. Another argument is on reliance of the decision of the Hon'ble Supreme Court in the case of Smt. P.K Noorjahan *supra* to show that the AO cannot directly make the addition without finding/considering the explanation offered by the assessee not satisfactory. Third argument is with regard to corresponding of deposits and withdrawals. Lastly, the CIT-A did not follow the procedure as contemplated in Section 251 of the Act in issuance of notice in view of the enhancement of assessed income. Considering all the contentions of the Ld.AR and in the facts and circumstances, we find the assessee has also filed a list of workmen for the month of Jan'11 and also filed the copy of EPF deposits of Md. Sahidul Islam from 2009-2011. Admittedly, all these documents were not filed before the AO during assessment proceedings. Taking into consideration the arguments and submissions as made before us by the Ld. AR and Ld. DR, we are of the view that the issue requires fresh verification by the AO. Accordingly, we remand the issue to the file of the AO to consider all the documents as filed by the assessee before us and to pass an order in accordance with law. The assessee shall be at liberty to file necessary evidences, if any, to substantiate his claim. He is also directed to co-operate with the AO in further assessment proceedings.

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

ORDER PRONOUNCED IN OPEN COURT ON 25th November,2016

Sd/-

Sd/-

M.Balaganesh
Accountant Member

S.S. Viswanethra Ravi
Judicial Member

Dated 25-11-2016

Copy of the order forwarded to:

1. The Appellant/assessee: Md. Samsuddin, Mahishbathani, Barkol, Malda PIN 732128.
2. The Respondent/department: Income Tax Officer, Ward 3, 1st Floor, Netaji Market, Malda-732101 (WB).
3. /The CIT(A)
4. The CIT
5. DR, Kolkata Bench
6. Guard file.

**PP/SPS

True Copy,

By order,

Asstt Registrar

