

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA**  
[Before Shri A. T. Varkey, JM]**I.T.A. No. 2137/Kol/2019**  
Assessment Year: 2009-10

Shri Ashim Kumar Mahanta (PAN: AEHPM7758L)	Vs.	Income Tax Officer, Wd-23(4), Hooghly.
Appellant		Respondent

Date of Hearing	14.03.2022
Date of Pronouncement	31.03.2022
For the Appellant	Shri Siddhartha Pratim Datta, Advocate
For the Respondent	Shri Nicholas Murmu, Addl. CIT

**ORDER**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-6, Kolkata dated 27.06.2019 for AY 2009-10.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) enhancing the addition to Rs.27,68,700/- whereas the AO had made an addition of Rs.13,97,640/-.

3. Brief facts of the case as noted by the AO are that the assessee has filed the return of income on 07.12.2009 showing total income of Rs.1,60,000/- against gross receipts from business to the tune of Rs.12,65,390/-. Later on the department had information that the assessee had account in the Axis Bank (*joint account, first holder assessee and second holder the wife of the assessee*) wherein there was cash deposit to the tune of Rs.27,68,700/- which was a savings bank account, therefore, the AO issued notice u/s. 148 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) proposing reopening of the assessment. When the assessee was confronted in respect of the cash deposits, the assessee submitted that this amount (Rs.27,68,700/-) belongs to/receipt from the business of the assessee’s wife Mrs, Sanatan Mahanta. When asked by the AO to prove the contention, the assessee had filed P&L Account as well as the Balance Sheet of his wife and stated that she was regularly filing *return of income* and for this assessment year under consideration she has shown an income of Rs.1,83,630/-. However, this particular defense

taken by the assessee was not accepted by the AO because according to him, there was no such business as contended by the assessee in the absence of trade license of wife (Mrs. Santana Mohanta) which assessee failed to produce. Therefore, the AO made an addition of Rs.13,97,640/-. On appeal, the Ld. CIT(A) while taking note of the assessee's submission as well as the records found that Smt. Santana Mahanta did not have the capacity to deposit Rs.27,68,700/- and, therefore, was pleased to confirm the addition by enhancing the addition from Rs.13,97,640/- to Rs.27,68,700/-. Aggrieved, the assessee is before us.

4. Heard rival submissions and after carefully going through the facts and circumstances of the case, I am of the view that the facts stated hereinabove are not repeated for the sake of brevity and to avoid repetition. The undisputed fact is that in this case Rs.27,68,700/- has been found deposited in the joint account of assessee as well as his wife in the savings bank account of Axis Bank. When confronted by the AO after reopening the assessment, according to the assessee, this amount was trade receipt from sale of seasonal vegetables of the business of his wife and not that of his. In the absence of any evidence to substantiate the business of the assessee's wife (trade licence) the AO as well as the Ld. CIT(A) did not accept the contention of the assessee; And though the AO had made an addition of Rs.13,97,640/-, the Ld. CIT(A) while passing the impugned order has confirmed addition of total deposit of Rs.27,68,700/-. On a query from the Bench as to whether there was any enhancement notice given by the Ld. CIT(A), the Ld. AR could not throw any light on this aspect. Therefore, presuming that the enhancement notice was given, still after perusing the bank transactions from pages 7 to 16 of the paper book it is noted that there was regular deposit as well as regular withdrawals in the said bank account, from which I note that there was no lump-sum deposit of the amount of Rs.27,68,700/- in the Axis Bank account. In this factual back-drop, even if it is presumed that the assessee or his wife has not disclosed this bank account in the Axis Bank to the department, still the total deposit in the joint account cannot be treated as the undisclosed income of the assessee because I find that there was regular withdrawal after the deposits. It has been brought to my notice that assessee is executing contract works as well as he is into the business of selling seasonal vegetable products; and in such a factual scenario, when it is evident that there was several deposits and simultaneous withdrawals, the entire

deposit of amount cannot be brought to tax as income of the assessee. In this case, in the Axis Bank account in question, I find that there is regular inflow of money and regular outgo of money which gives credence to the explanation of the assessee or his wife that they are into trading activity (seasonal agriculture products). Taking into consideration the entire facts and circumstances of the case, even if it is presumed that the deposits made in the Axis Bank which has not been disclosed to the department was taken as correct still the entire amount cannot be taxed as done by the lower authorities. Therefore, taking into consideration of the fact that the assessee is into the contractual business which has not been disputed by the AO/Ld. CIT(A), for the ends of justice the presumptive tax @ 8% of the total amount of Rs.27,68,700/- i.e. Rs. 2,21,496/- is confirmed and the balance amount is directed to be deleted.

5. In the result, the appeal of the assessee is partly allowed as indicated above.

Order is pronounced in the open court.

Sd/-  
(A.T. Varkey)  
Judicial Member

Date 31st March, 2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Ashim Kumar Mahanta, Basantapur More, P.O. Arambagh, Hooghly, West Bengal-712601.
2. Respondent – ITO, Ward-23(4), Hooghly.
3. CIT(A)-6, Kolkata.
4. CIT Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar

1. Date of dictation- 14/03/2022
2. Date on which the typed draft order is placed before the Dictating Member and Other member 14/03/2022
3. Date on which the approved order comes to the Sr. P.S./P.S. - /02/2022
4. Date on which the file goes to the Bench Clerk /02/2022
6. Date on which the file goes to the O.S. ....
8. Date of Despatch of the Order.....