

ORDER SHEET

GA NO.115 OF 2017
WITH
ITAT NO.15 OF 2017
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(INCOME-TAX)
ORIGINAL SIDE

PINAKI RANJAN DAS

Versus

DEPUTY COMMISSIONER OF INCOME TAX

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA BOSE

The Hon'ble JUSTICE AMITABHA CHATTERJEE

Date : 20th June, 2018

MR.PRANIT BAG, ADVOCATE FOR APPELLANT
MR.RANJAN SINHA,ADVOCATE FOR RESPONDENT

The Court : Certain undisclosed bank accounts of the assessee were discovered in course of survey operation by the Income Tax Authorities under section 133A of the Income Tax Act, 1961. On that basis fresh assessments were made under sections 154/147/143(3) of the Act in respect of the assessment years 2003-04 to 2007-08. The Assessing Officer treated all the withdrawals by cheque from these

undisclosed accounts as undisclosed sales and cash withdrawals were treated as undisclosed income of the assessee. Upon treating the cheque withdrawals as unaccounted sales, the Assessing Officer clubbed the sales with the turnover declared by the assessee in respect of his business concern and applied a profit rate of 8% to the total turnover. The said assessment order was contested before the First Appellate Authority, Commissioner of Income Tax (Appeals).

Main case of the appellant before the CIT(Appeals) was that there was no basis for computation in such manner. The Appellate Authority modified the Assessing Officer's finding and held:-

“Though cash withdrawals does not necessarily by itself tantamount to profit, it gives an indication of being net profit since the assessee has spent it on investment & consumption at his personal level and this money has gone out of the unaccounted business circulation. The assessee thus reduced the unaccounted money available to him and a logical explanation can only be that the withdrawal are from surplus profits. Therefore, using the cash withdrawal figures as an indicator it is held that a sum of 25% of the total deposits can be safely taken to represent the assessee's unaccounted profits and or unaccounted working capital. This figure is lower than the cash withdrawals in most of the years because a concession for cash redeposited is also available to the assessee though it

is not possible to state that both cash deposits & withdrawals are made by the assessee himself. Further a possibility of incurring routine cash expenses is also possible but side by side cheque investment or consumption expenditure by cheque or credit card is equally probable. Therefore, a rate of 25% is taken to represent the concealed profit on the total deposits on an average and the taxable income of the assessee is recomputed accordingly. This figure may appear slightly excessive for A.Y. 2005-06 but it is adopted for this year also in view of the above discussions. As a result the adoption of 8% profit rate on all cheque/transfer withdrawals and also on the regular turnover as made by the A.O. is rejected and the cash withdrawal addition gets modified.”

As a consequence of the order of the first Appellate Authority, the tax liability stood reduced. Before the Tribunal the appellant-assessee questioned the basis of arrival by the First Appellate Authority of the profit figure at the rate of 25% of total deposit.

The Tribunal in its decision confirmed the finding of the CIT(Appeals). The Tribunal held:-

“The second contention raised by the ld. counsel for the assessee is that the estimation of the income of the assessee from undisclosed transactions as made by the ld. CIT(Appeals) at 25%

of the total deposits found to be made in the undisclosed Bank accounts on the basis of cash withdrawals is on the higher side. In this regard, he has pointed out that there were substantial cash deposits also made by the assessee in the relevant Bank accounts, but the ld.CIT(Appeals) has taken into account only the cash withdrawals ignoring totally such cash deposits. He has also furnished the details of such cash deposits made in the undisclosed Bank accounts of the assessee during the years under consideration and a perusal of the same shows that such cash deposits were actually more than the cash withdrawals at least in three years out of six years under consideration and in two years, i.e. A.Ys. 2007-08 and 2008-09, such cash withdrawals were substantially more than the corresponding cash withdrawals. It is thus clear that the cash deposits in his undisclosed Bank accounts were not made entirely out of cash withdrawals made from the said accounts and such cash deposits thus were made at least partly out of independent source of income. Moreover as rightly pointed out by the ld.D.R. in this regard, the total cash withdrawals from the undisclosed bank accounts of the assessee were found to be made in the range of 25% to 42% of the total fixed deposits, but the ld.CIT(Appeals) estimated the income of the assessee only to the extent of 25% of the total deposits after considering all other aspects including the

cash deposits made during the corresponding period. It is also pertinent to note here that some of the outgoings from the undisclosed Bank accounts of the assessee by cheques or by Bank Transfers were found to be made on account of personal expenses and personal investment by the ld.CIT(Appeals). However, the same have not been taken into consideration separately by the ld.CIT(Appeals) while estimating the income of the assessee at 25% of the total deposits on the basis of the quantum of cash withdrawals. This again goes to prove that all other aspects of the matter including the adverse findings given by him were taken into account by the ld.CIT(Appeals) while estimating the income of the assessee at 25% of the total deposits found to be made in the undisclosed Bank accounts of the assessee. Having regard to all these facts and circumstances of the case, we are of the view that the estimate made by the ld. CIT(Appeals) of the income of the assessee from the transactions reflected in the undisclosed bank accounts of the assessee at 25% of the deposits made in the said Bank accounts is quite fair and reasonable and the same cannot be regarded as on higher side. In that view of the matter, we uphold the impugned order of the ld.CIT(Appeals) on this issue for all the years under consideration and dismiss these appeals filed by the assessee.”

Mr. Bag, learned counsel for the appellant has submitted that the importation by the CIT(Appeals) the concept of 25% of the total deposit to be unaccounted profit as income to be without any foundation and arbitrary. His submission is that both the statutory appellate fora were wrong in coming to the finding that the business in which the appellant is engaged involves mostly cash and credit card payments. But these are all factual issues and we do not want to reappreciate the materials on the basis of which the Tribunal arrived at its finding. No substantial question of law arises in this appeal.

The appeal and the stay petition are accordingly dismissed.

There shall be no order as to costs.

(ANIRUDDHA BOSE, J.)

(AMITABHA CHATTERJEE, J.)

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