

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]

I.T.A. No. 464/Kol/2015
Assessment Year: 2010-11

Rajesh Pagaria.....Appellant
14, Watkins Lane,
Gokul Apartment,
Howrah – 711 101
[PAN: AFTPP 9012 M]

I.T.O. Ward 48(2) Kolkata.....Respondent
3, Government Place (West),
Kolkata – 700 001

Appearances by:

Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.
Shri Pinaki Mukherjee, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : February 22, 2018

Date of pronouncing the order : May 11, 2018

ORDER

This appeal filed by the assessee is directed against the order of
Ld. CIT(A) - 10, Kolkata dated 22.01.2015..

2. In ground no 1, the assessee has challenged the addition of Rs. 4,06,737/- made by the A.O. and confirmed by the Ld. CIT(A) under section 68 of the Income Tax Act, 1961.

3. The assessee in the present case is an individual who filed his return of income for the year under consideration on 31.03.2011 declaring a total income of Rs. 1,54,180/-. During the course of assessment proceedings, it was noticed by the A.O. that the assessee has maintained two saving bank accounts with Axis Bank Ltd. and United Bank of India in which cash deposits of Rs. 25,82,000/- and Rs.

18,23,590/- were made during the year under consideration. While explaining the source of the said deposits, a cash flow statement was furnished by the assessee. From the perusal of the said cash flow statement, it was noticed by the A.O. that the expenditure of Rs. 2,06,737/- incurred by the assessee was not reflected in the said cash flow statement. He also noticed that personal and household expenses to the extent of Rs. 2,00,000/- of the assessee were not reflected in the said cash flow statement. He accordingly treated the cash deposits found to be made in the bank account of the assessee to the extent of Rs. 4,06,737/- as explained and made addition to that extent to the total income of the assessee under section 68 of the Act. On appeal, the Ld. CIT(A) confirmed the said addition.

4. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned counsel for the assessee has invited our attention to the relevant details furnished at page no 5 and 7 of the Paper Book to show that the total expenditure of Rs. 2,06,737/- and personal expenditure in the form of drawings of Rs. 2,00,000/- were incurred by the assessee against the payments made through credit cards and the same, therefore, were not reflected in the cash flow furnished during the course of assessment proceedings. He has contended that this claim of the assessee can be verified by the A.O. from the relevant record and on such verification, appropriate relief may be directed to be allowed to the assessee. Since the learned DR has also not raised any objection in this regard, we set aside the impugned order of the Ld. CIT(A) on this issue and restore the matter to the file of the A.O.

for deciding the same afresh after verifying the claim of the assessee that the expenses of Rs. 4,06,737/- were incurred by the assessee through credit cards and the same, therefore, were not reflected in the cash flow statement. Ground No. 1 is accordingly treated as allowed for statistical purposes.

5. Ground No. 2 raised by the assessee in this appeal challenging the addition of Rs. 4,00,000/- made by the A.O. and confirmed by the Ld. CIT(A) on account of unexplained investment in shares is not pressed by the learned counsel for the assessee. The same is accordingly dismissed as not pressed.

6. The issue raised in ground no 3 relates to the addition of Rs. 7,14,436/- made by the A.O. and confirmed by the Ld. CIT(A) on account of disallowance of interest under section 40(a)(ia) for non deduction of tax at source.

7. During the year under consideration, the assessee had incurred interest expenditure of Rs. 7,14,436/- and after adjusting the same against interest income of Rs. 5,69,869/-, the balance amount of Rs. 1,70,630/- was claimed against directors remuneration. According to the A.O., the assessee was required to deduct tax at source from the payment of the said interest under section 194A and since the assessee had failed to comply with the said requirement, interest expenditure claimed by the assessee was disallowed by him by invoking the provisions of section 40(a)(ia). On appeal, the Ld. CIT(A) confirmed the said addition.

8. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As rightly submitted by the learned counsel for the assessee, the provisions of section 40(a)(ia) can be invoked to make a disallowance for non deduction of tax at source only while computing income under the head “profits and gains of business or profession”. Since the assessee during the year under consideration had no business income and the interest expenditure in question was claimed by him under the head ‘Income from other sources’, we find merit in the contention of the learned counsel for the assessee that the disallowance made by the A.O. and confirmed by the Ld. CIT(A) on account of interest by invoking section 40(a)(ia) is not sustainable. We accordingly delete the same and allow ground no 3 of the assessee’s appeal.

9. The issue raised in ground no 4 relates to the addition of Rs. 3,39,949/- made by the A.O. and confirmed by the Ld. CIT(A) to the total income of the assessee on account of interest on bank accounts.

10. As found by the A.O. from the information directly received from United Bank of India, the assessee had earned interest of Rs. 3,84,249/- on fixed deposits during the year under consideration. Since the assessee had disclosed income on account of bank interest only to the extent of Rs. 44,345/-, he was called upon by the A.O. to explain the reason for non disclosure of the balance amount of bank interest. In reply, it was submitted by the assessee that the relevant fixed deposits with United Bank of India were actually belonging to

M/s. Anand Vinayak Coalfield Ltd. after takeover of his propriety concern and the same by mistake confirmed in his name in the bank record and even the tax was deducted at source by the bank with his PAN. This explanation of the assessee was not found acceptable by the A.O. in the absence of any supporting evidence and the balance amount of bank interest of Rs. 3,39,949/- was added by him to the total income of the assessee. On appeal, the Ld. CIT(A) confirmed the addition made by the A.O. on this issue.

11. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned counsel for the assessee has submitted that the relevant fixed deposits with United Bank of India were actually belonging to M/s. Anand Vinayak Coalfield Ltd. and since the said company had already offered to tax the interest income earned on the said deposits and also claimed credit for the relevant TDS, the addition of the said interest income in the hands of the assessee is not sustainable as the same is resulting into double addition. The learned DR, on the other hand, has contended that this claim made by the learned counsel for the assessee for the first time relating to double addition is required to be verified by the A.O. I find merit in this contention of the learned DR. This issue is accordingly restored to the file of the A.O. with the direction to verify the claim of the assessee that the amount of interest in question has already been brought to tax in the hands of M/s. Anand Vinayak Coalfield Ltd. and if it is found to be correct, the addition made in the hands of the assessee on account of same income is liable to be deleted as the same would otherwise result in

double addition. Ground No. 4 is accordingly treated as allowed for statistical purposes

12. The issue involved in ground no 5 relates to the addition of Rs. 28,96,502/- made by the A.O. and confirmed by the Ld. CIT(A) on account of deemed dividend under section 2(22)(e) of the Act.

13. As found by the A.O. from the cash flow statement furnished by the assessee, the assessee had received total amount of Rs. 28,96,502/- from M/s. Anand Vinayak Coalfield Ltd. According to the A.O., the said amount received by the assessee was in the nature of loans and advances and since the provisions of section 2(22)(e) were applicable, he invoked the same and added the amount of Rs. 28,96,502/- to the total income of the assessee by treating the same as deemed dividend. On appeal, the Ld. CIT(A) confirmed the addition made by the A.O. on this issue.

14. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned counsel for the assessee has invited our attention to the relevant ledger account extract given at page no 38 of the Paper Book and submitted that the account with M/s. Anand Vinayak Coalfield Ltd. was in the nature of current account and not in the nature of loans or advances. By relying on the decision of Co-ordinate Bench of this Tribunal in the case of ITO vs Smt. Gayatri Chakraborty (ITA No. 151/Kol/2013 dated 30.10.2015), he contended that the provisions of section 2(22)(e) are not applicable where the relevant transactions

are in the nature of current account transactions and not loans and advances. The learned DR, on the other hand, has contended that the relevant transactions with M/s. Anand Vinayak Coalfield Ltd. were categorised by the assessee himself as loan transactions and the assessee, therefore, cannot change his stand at this stage to claim the said transactions as current account transactions. In our opinion, the nomenclature by the assessee alone cannot determine the exact nature of relevant transactions and it is required to be ascertained from the facts and record. I, therefore, set aside the impugned order of the Ld. CIT(A) on this issue and restore the matter to the file of the A.O. for deciding the same afresh in the light of the decision of Tribunal in the case of Smt. Gayatri Chakraborty (supra) after verifying the exact nature of transactions from the relevant facts and record. Ground No. 5 is accordingly treated as allowed for statistical purposes.

15. In the result, the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on 11th May, 2018.

Sd/-

(P.M. Jagtap)

ACCOUNTANT MEMBER

Dated: 11/05/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Rajesh Pagaria, 14, Watkins Lane, Gokul Appartment, Howrah - 711101
2. ITO Ward 48(2), 3, Government Place (West), Kolkata – 700 001.

3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata