

**IN THE INCOME TAX APPELLATE TRIBUNAL
Kolkata Bench, KOLKATA
(Bench- "D")**

**BEFORE SRI ABY T.VARKEY, JUDICIAL MEMBER AND
DR. A L SAINI, ACCOUNTANT MEMBER**

I.T.A No. 1480/Kol/2014
Assessment Year: 2007-08

SriBiswajit Banerjee [PAN : AJQPB0172P] (Appellant)	-Vs-	I.T.O. Ward-52(1), Kolkata (Respondent)
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For the Appellant	S. M. Surana, Advocate
For the Respondent	Sk. Z.H. Tanweer, JCIT, Sr. D.R.
Date of Hearing	27.12.2016
Date of Pronouncement	31.01.2017

ORDER

Per Aby T.Varkey, JM

This is an appeal preferred by the assessee against the order of the CIT(A)-XXXIII, Kolkata, dt. 08.04.2014, for the assessment year 2007-08.

2. The first ground is general in nature and so is dismissed. The second ground is against the estimation made by the Ld. CIT(A) by applying 12% on the turnover of Rs. 16,88,500/- and the third ground is in respect of confirmation of addition of Rs. 1,50,000/- being the capital introduced which the assessee pleads to be telescoped with the income that needs to be calculated as per Section 44AD which is the deemed turnover i.e., 8% of turnover.

3. Brief facts of the case is that the AO taking note of the ITS observes that the assessee has deposited Rs.16,88,500/- in cash in Axis Bank, Garia Branch. The AO asked the assessee to explain the source of the cash deposited and why it was not reflected in his return of income. The assessee replied that cash

deposit of Rs. 16,88,500/- occurred during the assessment year which was deposited in Axis Bank, Garia Branch; and that the deposit in the bank was not reflected in the balance sheet since there was nil balance as on 31.03.2007. The assessee explained that his main business was to make plants for the herbal products by using some special technology and later on sell the plants at nursery stage to farmers for their re-plantation. It was explained by the assessee that he used to take security deposit from the farmers for the products he nurtured and grows in his nursery and to ensure that they purchased the plants and it was brought to the knowledge of the AO that at the time of sale he used to refund the farmers the balance amount after taking the sale value of the products. The assessee explained that the sale of the products and related expenditure were duly reflected in the accounts and as the security deposit has been refunded after adjustment and since there was no balance left at the year end, so, no reflection of the said deposit was made in the balance sheet. The AO after perusal of the reply and after going through the balance sheet and profit and loss account for the assessment year, directed the assessee to furnish the name of the farmers, their addresses and confirmation along with their identity proofs, bank statement, PAN card, copy of Acknowledgement of the IT Return to substantiate his claim of receiving security deposit from the farmers and later as to the refund of the same. The AO notes that the assessee in fact has submitted the list of parties from whom the assessee has claimed to have received funds. However, according to the AO the assessee failed to produce any confirmation from these parties. So according to the AO the receipt of fund from the farmers is an afterthought story of the assessee and so the entire deposit of cash of Rs.16,88,500/- in Axis Bank, Garia Branch was treated as unexplained money and was added back to the total income of the assessee.

4. In ground no. 3 which we have combined together to the facts of the case is that the AO noted that the assessee has introduced Rs. 1,50,000/- as fresh

capital during the assessment year. When the assessee was confronted by the AO to produce the source of capital introduction the assessee replied that it was from the fund generated from business during the year and cash balance from the previous year. According to the AO, since the assessee could not support his submission by any documentary evidence he added the same back to the total income of the assessee. Thus making an addition of Rs. 1,50,000/-

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to restrict the addition from Rs. 16,88,500/- to Rs. 2,02,620/- by estimating the income at 12% of the turnover of Rs. 16,88,500/- and thus he confirmed Rs. 2,02,620/- in place of Rs. 16,88,500/- made by the AO. In respect to Rs. 1,50,000/- on account of fresh capital introduced the Ld. CIT(A) has confirmed it by stating that it was not pressed before him. Against the said decision of the Ld. CIT(A) the assessee has preferred an appeal before us. In respect to both the additions made by the Ld. CIT(A) the assessee is before us.

6. We have heard both the parties and perused the records. Based on the ITS, the AO notes that an amount of Rs. 16,88,500/- was deposited in cash in the Axis Bank, Garia Branch. When the AO asked for the assessee to prove the source, the assessee replied that his main business was to grow plants for the herbal products by a special technology and that he later on sells the plants after nurturing it at his nursery to the farmers for re-plantation. According to the assessee, in order to ensure that farmers buy the grown up plants, he used to collect security deposit from the farmers and then adjust the same at the time of sale wherein he used to collect the cost from the farmers and refund the security deposit back to them and since there was no balance at the end of the assessment year, he did not reflect the same in his balance sheet along with the return of income. The AO asked the assessee to furnish the names of farmers, address confirmation etc. in order to verify as to whether the *modus-operandi* of the assessee of collecting & refunding the security deposit is correct or not.

According to the AO since the assessee failed to produce the confirmation from the farmers in respect to receipt of loan and refund of the same, he added the entire deposit in the Axis Bank, Garia Branch and made an addition to the tune of Rs. 16,88,500/-. Likewise, the AO noted that the assessee has introduced Rs. 1,50,000/- as fresh capital for the instant assessment year. According to the AO, he asked the assessee to produce the source of capital introduction for which the assessee replied that the capital was introduced from the funds generated from the business during the year and cash balances saved from the previous year. The AO did not accept the same and made another addition of Rs. 1,50,000/-. On appeal the Ld. CIT(A) taking note of the remand report of the AO as well as the report of the JCIT Range-52, came to the conclusion that no addition can be made on account of the cash deposit, since the peak credit was nil during the year. In the remand report the AO has suggested to the Ld. CIT(A) that 8% of the total cash deposit should be taken as the profit from business. However, the JCIT Range-52 was of the opinion that 20% should be treated as the income from the turnover of Rs. 16,88,500/-. Ld. CIT(A) took note of the fact that the opening balance in the assessee's bank account in the Axis Bank, Garia Branch, as on 01.04.2006, stood at Rs. 29,72,970 and during the instant assessment year various withdrawals and cash payments were made from time to time and that the total deposits at any given point of time was less than the preceding aggregate of withdrawals and, therefore, the Ld. CIT(A) agreed with the AO's remand report that no addition of the gross value of the cash deposit ought to be made as it represents the turnover of the appellant assessee.

7. Ld. CIT(A) taking note of the *modus operandi* of the business of the assessee as told by him that the assessee used to collect security deposit for growing up the herbal plants in his nursery and adjust the sale amount and later on return the security deposit shows that the assessee was not taking any risk and must be earning good profit. The Ld. CIT(A) took note of the fact that since

the opening balance in the bank account on 01.04.2006 stood at Rs. 29,72,920/- ,the appellant has accumulated capital of at least Rs. 29,70,215/- from the activities relating to his business. So, according to the Ld. CIT(A) the assessee would have earned 12% margin on the turnover of Rs. 16,88,500/- which works out to Rs. 2,02,620/- and he confirmed Rs. 2,02,620/- and deleted Rs. 14,85,880/-. In respect to the capital introduction of Rs. 1,50,000/-, he confirmed it stating that it was not pressed before him. We note that the assessee has an opening balance of Rs. 29,70,215/- and we note that during the relevant assessment year various withdrawals and cash deposits were made from time to time and the total deposits at any given point of time was less than the preceding aggregate of withdrawals. So, the Ld. CIT(A) rightly held that no addition of the gross value of the cash deposit can be made since the deposits of amount represents the turnover of the appellant. Since the main plea of the assessee is that assessee's turnover is less than the limit prescribed u/s 44AD a sum equal to 8% of the total turnover or gross receipt of the assessee of the assessee needs to be treated as the deemed profit of his business chargeable to tax under the head profit of the business. It was not disputed by the department that the assessee's turnover does not breach the profit and gains limit prescribed by Section 44AD and, therefore, special provision for computing profit and loss accounts of business on presumptive basis as prescribed u/s 44AD is attracted in this case and, therefore, we estimate the income of the assessee at 8% of the turnover which come to Rs. 1,35,440/-. However, we take note that the assessee has introduced Rs. 1,50,000/- as capital in his assessment order. When the AO asked the assessee to explain the source he stated that it was generated from the funds of business of this assessment year and cash balance of the previous year. We take note that since the assessee has stated before the AO that the capital introduction of Rs. 1,50,000/- is from the funds generated during the instant assessment year, we are of the view that the income of the assessee

should be treated as Rs. 1,50,000/- in place of Rs. 2,02,620/- as confirmed by the Ld. CIT(A). Thus, we restrict the income of the assessee in respect to the deposit of Rs. 16,88,500/- to Rs. 1,50,000/- and the ground no. 2 of the assessee is partly allowed.

8. Coming to the ground no. 3 which we have all throughout considered in the facts of the case, the assessee's plea in respect to the capital introduction of Rs. 1,50,000/- before the AO is that the said capital was generated from the funds during the year and cash balance of the previous year. By raising the ground no. 3 the assessee has pleaded that the said amount of Rs. 1,50,000/- should be telescoped and no separate addition ought to be made on the capital introduced in the assessment year. We find force in the ground of appeal raised by the assessee and since we have estimated the income of the assessee is Rs. 1,50,000/-, it would be just and proper to treat the capital introduction to be same as the fund generated during the year and, therefore, we direct no separate addition to be made on capital introduction by the assessee and so delete the addition confirmed by the Ld. CIT(A) of Rs. 1,50,000/-.

9. Ground no. 4 is against the confirmation of Rs. 4, 75,478/- made by the Ld. CIT(A). Brief facts of the case is that the AO noted that the assessee has capitalized an amount of Rs. 4,75,478/- on account of sale of gold. The AO asked the assessee to file the details of the capital gain along with the evidences of purchase and sale of gold. According to the AO the assessee only has stated that the Gold belongs to the assessee's wife and that a part of the gold has been inherited and balance during marriage. According to the AO, since the assessee is unable to give any details to substantiate his claim, therefore, he added back the entire amount as unexplained money. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to give redressal for 100gms of

gold which was valued at Rs. 88,800/- and the balance addition of Rs. 3,86,678/- was confirmed by the Ld. CIT(A). Aggrieved the assessee before us.

10. We have heard both the parties and perused the records. We take note that the assessee during the appellate proceedings had filed copy of receipts from M/s P. C. Chandra Jewellers showing sale of gold of 552gms, worth Rs. 4,75,478/-. The Ld. CIT(A) sent the receipts of M/s P. C. Chandra Jewellers along with the explanation given by the assessee that some gold was inherited and the rest belonged to his wife which was brought by her during marriage was forwarded to the AO for the remand report. The AO in his remand report dt. 09.09.2013 has replied as under:

"As per AO order u/s 143(3) the assessee was asked to file details of Capital Gains and clarify the point if any capital gain out of sale of jewellery was offered for taxation. Presently the a/r remarked in the negative and at the same time relied on his written submission and CBDT press note dated 09/05/1994 citing that the source of jewellery upto 500gms per lady and 100gms for a male should be treated as explained.

*Here the a/r has filed copy of receipts from from P. C. Chandra Jewellers showing sale of gold of 552gm worth Rs. 4,75,478/-. The same was introduced in the capital. The same is reflected in the bank statements of relevant financial year. **Capital Introduction is explained vide the receipt. On the basis of the receipts the capital introduction stands explained.***

We take note that after the perusal of the receipt of sale of gold of 552gms worth Rs. 4,75,478/- from from M/s P. C. Chandra Jewellers was gone through by the AO and he has given the remand report taking note also of the fact that the CBDT circular wherein the CBDT has accepted the fact that *"the source of Jewellery up to 500gms for a lad and 100gms for a male needs to be taken as explained."* After taking note of that and the receipt from M/s P. C. Chandra Jewellers that the assessee has sold the gold weighing 552gms worth

Rs. 4,75,478/- has categorically stated that on the basis of the receipts the capital introduction stands explained. In such a scenario, and in a similar case the co-ordinate bench in ITA NO. 1750/Kol/2012 in the case of Smt. Archana Roy Vs. I.T.O. Wd- 51(3) Kolkata, dt. 03.05.2013 in which the addition on account of unexplained jewellery was deleted relying on the instruction no. 1916 dt. 11.05.1994 of CBDT. We take note that the co-ordinate bench referred to the decision of the three member decision in the case of A.C.I.T. vs. Rameshchandra R. Patel (89) ITD 203 (ITAT, Ahmd) in which it was observed that though the instruction no 1916 speaks of not seizing the jewellery within the limits prescribed in the instruction, the extended meaning of the same shows the intention that the jewellery has to be treated as explained for the purpose of Income-Tax Act.

11. We note that the assessee has sold 552 gms which is well within the 500gms belonging to his wife and 100gms of his is less than 600gms. So, therefore, we treat the sale of gold as explained for the purpose of Income-Tax and as found by the AO in his remand report, therefore, we are inclined to allow the appeal of the assessee and direct deletion of Rs. 4,75,478 on this account.

12. Ground No. 5 is not pressed and, therefore, is dismissed. Ground no. 6 & 7 are general in nature so no necessity of adjudication.

13. In the result the appeal of the assessee is partly allowed.

Order pronounced in the Court on 31.01.2017.

Sd/-
[Dr. Arjun Lal Saini]
Accountant Member

Sd/-
[A.T.Varkey]
Judicial Member

Dated : **31.01.2017**

{SC SPS}

Copy of the order forwarded to:

1. Sri Biswajit Banerjee, B-40, Goshtho Tala, New Scheme, P.O. Garia, Kolkata-700084
2. I.T.O., Ward-52(1), Kolkata.
3. CIT(A)- Kolkata.
4. CIT – , Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches