

**IN THE INCOME TAX APPELLATE TRIBUNAL, “ B” BENCH, KOLKATA**

Before : **Shri N.V. Vasudevan, Judicial Member, and  
Shri M. Balaganesh, Accountant Member**

**ITA No. 162/Kol/2013 A.Y 2009-10**

Sumit Kumar Sanei  
PAN: ARIPS 6163R  
(Appellant)

Vs.

I.T.O Ward 32(2), Kolkata  
(Respondent)

For the Appellant/Assessee: Shri Subash Agarwal, Advocate, Id.AR

For the Respondent/Department: None appeared

Date of Hearing: 28-01-2016

Date of Pronouncement: 29 -02-2016

**ORDER**

**SHRI M.BALAGANESH, AM**

This appeal of the assessee arises out of the order of the Learned CIT(A)-XIX, Kol in Appeal No. 222/CIT(A)-XIX/ITO, Wd-3292)/Kol/11-12 dated 16-11-2012 for the assessment year 2009-10 against the order of assessment framed by the Learned AO u/s. 143(3) of the Income Tax Act 1961 (hereinafter referred to as the ‘Act’).

2. None appeared on behalf of the revenue. So we have proceeded to dispose off the appeal after hearing the Id.AR and perusing the material available on record on merits.

3. The first issue to be decided in this appeal of the assessee is as to whether an addition of Rs.28,53,113/- representing cash/cheque deposits in undisclosed bank account maintained with ICICI Bank could be brought to tax in the facts and circumstances of the case.

4. The brief facts of this issue are that the assessee has maintained a saving bank account maintained with State Bank of Hyderabad, Park Street Branch, Kolkata vide account no.62003442810, which is a disclosed bank account in the return of income of the assessee. The Id. AO observed that the assessee has also maintained another saving bank account ( no. 003401024457 ) with ICICI Bank 1/1 Ashutosh Choudhury Avenue, Ballygunge Branch, Kolkata, which is undisclosed bank account in the return of income of the assessee. In the said undisclosed bank account, there were cash deposits of Rs.18,94,400/- and cheque deposits of Rs. 9,58,713/-. The Id.AO treated the entire credits of the said bank accounts as unexplained cash credit u/s. 68 of the Act by disbelieving the contentions of the assessee. On 1<sup>st</sup> appeal, before the Id. CIT(A) it was pleaded by the assessee that the said bank account belongs to the assessee in his HUF capacity, which was operated by mentioning the PAN of the assessee. The assessee tried to explain the sources of cash deposit as gifts received from his grand mother, Smt. Gita Devi Sanei and also stated that the cheque deposits represent the sale proceeds of shares and other receipts. However, the Id. CIT(A) found that the assessee had not given the date of marriage in order to believe the version of HUF status. Moreover, it was found that the bank account was opened on 7-6-2009 when the assessee was just 20 years old. Accordingly, he held that gifts received from his grand mother for creation of corpus fund of HUF is a cooked up story by the assessee. It was also found that the grand mother (donor of the gift) passed away on 14-04-2009. Summons were issued to the legal heirs of Smt. Gita Devi Sanei to verify the veracity of the said gift. It was found that none of the legal heirs were able to explain the occasion for which the alleged gift was given to the assessee. Based on this fact, the Id.CIT(A) upheld the order of the Id.AO in making addition. Aggrieved the assessee is in appeal before us on the following grounds:-

*1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs. 28,53,113/- made by the A.O. on account of alleged unexplained deposit into the ICICI Bank account.*

*2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 1,595/- made by the A.O. in the hands of the assessee on account of Bank Interest from the ICICI Bank Account.*

*3. Without prejudice to the above, the peak credit theory ought to have been applied in respect of the alleged undisclosed bank account with ICICI Bank.*

5. The Id.AR argued that it is an admitted fact that the said bank account maintained with ICICI Bank was undisclosed by the assessee in the return of income and the said bank account contained certain deposits and withdrawals and the withdrawals made from the said bank account would also act as source for subsequent deposits in the same bank account. Accordingly, he prayed before us for adoption of peak credit to be added in the facts and circumstances of the case.

6. We have heard the Id. AR and perused the material available on record. We find that in the facts and circumstances, the transactions in the undisclosed bank account maintained with ICICI Bank has to be brought to tax by adopting the peak credit method. Thus, the assessee is hereby directed to furnish the workings of the peak credit, which needs to be verified by the Id.AO about its veracity. Hence, we deem it fit and appropriate, in the interest of justice and fair play, to set aside this issue to the file of the Id.AO, to frame this addition based on the workings of peak credit as would be given by the assessee and of course, after verification by the Id.AO. Therefore, the ground nos. 1 to 3 of assessee's appeal are allowed for statistical purpose.

7. The second issue to be decided in this appeal of the assessee is as to whether an addition of Rs.2,20,000/- could be made towards deemed dividend u/s. 2(22)(e) of the Act in the facts and circumstances of the case.

8. The brief facts of this issue are that the assessee is a director in M/s.G.S Laminators Pvt. Ltd and had received a sum of Rs. 2,20,000/- as unsecured loan from the said company during the assessment year under appeal. The Id. AO observed that M/s. Gopal & Sons (HUF) held 8000 shares of this company, which was close to 80% shareholding of the said company. The Id. AO found that the assessee is one of the members of the said HUF. When this issue was confronted by the Id.AO as to why the provisions of section 2(22)(e) of the Act should not be invoked in the case of assessee,

the assessee submitted that he is not a shareholder of the said company. Accordingly, he submitted that the provisions of section 2(22)(e) cannot be invoked in his hands. The Id.AO observed from the copy of the annual return filed by the company before the Registrar of Companies (ROC) that Shri Gopal Kumar Sanei HUF had sold 8000 shares to Shri Gopal Kumar Sanei during the financial year 2008-09. For this, the assessee pleaded that some typographical errors had crept in the annual return filed with ROC with regard to the name of the shareholder. The Id. AO ultimately concluded that the shares were held by Gopal & Sons HUF on 1-4-08, but the same were transferred to individual on 31-3-09. Thus, he invoked the provisions of section 2(22)(e) of the Act on the assessee and brought to tax Rs.2,20,000/-. On 1<sup>st</sup> appeal before the Id.CIT(A), the assessee pleaded that 8000 shares were held by Shri Gopal Kumar Sanei in his individual capacity during the financial year 2008-09 and no shares were held by M/s. Gopal & Sons HUF. In this regard, he also filed a certificate from M/s.G.S Laminators Pvt. Ltd that the word Gopal & Sons was wrongly entered in the annual return filed with ROC in place of Shri Gopal Kumar Sanei. Accordingly, he pleaded that the assessee is not a shareholder of the lending company and the HUF is not the shareholder of the lending company. Accordingly, the provisions of section 2(22)(e) of the Act cannot be invoked in the hands of the assessee.

9. We have heard the Id.AR and perused the material available on record including the paper book as filed by the Id.AR before us containing the audited financial statements of M/s. G.S Laminators Pvt. Ltd together with return acknowledgement and list of shareholders of the said company. We find from the said documents that the lending company at the outset does not possess any accumulative profit. We also find that there are some discrepancies with regard to the names of the shareholders. We also find that the lower authorities have not examined the aspect of availability of accumulated profits of the lending company. In these circumstances, we deem it fit and appropriate, in the interest of justice and fair play, to set aside this issue to the file of the Id.AO to verify the register of the shareholders of the lending company and other relevant documents in order to ascertain the true shareholding pattern of the said company during the financial years

2007-08 and 2008-09 and to give a definite finding with regard to availability of accumulated profits of the lending company and decide the issue in accordance with law. Ground nos. 4 raised by the assessee is allowed for statistical purpose.

10. The third issue to be decided in this appeal of the assessee is as to whether an addition of Rs.1,35,000/- on account of alleged director's remuneration could be brought to tax in the facts and circumstances of the case.

11. The brief facts of this issue are that there are certain credits in the same bank account maintained with State Bank of Hyderabad, which the assessee explained to be salary received from M/s.G.S Fertilisers Pvt. Ltd. Accordingly, the Id.AO added the same. But on 1<sup>st</sup> appeal before the Id.CIT(A), the assessee stated that he had not received the sum of Rs.1,35,000/- but instead of it, he received a sum of Rs.1,45,000/- from the said company as loan. The assessee had also repaid the same to the company. Thus, the assessee pleaded before us for deletion of addition of Rs. 1,35,000/- as made by the Id.AO on account of alleged director's remuneration. The Id. CIT(A) held that this is precisely a complete change of stand by the assessee, which was not accepted by the Id. CIT(A) as he held the same to be an afterthought. Accordingly, he upheld the impugned addition made by the Id.AO on this issue. Aggrieved, the assessee is in appeal before us on the following ground:-

*5. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 1,35,000/- made by the A.O. on account of alleged Director's remuneration.*

12. We have heard the Id.AR and perused the material available on record including the paper book containing the ledger account of M/s. G.S Fertilisers Pvt. Ltd in the books of assessee vide page 29 of the paper book. We find from the relevant page of the paper book that the assessee had borrowed loan and also repaid the same by cheques to said M/s. G.S Fertilisers Pvt. Ltd to the tune of Rs.1,45,000/-. We find that this aspect has also not been examined by the Id.AO. Accordingly, we deem it fit and appropriate, in the

interest of justice and fair play, to set aside this issue to the file of the Id.AO to verify the same. This ground of assessee's appeal is allowed for statistical purpose.

13. The fourth issue to be decided in this appeal of the assessee is as to whether a sum of Rs.51,368/- could be added in the hands of the assessee representing reimbursement of taxes in the facts and circumstances of the case.

14. The brief facts of this issue are that there were certain credits in the bank account maintained with State Bank of Hyderabad as follows:-

16-05-2008	Rs. 554/-
-Do-	Rs. 245/-
-Do-	Rs.299/-
-Do-	Rs.11,890/-
-Do-	Rs.38,380/-

15. The assessee tried to explain before the Id.AO that these credits represent reimbursement of taxes made by M/s Sanei Estates P. Ltd ; M/s. The Nawn Estates P.Ltd and M/s. G.S Fertilisers P.Ltd for payment of taxes through online banking channel. It was also explained that the monies were received from these companies which got credited in the bank account of the assessee and immediately the same were utilized for online payment of taxes for and on behalf of the said companies. However, the Id.AO observed that the assessee did not have sufficient cash balance to make such payment of taxes initially in order to enable him to seek reimbursement from the said companies. Hence, such credits were brought to tax as unexplained cash credit u/s. 68 by the Id.AO. On 1<sup>st</sup> appeal before the Id.CIT(A) the assessee produced bank statement, which clearly depicted the fact that the amounts were received from these companies and immediately the same were utilized for payment of taxes on behalf of those companies. Accordingly, he pleaded before us for deletion of addition made by the AO. However, the Id. CIT(A) did not admit the bank statement being fresh evidence and confirmed the order of the Id.AO in making the impugned addition. Aggrieved, the assessee is in appeal before us on the following ground:-

*6. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs. 51,368/- made by the A.O. on account of reimbursement of tax.*

16. We have heard the Id.AR and perused the material available on record including the paper book filed by the assessee containing the relevant pages of bank statement/bank account maintained with the State Bank of Hyderabad and copy of tax remittance challan vide pages 30-36 of the paper book. On perusal of the same, we find that the assessee indeed had received the monies from the said companies, which were duly credited in the bank account of the assessee maintained with State Bank of Hyderabad and immediately the same were indeed paid towards tax payment of the said companies through on line banking facility. We also find from the tax remittance challan as produced before us that the version of the assessee is correct. We further find that the bank account maintained with State Bank of Hyderabad is already disclosed bank account by the assessee in the return of income. While this is so, there is no need to make any addition on this issue. Ground no.6 as raised by the assessee before us is allowed.

17. The last issue to be decided in this appeal of the assessee is as to whether an addition of Rs. 50,000/- representing cash deposits in the bank could be made in the hands of the assessee in the facts and circumstances of the case.

18. The brief facts of this issue are that the assessee has made cash deposits of Rs.50,000/- on 21/1/2009. The Id.AO observed that the assessee had shown Rs.430 as cash balance as on 31-03-2008 and he had not withdrawn any cash from the bank account prior to 13-10-08 and only on 13-10-08 he has withdrawn cash of Rs.34,000/-, which would not remain with the assessee as source for deposit on 21-01-2009. Based on this observation, he had added the entire cash deposit of Rs. 50,000/- as unexplained cash credit u/s. 68 of the Act. On 1<sup>st</sup> appeal, the Id.CIT(A) upheld this addition as made by the Id.AO. Aggrieved, the assessee is in appeal on the following ground:-

*7. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 50,000/- made by the A.O. on account of cash deposit in the bank.*

19. We have heard the Id.AR. We find from the facts that there is cash withdrawal of Rs.34,000/- on 13-10-2008. The revenue had not brought any contrary material/evidence to prove that this sum of Rs. 34,000/- was spent by the assessee for some other purpose. Accordingly, this would definitely remain as source for the assessee to explain the cash deposit in part. Hence, we deem it fit, appropriate and in the interest of justice, to grant relief to the extent of Rs.34,000/- and confirm the balance of addition of Rs.16,000/- as unexplained cash deposit in the bank. This ground of the assessee's appeal is partly allowed.

20. In the result, the appeal of the assessee is partly allowed for statistical purpose as stated above.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 29 -02- 2016

Sd/-  
( N.V. Vasudevan, Judicial Member )

Sd/-  
(M. Balaganesh, Accountant Member)

Date 29 -02-2016

Copy of the order forwarded  
to:-

- 1.. The Appellant/Assessee: Shri Sumit Kumar Sanei Block-A, 1<sup>st</sup> Fl., 113 Park Street, Kol-16.
- 2 The Respondent- Income Tax Officer, Ward 32(2), 10 Middleton Row, Kol-71.
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

\*\*PRADIP SPS