

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH : KOLKATA

[Before Hon'ble Sri Aby T.Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No.774/Kol/2012

Assessment Year : 2007-08

I.T.O., Ward-46(1)
Kolkata

-vs.-

Shri Anupam Nandi
Kolkata
[PAN : ABIPN 4303 N]

(Appellant)

(Respondent)

For the Appellant : Md.Ghayas Uddin, JCIT,Sr.DR

For the Respondent : Shri Miraj D.Shah, AR

Date of Hearing : 15.12.2016.

Date of Pronouncement : 23.12.2016.

ORDER

Per Aby T.Varkey, JM

This is an appeal preferred by the revenue against the order of CIT(A)-XXX, Kolkata dated 31.01.2012 for AY 2007-08.

2. Ground No.1 to 3 have been raised by the revenue against the deletion of addition of Rs.1,52,00,082/- made by the ld. AO u/s 28(iv) of the Act.

3. The brief facts of the case as noted by the AO is that the assessee has shown his capital as on 31.03.2007 at Rs.2,35,07,705/- as against the capital of Rs.14,33,285/- as on 31.03.2006. The AO asked the assessee to explain the huge increase in capital as corresponding income has not been shown in A.Y.2007-08. The assessee while explaining how the capital has increased, admitted that there was mistake in the balance sheet filed originally and so the assessee duly filed audited reconciliation statement before the AO. The assessee's explanation regarding increase in capital was attributable to inheritance of assets which consists of land and building (original cost Rs.25,000/- and revalued cost at

Rs.14.5 lakhs) and gold ornament which were pawned and pledged of 27,927 gms received by the assessee from his grand father Shri Khagendra Nath.Nandi was not believed by the Id. AO. The assessee explained before the AO that on 11.07.1997 his grand father Shri Khagendra Nath .Nandi expired leaving behind his assets in favour of the assessee. It was brought to the knowledge of the AO that the late grand father was an income tax returnee and was in the business of money lending and used to lent money on the basis of gold jewellery being pledged before him as a security and when he died there was 27,927.170 gms of gold ornaments which were pledged gold in the money lending business was transferred to the assessee who took over the business of money lending business after the demise of his grand-father. In order to prove that the assessee inherited the business of money-lending from the late grand father, the assessee produced a copy of the notarised affidavit which was sworn by the uncles of the assessee and father of the assessee, in which it was stated that according to the wish of the late grand father the money lending business and the pawn gold weighing 27,975 gms which was in the possession of the late grand father as pledged gold in the money lending business was transferred to the assessee for doing business. Thus the assessee explained to the AO that pledged gold which was revalued and the land and building got from his grand-father increased the capital of the assessee in the year under consideration, which was not fully accepted by the AO. The AO believed that the land and building was bequeathed by the assessee which was supported by a registered gift deed (original cost of Rs.25,000/- and revalued cost at Rs.14.5 lakhs) and the AO accepted the fact the late grand father of the assessee was an income tax assessee, however according to the AO it was difficult to accept that gold weighing 27,909 gms (28 kgs) came to the assessee from his late grand father. After the AO stating that it was difficult to accept that the 28 kg of gold came to the assessee from late grand father, the AO in his order at page-4 of his order curiously takes an about-turn and states as below:-

“Even assuming (But not admitting) that the grandfather had an accumulated stock of pawn ornaments weighing 27.909 kgs which devolved to the assessee, the fact would remain that such gold could not have belonged to the assessee. The ownership would normally lie with the borrowers of the money who would have pledged such gold to be kept in the custody of the assessee and the assessee was merely a custodian. It is however well known in pawn broking business that more often than not, the borrowers who leave behind gold with the lenders did not come back to retrieve their gold and the moneylenders enjoy such gold through forfeiture and such gold becomes their own assets. In the present case, even without going to the debate on the factuality and the legality to decide the issue as to whether the pawn gold could be treated as forfeited assets, by his own conduct, the assessee has established that he had indeed derived the benefit of forfeiture of the pawn gold and has treated such gold as a part of his own capital as on 01.04.2006. On admission of the assessee, the gold of 27.909 kg had got accumulated in the hands of his late grandfather who was carrying on business or pawn broking since independence of India. Therefore, on a preponderance of probability, it is almost certain that such accumulated gold did not have any claimant and would constitute forfeited gold.

However, it was not proper to treat such forfeiture to be a benefit derived by the lender (Assessee) till 01.04.2006, when finally he took the gold stock as a part of his own capital. In view of the above, I hold that by forfeiting the alleged pawn gold of 27.909 kgs and treating it as a part of his own capital as on 01.04.2006, the assessee has derived the benefit of its ownership which arose from his business and the benefit is clearly convertible money. The value of such benefit as on 01.04.2006, as computed by assessee himself is Rs.1,52,00,082/- which has to be assessed as assessee's income arising on 01.04.2006 i.e. for the A/Y 2007-08 u/s 28(iv) of the IT Act, 1961. Therefore, this will be added to the income returned by the assessee. “

4. Aggrieved the assessee preferred an appeal before Id.CIT(A) and contended that the entire confusion in respect to the increase in capital was caused due to certain mistakes committed by the auditor because of over-sight and that in the instant assessment year, the assessee deviated from the Bengali conversion single entry system to the English double entry systems, so the assets which he got from his late grand father was not reflected in the previous assessment year. The Id. CIT(A) having taking note of the fact that the late grand father of the assessee Shri Khagendra Nath.Nandi was an income tax assessee and died in 1997 and taking note of the audited statement of accounts of the said late Shri Khagendra Nath.Nandi for the year ending 31.03.1997 along with the notes of account specifying the fact of pledged gold weighing 927.170 gms and also taking note into account the physical verification report dated 7.5.1997 of M/s. P.C.Associates, Chartered Accountant regarding pledged stock of gold/jewellery as on 31.03.1997 certifying that the gold weighing 27,927.17 gms of stock of gold was in fact pledged and kept in the custody of late grand father as on 31.3.1997. The Id. CIT(A) also took note of the copy of the pledge stock register of Late Shri Khagendra Nath Nandi for the year 1996-97, 1997-98 and 1998-99 therein the continuity of the pledged items and subsequent release of some items back to borrowers. The Id.CIT(A) also took note of the statement showing release of pledged gold for the A.Y.1997-98 and 1998-99 which fact was corroborated in the remand report wherein, six persons who have taken back the pledged gold confirmed before the AO the fact of redemption back of the pledged gold. The Id.CIT(A) also took note of the fact that scrutiny assessment orders has been passed in the case of the assessee for A.Y.2001-02, 2002-03 and 2003-04. The Id. CIT(A) also took note of the fact that the assessee is the grand son of Late Shri Khagendra Nath Nandi. The assessee's father and two of his brothers were in fact could have inherited the property left by late Shri Khagendra Nath Nandi. He took note of the fact that the father of the assessee and his two brothers of the father had by an affidavit which has been notarised has categorically stated that they are

waiving their share of inheritance in the business of all assets and liabilities including pledged gold weighing 27,909.070 gms in favour of the assessee. The Id.CIT(A) after taking note of the remand report and discussing the law on pledged items demolished the theory of the AO that in the money lending business if the pledger of the gold does not take back the gold pledged then it is forfeited to the pledgee/money lender in this case to the assessee has been found to be on a totally wrong basis both on facts and law. The Id. CIT(A) after discussing the case laws has held that the pledged item can be claimed by the pledgor any time and the pledgee (money lender) has to give back the pledged item after collecting the dues. And in any case if the pledger is not able to retrieve the gold by remitting the amount as agreed upon then the assessee money lender has to give notice to the pledgor about the sale of pawned items and that during the auction the pledgee (money lender) cannot even buy the pledged items. Based on the aforesaid facts the Id. CIT(A) agreed to the explanation given by the assessee that the assessee cannot be termed as the owner of the pawned gold which got transferred to the assessee from his grand father and the same is a contingent liability and cannot be taxed in A.Y.2007-08 and ordered deletion of the addition.

5. We have heard both the parties and perused the records. The whole controversy is that during the assessment proceedings the AO observed that the assessee has shown in his own capital as on 31.03.2007 at Rs.2,35,09,705/- as against the capital of Rs.14,33,285/- as on 31.03.2006. The assessee pursuant to the notice issued by the AO to explain the increase in the capital, the assessee explained that until 31.03.2006 the accounts of the assessee were maintained in Bengali conversion single entry system and in the instant year the assessee switched on to English double entry system wherein AS-28 and AS-29 of the accounting system was followed. It was pointed out that there was a mistake on the part of the auditor who had admitted the same. The description of the gold items as inherited stock in the balance sheet was not correct because these are the

very same gold items which have been pawned before the late grand father and later on transferred to him after the demise of grand father and the said gold is appearing in the pledged stock register maintained during the business of the late grand father Shri Khagendra Nath Nandi of the assessee. The auditor clarified that the pledged items were revalued and wrong description of the items as inherited stock of gold was a wrong description. It was also clarified by the auditor that he omitted to mention that the capital includes contingent liability to the extent of revalued pledged items and as per the proper accounting standards the pledged item should have been shown as contingent asset and corresponding entry on the liability side ought to have been made as per AS-28 and AS-29 laid by the Institute of Chartered Accountant of India which was not accepted by the AO who was of the opinion though it was difficult to believe that gold was inherited by the assessee from late grand father, Thereafter, though he rightly noted that the ownership of the pledged gold is that of the borrowers, he went on to hold that if the borrowers does not redeem the pawned items, then by virtues of forfeiture, the gold need to be treated as capital of the assessee as on 01.04.2016. Thus he held that the pledged stock of gold of 27,927.170 gms as income arising on 01.04.2006 u/s 28(iv) of the Act. The Id. CIT(A) took note of the fact that the assessee's grand father Shri Khagendra Nath Nandi was into money lending business since independence and he died in 1997 and thereafter the money lending business was carried out by the assessee, the grand son and the gold/jewellery weighting 27,927.170 gms was reflected in the notes of the account specifying the pledged stock of gold as on 31.03.1997. This fact according to the Id. CIT(A) has been corroborated by the physical verification carried out by M/s. P.C.Associates, Chartered Accountants regarding the pledged stock of gold jewellery as on 31.03.1997. The Id. CIT(A) also took note of the fact that the assessee got the money lending licence on 21.11.1997 and the Id. CIT(A) has gone through the stock register of the pledged and released items from 1997 onwards and found that it contained the entire list of parties who had pledged jewellery for availing loans

and the borrowers who have redeemed the pledged gold also. Thereafter the Id. CIT(A) after taking note of the affidavit which was notarised by assessee's father and 2 uncles (i.e. two brothers of the father) who have waived their share of inheritance in the business with all its assets and liabilities including that of the pledged gold/jewelleries weighing 27,909.070 gms noted that the assessee was running the money lending business after the death of his grandfather and was having the pledged stock of 27,927.170 gms as on 31.03.1997 onwards. The Id. CIT(A) took note of the fact that in the remand report the AO has confirmed from six borrowers who had redeemed the pledged gold from the assessee. The Id. CIT(A) has not agreed with the AO's conclusion that the gold which has not been redeemed by the borrowers becomes forfeited asset of the assessee. The Id. CIT(A) has observed that the assessee could not have forfeited the pawned items and in any case he cannot own the same. The Id. CIT(A) has taken note that the entire controversy has started because in the year under consideration the assessee changed from the single entry system to double entry system and the pledged gold was wrongly shown as inherited capital in the balance sheet and which was in fact a contingent liability. The Id. CIT(A) has taken note of the auditors clarification that the description of the inherited stock of gold as capital was wrong when the fact was that the pledged gold was a contingent liability. The auditor clarified that the capital includes the contingent liability of the revalued pledged items and corresponding entry on the liability side as contingent liability as per AS 28 and 29 was not properly made and so the confusion happened. The Id. CIT(A) after appreciating the fact the assessee's grand father Shri Khagendra Nath Nandi have been in the money lending business and after his demise in 1997 the assessee's father and his two brothers have waived their share of inheritance and the money lending business to the assessee and the assessee got the licence for money lending business and the pledged gold which has been revalued in 2007 was the very same pledged gold which has been brought forward from 1997 onwards and which fact has been corroborated by the stock registers from all the pledged items from 1996-

97 onwards. Based on these facts the Id. CIT(A) has deleted the addition. The impugned findings of the Id. CIT(A) cannot be termed by us as perverse because the Id. CIT(A) has come to the conclusion based on evidence on record which has been perused by us. The whole controversy as explained by the Id. AR was due to the assessee changing in the assessment year under consideration from the Bengali conversion single entry system to the English double entry system and erroneously the auditor has shown the pledged gold in the balance sheet as capital which was in fact the contingent liability. In order to prove that the auditors mistake created the wrong description of the pledged gold, the Id. CIT(A) has reproduced the admission in this respect of the auditor in the impugned order of the Id. CIT(A) in pages 26 and 27. The question whether the assessee is into the money lending business has also been proved by the assessee by producing the money lending licence which is annexed at page 19 of the paper book and we note that licence for money lending was granted to the assessee dated 21.11.1997. The assessee's grand father Shri Khagendra Nath Nandi was into the business of money lending on the basis of the gold pledge as security is proved by the income tax returns filed by the said Shri Khagendra Nath Nandi and also from the pledged stock register of Shri Khagendra Nath Nandi for the year 1996-97 and 1997-98 which shows the pledged items and subsequent release of the same which are annexed at pages 55 to 145 of the paper book. On perusal of the audited statement of Shri Khagendra Nath Nandi for the year ended 31.03.1997 which is placed at page 49 and perusal of notes on accounts reveals the fact of stock of gold of 27,927.170 gms as on that date. This fact has been corroborated by the Chartered Accountants M/s. PC Associates who have physically verified the stock has given a certificate dated 7.5.1997 which is placed at page 50 of the paper book and list of gold stock which is placed from 51 to 54 of the paper book wherein the products, number of items, weight in grams have been enumerated. The Id. AR took our attention from pages 55 to 145 of his paper book which is the pledged stock register of late Shri Khagendra Nath Nandi for the year 1996-97, 1997-98 which shows the continuity

of pledged items and subsequent redemption/release of some of the items back to the borrowers. The Id. AR took our attention to the statement showing release of the pledged stock of gold for the year 1997-98, 1997-98 and 1998-99 which are placed at pages 146 to 163 of the paper book. The Id. AR took our attention the fact that after the death of the grand father the business of money lending was being run by the assessee from his father that he had taken the money lending licence on 21.11.1997 and the affidavit of the legal heirs of Shri Khagendra Nath Nandi dated 08.08.2016 which is placed at pages 46 to 47 of the paper book which has been notarized. The legal heirs of the grand father of the assessee i.e. the three sons of late Shri Khagendra Nath Nandi who is assessee's father and his two brothers of the father of the assessee have sworn the affidavit that they have waived their share of inheritance in the business with all its assets and liabilities including pledged gold/jewelleries weighing 27,909.070 gms in favour of the assessee. We take note from page nos. 46 and 47 of the paper book the affidavit and so the identity need not be disbelieved because the affidavit has been sworn before a notary public by the legal heirs of the late Shri Khagendra Nath Nandi. So the fact that late Shri Khagendra Nath Nandi expired in 1997 leaving behind stock of gold of 27,909.170 gms which is duly reflected in the stock register maintained in respect to the pledged items of gold have been transferred to the assessee to continue the business of money lending from 1997 onwards and thereafter with the aforesaid documents that has been produced before us the assessee was able to establish that he had 27,927.17gms of gold in 1997 which was duly reflected in the notes forming part of balance sheet as on 31.03.2009 (page 48 and 49 of PB) . Thereafter we find that the stock register was maintained continuously from 1997 onwards. The Id AR, took our attention to page 22, which is the balance sheet as on 31.03.2009 and we note that the money lended was to the tune of Rs 5,14,857 and in order to corroborate the figures the Id AR took our attention to page 146 to 163 of the PB, which are the pledged stock register, wherein we note the entire names of the borrowers with address ,date , weight of gold and amount lended is

reflected and we take note that opening balance of gold is 27.927 gms and on 31.03.1999 the closing stock of gold pawned was 31,183 gms and Rs.5,14 ,897/- was lended by the assessee, which matches with the figures shown in the balance sheet as on 31.03.1999 at page 22 of the paper book. Thus we note that the pawned jewellery stock of 31,183gms as on 31.3.1999 was reduced to approx 28 kgms as noted by AO as on 31.3.2007 pursuant to various redemptions that had happended during the period from 1999 to 2007. The assessee during the financial year 2006-07 thought it fit merely to revalue the said already accounted jewellery and give the effect of revalued portion of the jewellery to the tune of Rs.1.52 crores and included the same in the jewellery account on assets side and corresponding credit to his capital account. This is merely a book entry passed by the assessee to give effect to the revaluation of the jewellery which was already disclosed in the balance sheet. Hence in any case there is no case made by the AO for framing an addition u/s 28 (iv) of the Act. The assessee was able to explain with the evidence of the auditor who has admitted to have made mistakes in describing the gold pledged as capital of the assessee , whereas, in the eyes of law it is a contingent liability and since the error has been corrected by audited reconciliation statement before the AO at the very first instance itself, we do not find any infirmity in the order passed by the Id. CIT(A) in directing the deletion of the addition made by the AO u/s 28(iv) of the Act. Therefore we confirm the order of the Id. CIT(A) and dismiss the ground of appeal raised by the revenue on this issue.

6. The last issue to be decided in the appeal of the revenue is as to whether the Id CITA is justified in deleting the addition in the sum of Rs. 49,50,000/- made u/s 68 of the Act in the facts and circumstances of the case.

7. The brief facts of this issue is that the Id AO observed that in the money lending business, the assessee showed deposit from customers amounting to Rs.

49,50,000/-. The assessee was asked to furnish the list of customers. The assessee furnished a list of customers along with his letter dated 13.7.2009, wherein the assessee replied that he had taken advance from Anal Kanti Dey for Rs. 27,50,000/- and Mt Goutam Pal for Rs. 22,00,000/-. The ld AO observed that the assessee did not mention the date of receipt of these advances in his reply. Notice u/s 133(6) of the Act was issued by the ld AO to Mr Anal Kanti Dey and Mr Goutam Pal on 20.7.2009. In response to the said notice, Mr Anal Kanti Dey replied and stated that he had given advance to assessee of Rs. 27,50,000/- and through Mr Goutam Pal of Rs. 22,00,000/-. He also failed to furnish the date and mode of payment of monies to the assessee. The assessee when confronted with the same stated that the party had given this money towards advance for purchase of gold. The ld AO issued summons u/s 131 of the Act to Mr Anal Kanti Dey for personal appearance along with books of accounts, bank statements and documents of advance given to the assessee but he failed to appear before the ld AO. He sent a letter in response to summons u/s 131 of the Act. The ld AO further issued a letter to Mr Anal Kanti Dey on 16.11.2009 calling for certain details. In response to the said letter, Mr Anal Kanti Dey replied that the amount was given prior to 1.4.2002 and the same is brought forward from 1.4.2002 and outstanding as on 31.3.2007 and that no interest was received by him from the assessee on the said amounts. The ld AO made verification of the income tax returns of the assessee for the Asst Years 2001-02, 2002-03, 2003-04 and 2006-07 and observed that no advance was stated to have been shown by the assessee in his returns of income. The ld AO observed that the assessee showed / reflected the advance from customers only in the financial year 2006-07 relevant to Asst Year 2007-08. The ld AO concluded that if the explanation of the assessee is accepted then it is to be held that there was an agreement between the assessee and Mr Anal Kanti Dey for rate of sale of gold and because the price of gold is gradually increasing on the higher side, naturally no business would like to make his investment remain idle. Hence in the absence of any documentary evidence of

advance to establish the genuineness of transaction, the Id AO added the advance amount of Rs. 49,50,000/- as unexplained cash credit u/s 68 of the Act.

8. The Id CITA appreciated the various contentions of the assessee together with the evidences submitted before him in the paper book and held that no addition u/s 68 of the Act could be made in the year under appeal in the facts and circumstances of the case and accordingly deleted the addition. Aggrieved, the revenue is in appeal before us on the following ground:-

“4. That the Ld.CIT(A) has erred in facts and circumstances of the case by allowing relief Rs.49,50,000/- to the assessee though in the assessment stage as well as in remand stage, Sri Anal Kanti Dey was specifically asked to provide details of his transaction (i.e. date and mode of transaction) with the appellant and the said person as well as the appellant assessee failed to discharge the onus not only to prove the genuineness of the transaction but also failed to provide all relevant particulars in this regard.”

9. The Id DR apart from reiterating the findings of the Id AO stated that the assessee is engaged only in money lending business and not in the purchase and sale of jewellery business. Whether the assessee had sufficient stocks of jewellery in his books to substantiate the receipt of advance for sale of gold itself is in doubt and not proved by him. The creditworthiness of the creditor and genuineness of transaction was not proved by the assessee. He argued that hence the provisions of section 68 of the Act had been rightly invoked by the Id AO in the instant case. He relied on the decision of the Hon'ble Supreme Court in the case of Sumati Dayal vs CIT reported in 214 ITR 801 (SC) in support of his contentions. The Id also placed reliance on the decision of the Hon'ble Supreme Court in the case of Roshan Di Hatti vs CIT reported in (1977) 107 ITR 938 (SC),

10. In response to this, the Id AR argued that the deposits of Rs. 49,50,000/- in the books of the assessee has been duly confirmed by Mr Anal Kanti Dey and hence no addition is called for in this regard. With regard to the non-appearance of these advances from customers in the books of the assessee prior to financial

year 2006-07, he argued that the assessee was not maintaining double entry system of accounting and there was no proper balance sheet showing the full assets and liabilities for the past years that could be prepared. He stated that the entries in the books were recorded on single entry system in the past. During the financial year 2006-07, the assessee thought it fit to convert from single entry system to double entry system and accordingly brought all the entries from the past into the books of accounts in the financial year 2006-07 relevant to Asst Year 2007-08. That does not make automatically fresh credits found credited in the books of accounts of the assessee so as to attract the provisions of section 68 of the Act. He argued that the advance from customer was very old entry and brought forward from earlier years which has also been rightly confirmed by Mr Anal Kanti Dey. He also argued that these advances were reflected in the single entry method of accounting in the past in the year of receipt and income tax scrutiny assessments were completed accordingly for Asst Years 2001-02 , 2002-03 & 2003-04 based on the said books of accounts finding that the advance received were satisfactorily explained in the assessment. He argued that the subject mentioned advance from customers had not entered either the cash book or the bank book of the assessee during the financial year 2006-07. The Id AO also had not disputed this aspect. While that is so, how the provisions of section 68 of the Act could be invoked in as much as the said section starts with the phrase ‘where any sum found credited in the books ‘. He argued that the expression ‘sum’ mentioned in section 68 of the Act means only ‘sum of money’ and not otherwise, in support of which he placed reliance on the decision of the *Hon’ble Supreme Court in the case of H.H.Sri Rama Verma vs CIT reported in (1991) 187 ITR 308 (SC)* wherein it was held :-

The use of the expression “any sums paid” contemplates payment of an amount of money . One of the dictionary meanings of the expression “sum” means any indefinite amount of money. In the context in which expression “sums paid by the assessee” has been used make the legislative intent clear that it refers to amount of money paid by the assessee as donation . The

plain meaning of the words used in the section does not contemplate donations in kind. Donations may be made by supplying goods of various kinds including building, vehicle or any other tangible property but such donations, though convertible in terms of money, do not fall within the scope of s. 80G(2)(a) entitling an assessee to deduction. Donation of shares of a company does not amount to payment of any sum or amount though the shares, on their sale, may be converted into money. But the donation so made does not fall within the ambit of the aforesaid section. Since the expression and language used in s. 80G(2)(a) is plain and clear, it is not open to the courts to enlarge the scope by its interpretative process founded on the basis of the object and purpose underlying the provision for granting relief to an assessee.

He accordingly argued that when no physical sum of money was received in the financial year 2006-07 from Mr Anal Kanti Dey, the provisions of section 68 of the Act cannot be invoked. He also referred to page 3 of Paper book ; pages 10 & 11 of paper book in Point No. 3 & 6 wherein the assessee had clearly disclosed in the Notes on Accounts for the year ended 31.3.2006 filed together with the balance sheet as under:-

3. Accounts were maintained in Bengali conversion single entry system. It is necessary to convert in to English conversion double entry system and accordingly effected to in the accounts. Accounts is drawn up in accordance with I.Tax Return made time to time for which extra tax is not liable for converting single entry system to double entry system.

6. Balance creditors /deposit of Rs. 49,50,000/- was received long back from Sri Anal Kanti Dey (Rs. 27,50,000/- directly and Rs. 22,00,000/- through Sri Goutam Pal) for purchasing of gold & jewellery.

He argued that from the above, it would be clear that the advance was received from Mr Anal Kanti Dey in the earlier years and the same has been brought on record in the regular books of accounts in the financial year 2006-07 without having any impact on cash flow for the year. Hence no addition u/s 68 of the Act could be made in the facts of the instant case.

11. We have heard the rival submissions and perused the materials available on record including the relevant pages of the paper book filed by the assessee in this regard. We find that at the outset, that the assessee has been maintaining accounts in Bengali conversion single entry system and the same were duly converted into English double entry system during the financial year 2006-07 relevant to Asst Year 2007-08. The Id AR argued that the advances from Mr Anal Kanti Dey had been received prior to 1.4.2002 which fact has been duly confirmed by him also in the reply letter filed by him before the Id AO in response to notice u/s 133(6) of the Act and proceedings thereafter. This is further ratified by the fact that the assessee had duly recorded the receipt of advances from Mr Anal Kanti Dey in his usual style of Bengali conversion single entry system of accounting and income tax returns filed based on those accounts have been duly subjected to scrutiny assessments in Asst Years 2001-02 , 2002-03 & 2003-04 by the Id AO. These facts are not controverted by the revenue before us. Hence the fact of non- receipt of advances in the sum of Rs. 49,50,000/- received from Mr Anal Kanti Dey during the financial year 2006-07 relevant to Asst Year 2007-08 stands very clearly established. The only basis for the revenue to invoke the provisions of section 68 of the Act in respect of such advance in the sum of Rs. 49,50,000/- is that the assessee had sought to reflect the said entry in the books of accounts for the financial year 2006-07 relevant to Asst Year 2007-08 for the first time. This had been properly explained by the assessee that it had converted its Bengali conversion single entry system to English double entry system during the year under appeal and this fact has also been duly mentioned in the notes on accounts filed along with the balance sheet in the return of income. So it is merely by book entry of bringing the advance from customers into the books of accounts of the assessee, the Id AO is seeking to tax the same by invoking the provisions of section 68 of the Act. It is well settled by the decision of the Hon'ble Supreme Court in 187 ITR 308 (SC) relied upon by the Id AR that the expression 'sum' means 'sum of money' only . Though this decision was rendered in the context of

applicability of deduction u/s 80G of the Act for donations given in kind, the principle laid down and observations made by the Hon'ble Supreme Court as reiterated supra would be binding and analogy drawn thereon could be applied to provisions of section 68 of the Act also. It is not in dispute that there was no physical receipt of any money in cash or by cheque during the financial year 2006-07 relevant to Asst Year 2007-08 from Mr Anal Kanti Dey towards advance for purchase of gold. Hence we hold that the provisions of section 68 of the Act as rightly contended by the Id AR could not be invoked in the facts and circumstances of the case. We find that the decision relied upon by the Id DR in the case of Roshan Di Hatti vs CIT supra is not applicable to the facts of the instant case as it only held that when the nature and source of credit is not properly explained by the assessee, then the same could be taxed u/s 68 of the Act. The issue as to whether the said credit is in the form of sum of money or not was not the dispute or the question before the Hon'ble Supreme Court. We find from the facts before the Hon'ble supreme court in that case , that the assessee thereon was carrying on jewellery business in Lahore and had migrated to India in June 1947 and had brought the value of gold and other jewellery from the said business into India and reflected the same in his balance sheet. The documentary evidences in that case proved the existence of that assessee carrying on jewellery business in Lahore prior to migration to India and hence it was held that the value of those assets (irrespective of it getting taxed in Lahore or not) that were brought into India cannot be added u/s 68 of the Act. Hence we hold that the decision relied upon by the Id DR does not advance the case of the revenue. It is also not in dispute that there was no physical inflow of money either in cash or by cheque in respect of advance received from Mr Anal Kanti Dey during the financial year 2006-07. To support this, Mr Anal Kanti Dey had confirmed to the Id AO in more than one occasion that the said advances were paid prior to 1.4.2002 and were outstanding as on 31.3.2007 with the assessee. Given this fact and the undisputed fact that the assessee was maintaining accounts under Bengali conversion single

entry system upto Asst Year 2006-07 (i.e immediately preceding previous year) and given the fact that the same were duly converted into English double entry system during the financial year 2006-07 relevant to Asst Year 2007-08 wherein these entries together with other entries were reflected in the books , we are persuaded to believe the version of the assessee in this regard. Respectfully following the Hon'ble Supreme Court's decision in 187 ITR 308 (SC) supra , we hold that the provisions of section 68 of the Act cannot be invoked in the facts and circumstances of the case and the Id CITA had rightly deleted the addition in this regard. Hence we do not find any infirmity in the order of the Id CITA. Accordingly, the Ground No. 2 raised by the revenue is dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 23.12.2016.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[Aby T.Varkey]
Judicial Member

Dated : 23.12.2016.
[RG PS]

Order pronounced by
Sd/- SSVR(JM) Sd/- WA(AM)

Copy of the order forwarded to:

- 1.Shri Anupam Nandi, Prop of : Abir Jewellers, Bagnan Station Road (North), Bagnan, Howrah-711303.
2. I.T.O., Ward-46(1), Kolkata.
- 3..CIT(A)-XXX, Kolkata 4. CIT –XVI, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

