

आयकर अपीलीय अधिकरण, न्यायपीठ – “SMC” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य)
[Before Sri Mahavir Singh, JM]

आयकर अपील संख्या / I.T.A No. 2425/Kol/2005

निर्धारण वर्ष/Assessment Year: 2001-02

Sri Suman Bose
(PAN-AEAPB 1232 R)
(अपीलार्थी/Appellant)

Vs. Income-tax Officer, Wd-1, Malda

(प्रत्यर्थी/Respondent)

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आयकर अपील संख्या / I.T.A No. 2426/Kol/2005

निर्धारण वर्ष/Assessment Year: 2001-02

Smt. Bapi Bose
(PAN-ADSPB 1149 C)
(अपीलार्थी/Appellant)

Vs. Income-tax Officer, Wd-1, Malda

(प्रत्यर्थी/Respondent)

Date of hearing: 08.12.2011

Date of pronouncement: 08.12.2011

For the Appellant: N o n e

For the Respondent: Shri R. Gupta

आदेश/ORDER

Both these appeals by assessee are arising out of separate orders of CIT(A), Jalpaiguri in Appeal No.134/CIT(A)/JAL dated 24.06.2005 and no. 135/MLD/CIT(A)/JAL dated 23.06.2005. Assessments, in these cases, were framed by ITO, Ward-1, Malda u/s. 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2001-02 vide his separate orders dated 31.03.2004 and 25.03.2004.

2. At the outset, I find that adjournment petitions have been placed in file by stating the reason that the counsel Shri S. B. Putatunda, Advocate, who is appearing for assessee was admitted to hospital for certain serious ailments and still under treatment of Dr. and unable to go outside and appear before Tribunal. I find from the certificate of Medical Officer of AMRI, which states the disease as under:

“Complaints on reporting:

Dyspepsia and constipation for 6 days.

He is a known case of HTN – on Tab Felodipine (5 mg) 1 tab oce daily. For dyspepsia took H2 blockers. Now complaints of generalized weakness. Low grade fever (99 degree F) for 1 to 2 days.”

The disease of dyspepsia and constipation the assessee suffering from and that also on 20th October, 2011 as per certificate, is not a serious ailment which prevented the assessee’s counsel

from attending the hearing. Hence, I do not grant adjournment as the matter is very old and is on board from 30.03.2006 and at least 40/50 times this was adjourned at the instance of assessee's counsel and reasons were more or less the same. Hence, after rejecting the adjournment petition, I adjudicate this appeal on merits.

3. Further, these appeals are time barred by 58 days and as per condonation petition filed by these assessees, the reason is same, which reads as under:

"1. The assessee has filed today (23/11/05) an appeal against the order of Ld. CIT(A) Jalpaiguri. The order of the CIT Appeal officer was received by the assessee in the last week of July, 2005. The appeal is thus delayed.

2. The appellant submits that the delay in filing the appeal was due to circumstance beyond his control. On receipt of the order the assessee could not proceed the case due to his illness and also for his father's serious illness. The assessee's father is attacked by paralysis for long time and total family was in turmoil for this incidence. After passing of crucial time and getting some free from anxiety the assessee could made contract with his tax advisor who advised the appellant to file an appeal."

The Ld. Sr. DR Shri R. Gupta has not seriously objected the contention. Hence, I condone the delay and admit these appeals as there is reasonable cause for assessee not to file these appeals in time.

4. The first common issue in these two appeals of assessees is as regards to addition of Rs.50,000/- and Rs.1,18,000/- in the case of Shri Suman Bose and Smt. Bapi Bose respectively on account of unexplained gift received by account payee cheque. For this, assessees raised following ground no. 1 in respect of ITA No. 2425/K/2005:

"1. That on the facts and in the circumstances of the case, Ld. CIT(A), JAL was not justified in rejecting the claim of the appellant for the gift of Rs.50,000/- received by the assessee as the gift was made by crossed cheque and was genuine."

Ground no.1 in respect of ITA No.2426/K/2005:

"1. That on the facts and in the circumstances of the case, Ld. CIT(A), JAL was not justified in rejecting the relief sought by the appellant for the gift of Rs.1,18,000/- received by the assessee."

5. The brief facts leading to the above issue are that Smt. Bap Bose received loan of Rs.1 lac vide account payee cheque no.027581 drawn on UBI, Near Market Branch, Malda from savings bank account of Shri Mrinal Bose, Account No.10924 dated 24.03.1997. This amount bears interest and accumulated interest of Rs.18,000/- was credited in the FY 1999-2000 relevant to assessment year 2000-01 and the amount became Rs.1,18,000/-.

6. Similarly, in the case of Shri Suman Bose, amount of Rs.50,000/- was received as loan from Shri Mrinal Bose vide cheque no.027583 drawn on UBI, Near Market Branch, Malda from his savings bank account no.10924 dated 25.03.1997. These two amounts in the case of Smt. Bapi Bose and Shri Suman Bose were outstanding till FY 2000-01 and in both the cases the amounts of Rs.1,18,000/- and Rs.50,000/- in the respective returns of these assesseees were credited in the capital account by treating the same as gift and by taking the loan accounts as nil. The Assessing Officer during the course of assessment proceedings added these amounts as unexplained in Assessment Year 2001-02 in both cases. Aggrieved, these assesseees preferred appeals before CIT(A), who also confirmed these gifts as unexplained without going into merits of the case, whether the gifts are explained or unexplained. I am of the view that once these two amounts were received by these two assesseees on 24.03.1997 by account payee cheque (proof qua this was enclosed before CIT(A), the addition of unexplained gift cannot be made in this assessment year i.e. 2001-02. However, for factual verification, whether these two amounts were advanced by account payee cheque/draft by Shri Mrinal Bose on 24.03.1997 drawn on UBI, Near Market Branch, Malda can be verified by Assessing Officer, however, CIT(A) has already verified this. In case, this is true then this addition will be deleted by Assessing Officer and if factually this is wrong, the addition will be sustained. This issue of assessee's appeals is allowed for statistical purposes for limited verification.

7. The next common issue in these two appeals is as regards to the addition confirmed by CIT(A) on account of value of some Xerox copy of share certificates in the name of Smt. Bapi Bose and Shri Suman Bose. For this, assesseees raised following ground no. 3 in ITA No. 2425/K/2005 and ground no. 2 in ITA No. 2426/K/2005:

“Ground No. 3 in ITA No.2425/K/2005:

That on the facts and in the circumstances of the case, Ld. CIT(A), JAL was not justified in rejecting the relief sought by the appellant for the addition of Rs.23,000/- just on the basis of Xerox copy of share certificate of other persons name found in his residence.”

Ground No. 2 in ITA No. 2426/K/2005:

That on the facts and in the circumstances of the case Ld. CIT(A), JAL was not justified in rejecting the appeal sought by the Appellant for adding the value of Xerox copy of share certificate not in the name of the assessee and again the same amount has added twice by the Ld. A.O. with the income of the assessee's son Sri Suman Bose and against with the income of the assessee also.”

8. The brief facts are that during the course of search by CBI/AC B at the residence of Shri Suman Bose, Xerox copies of share certificate valuing Rs.23,000/- was found which are as under:

Particulars	Total No. of shares	Rate	Value of shares
1)WEBEL-SL ENERGY SYSTEMS LIMITED	1000	@ 12/-	Rs.12,000/-
2) SRG INFOTEC (INDIA) LIMITED	1000	@ 11/-	Rs.11,000/-
		Total :	<u>Rs.23,000/-</u>

The Assessing Officer in the case of Smt. Bapi Bose and Shri Suman Bose made addition on account of Xerox copies of same share certificate amounting to Rs.23,000/-. CIT(A) also confirmed the action of Assessing Officer.

9. After hearing Ld. DR Shri R. Gupta I find that the addition is based on Xerox copies of share certificate and it is not clear from the share certificate in whose name this share certificate stands even the Assessing Officer has not got it verified from the concerned company in whose name this share certificate stands and whether this is transferred in assessee's name or not. Even it is not clear how these shares pertain to these two assessees. Since these assessee as well as Assessing Officer could not establish the above facts, I am of the view that let this issue be decided afresh after verification of ownership of these shares. Merely on the basis of Xerox copies the addition cannot be made and in any case not in the case of both the assessees but only in one hand addition can be made. Accordingly, this issue in both the appeals is set aside to the file of Assessing Officer. This ground of appeals of assessee is allowed for statistical purposes.

10. The next issue in ITA No.2425/K/2005 is as regards to confirmation of addition of unexplained gift of Rs.80,000/-. For this, assessee raised following ground no.2:

"2. That on the facts and in the circumstances of the case, Ld. CIT(A), JAL was not justified in rejecting the relief sought by the appellant for gift of Rs.80,000/- received by the assessee as the donor's submission also not mismatched regarding the genuinity of the gift."

11. I have heard Ld. DR Shri R. Gupta and gone through facts and circumstances of the case. I find that the assessee received gift from Shri Partha Paul during the year under consideration. Shri Partha Paul appeared before Assessing Officer and admitted gift as genuine by producing evidences that the said gift was reflected in his accounts as well as return filed with the I. T. Deptt. But the Assessing Officer was of the view that he is not residing in Malda but residing in Liluah, Howrah and according to him this gift is not genuine. The CIT(A) also confirmed the action of Assessing Officer. I find that none of the authorities below have gone into the accounts of Shri Partha Paul and the factum that when the assessee is being assessed, whether he has disclosed this gift given to assessee in the return of income, in the absence of these facts, I am unable to decide this issue. Hence, I set aside this issue to the file of

Assessing Officer to re-adjudicate after considering submissions of the assessee as per law. This ground of appeal of assessee is allowed for statistical purposes.

12. Next issue in ITA No. 2426/K/2005 is as regards to the order of CIT(A) confirming the addition of value of fixed deposit of Rs.24,000/-. For this, assessee raised following ground no.3:

“That on the facts and in the circumstances of the case Ld. CIT(A) JAL was not justified in rejecting the appeal sought by the Appellant for adding the value of Rs.24,000/- against Fixed Deposit.”

13. I have heard Ld. DR Shri R. Gupta and gone through facts and circumstances of the case. I find that the assessee has purchased fixed deposit from ITC Classic Finance Ltd. on 27.06.1995 vide receipt no. 02/199506/53666C/53667C/53702C at Rs.12,600/- (i.e.4200x3) and these were matured in June, 2000 amounting to Rs.24,000/-. According to Assessing Officer, this was not declared in accounts of assessee. Hence, he considered this as income from undisclosed sources. The CIT(A) also confirmed the action of Assessing Officer. I find that prima facie this addition cannot be sustained reason being the assessee has purchased these fixed deposits on 27.6.1995 i.e. in FY 1995-96 relevant to Assessment Year 1997-98. If any addition is to be made in respect to original investment of Rs.12,600/- that can be made in Assessment Year 1997-98 and not in Assessment Year 2001-02. In respect to accrued interest, it is not clear whether the interest is received by assessee on accrual basis or on receipt basis. If the interest received on accrual basis the addition qua this year interest can be made in this year and not of entire interest. In case, interest is received on receipt basis the amount of Rs.24,000/- - Rs.12,600/- can be added in this year. This fact can be verified by the Assessing Officer after providing reasonable opportunity of being heard to the assessee. Hence, this issue is also set aside to Assessing Officer. This ground of appeal of assessee is also allowed for statistical purposes.

14. In the result, appeals of assessee are allowed for statistical purposes.

15. Order is pronounced in open court.

Sd/-

महावीर सिंह, न्यायीक सदस्य
(Mahavir Singh)
Judicial Member

(तारीख) Dated : 8th December, 2011

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषित:- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT – Smt. Bapi Bose & Shri Suman Bose, Malancha Pally, Mokdumpur, Malda -732 103
2. प्रत्यर्थी/ Respondent, ITO, Ward-1, Malda
3. आयकर कमिशनर (अपील)/ The CIT(A), Jalpaiguri
4. आयकर कमिशनर/CIT, Jalpaiguri
5. वभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.