

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

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

**I.T.A. No.: 501/Kol/2021
Assessment Years: 2015-16**

***Arabinda Konar.....Appellant
[PAN: BUOPK 8080 K]***

Vs.

ITO, Ward-1(2), BurdwanRespondent

Appearances by:

Sh. Shuvo Chackroborty, A/R, appeared on behalf of the Assessee.

Sh. Arun Bhowmick, D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : July 13th, 2022

Date of pronouncing the order : August 10th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2015-16 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Id. "CIT(A)"] dated 09.09.2021 which is arising out of the assessment order framed u/s 143(3) of the Act dated 21.12.2017.

2. Brief facts of the case are that the assessee is an individual. Return of income for AY 2015-16 was filed manually declaring

income of Rs. 2,68,740/- on 30.03.2016. The case was selected for scrutiny through CASS for the reason *“large value of share or unit reported in security transaction tax return which is settled otherwise than by the actual delivery or transfer (STT Code-3).”* The assessee is engaged in the business of trading of rice and paddy. Notices u/s 143(2) & 142(1) of the Act were served on the assessee. During the course of assessment proceedings, ld. AO noticed that the assessee is holding a savings bank account with the IDBI Bank. This account is not disclosed in the return of income filed by the assessee. A copy of this bank account was obtained. Ld. AO noticed that in the said bank account there were total credits amounting to Rs. 22,61,494/- and the debits were mainly payment to a share broker namely Techno Shares & Stocks Pvt. Ltd. The assessee was asked to explain and it was stated that the alleged deposits were made out of the sale proceeds of rice and paddy and also loans from friends and relatives received from time to time but could not produce any evidence or proof in support of this claim. Ld. AO, thus, came to a conclusion that the said credits are undisclosed income of the assessee liable to be added u/s 69A of the Act. Addition for bank interest of Rs. 1,044/- on the said undisclosed bank account was also made and income assessed at Rs. 25,31,278/-.

3. Aggrieved, the assessee preferred appeal before ld. CIT(A) but failed to succeed as ld. CIT(A) confirmed the addition observing as follows:

“3.3. I have carefully gone through the assessment order as well as written submission of the Appellant. I have also gone through the copy of bank statement submitted by the Appellant. From an analysis of

the bank statement it can be clearly seen that while the deposits have been made in cash the withdrawal has invariably been made by cheque to Techno-shares and stocks private limited. Thus there is no merit in the arguments of the Appellant that there are rotational cash deposits and withdrawals because if the deposit was to come from techno-shares private limited then it would have come by way of cheques as the broker would not be making payment to a party in cash. Furthermore AO has stated that this bank account has not been disclosed by the Appellant in his ITR. The AO has clearly established that neither in this bank account nor in the other bank account maintained by the Appellant, there is any evidence of payment on purchases for his trading business. From the facts of the case it is clear that the entire deposit in cash has been used to make payment to Techno-shares and stocks private limited. The transaction between the Appellant and Techno shares, and stocks private limited is unidirectional i.e. only payments have been made through the impugned bank account whereas no deposits have been received. After considering the totality of facts it becomes clear that the Appellant is unable to explain the source of cash deposit in the impugned bank account. Consequently the addition of Rs. 22,61,494 made by the AO under section 69A of the Income tax Act 1961 is sustained. The addition of Rs. 1,044 representing interest earned on the deposits in the said account is also sustained as this income has not been disclosed by the Appellant in his return of income. The grounds of appeal numbers 1, 2 and 3 are dismissed.”

4. Aggrieved, the assessee is now in appeal before this Tribunal raising the following grounds including additional ground:

“1. For that impugned confirmation of entire assessment addition by the appellate authority is unjust and bad in law.

2. For that impugned appellate order is vitiated by recording wrong and incorrect justification of said addition of peak credit plea of the appellant before the appellate authority. But the very grounds of appeal as recorded by appellate authority is legally and factually contrary to the observation of the appellate authority.

3. For that appellant is just liable for estimated addition of said gross cash deposits since the appellant filed return u/s 44AD.

4. For that appellant may modify the grounds.”

4.1. The assessee has raised the following additional ground of appeal:

“5. For that appellate authority could have made peak balance credit addition since there have been circulating deposits and withdrawals.”

5. Ld. Counsel for the assessee vehemently argued referring to the written submissions and also referring to the additional grounds that additions should have been made only for the peak credit and not the entire deposits. It was also stated that the assessee files the return of income u/s 44AD of the Act on presumptive basis, but, ld. CIT(A) has not given any cognizance to this aspect. Secondly, it is pleaded that the source of said deposits is partly from the business income and partly from money received from persons who have traded in shares through appellant's broker. Thirdly, it is pleaded taking support from judicial pronouncements that addition should be made only for the peak credit and not the entire amount.

6. Per contra ld. D/R vehemently argued supporting the orders of both the lower parties.

7. We have heard rival contentions and perused the records placed before us. The assessee has raised four grounds of appeal and one additional ground of which ground nos. 1 & 4 are general in nature which need no adjudication and through the remaining grounds, the assessee's contention is that only the peak credit balance of the undisclosed bank account should have been added by ld. AO and not the entire amount credited during the year in the undisclosed bank account held in IDBI Bank.

8. We notice that the assessee is primarily engaged in trading of rice and paddy and has offered the income on presumptive basis u/s 44AD of the Act. It is not in dispute that the bank account held by the assessee with IDBI Bank has not been disclosed. Perusal of the bank account placed on record shows that during the year, apart from the credit of interest, a sum of Rs. 22,61,494/- has been deposited. Out of this amount cash deposit is Rs. 16,55,000/- and remaining amount are bank transfers. The amount so credited in this bank account has been utilized for trading in equity shares/derivatives/future and payments are given to Techno Shares & Stocks Pvt. Ltd. It is claimed by the assessee that it has suffered huge losses and the total amount paid to Techno Shares & Stocks Pvt. Ltd. has turned into loss.

9. Now the dispute before us is only with regard to the credits in the said bank account which are not explained. The assessee is claiming that the source of the said deposits i.e. cash and cheque is partly from loans taken from various friends and relatives, partly from sale proceeds of business carried on by him which have been diverted to his bank account and part of the credits is on account of the money taken from relatives and friends to be invested in stock market. Though the assessee was required to file complete details of such friends and relatives and also the details of sales but the same has not been done at any stage.

10. Under this situation to end the controversy coupled with being fair to both the parties, the only way out left is to sustain the addition only to the extent of peak credit in such bank account. There is no specific detail of the calculation of peak credit from

either of the sides and neither it is a case of cash deposits and cash withdrawals for which peak credits theory is perfectly applicable. But keeping in view that the alleged credits in the bank account in the form of cash and cheque have only been utilized for making payment to Techno Shares & Stocks Pvt. Ltd. and the assessee having incurred loss on such trading of shares is evidenced by the financial ledger appearing under the PAN number of the assessee on Form No. 10BB and also accepting the fact that the said cash deposit possibly contains the element of short term loans taken from friends and relatives, past savings, sale proceeds of the trading business and also looking to the fact that the peak credit in the bank account is Rs. 6,36,479/- as on 13.09.2014, we in the interest of justice and being fair to both the parties, sustain an addition of Rs. 8 lakhs to cover up the peak credit balance and other unexplained deposits and delete the remaining additions of Rs. 14,62,538/- and partly allow the grounds raised by the assessee.

11. In the result, the appeal filed by the assessee is partly allowed.

Kolkata, the 10th August, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 10.08.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Arabinda Konar, Vill.-Khudikuri, P.O.-Sankari, East Bardhaman-713 424.**
- 2. ITO, Ward-1(2), Burdwan**
3. CIT(A)- National Faceless Appeal Centre (NFAC), Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata