

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "SMC" KOLKATA

Before **Shri Mahavir Singh, Judicial Member**

**ITA No.2496/Kol/2013**  
Assessment Year:2007-08

Neeraj Murarka C/o Sri R.P.Shrma, Advocate, 19-D, Muktaram Babu Street, Kolkata – 700 007 [PAN No.AEYPM 0328 R]	बनाम/ V/s.	Income Tax Officer- Ward-35(2), Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Jitendra Kaushik, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Rajendra Prasad, JCIT-DR
सुनवाई की तारीख/Date of Hearing	16-07-2015
घोषणा की तारीख/Date of Pronouncement	11-08-2015

**आदेश /O R D E R**

This appeal by the assessee is out of order of Commissioner of Income Tax (Appeals)-XX, Kolkata in appeal No.332/CIT(A)-XX/Wd-35(2)/2009-10/Kol Dated 26-08-2013. Assessment was framed by ITO Ward-35(2), Kolkata u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2009 for assessment year 2007-08.

2. Only issue involved in this appeal of assessee is against the order of Ld. CIT(A) in regard to confirming the addition of unexplained cash credit amounting to Rs.8.60 lakh by the Assessing Officer. For this, assessee has raised following ground:-

*“1. For that on the facts and circumstances of the case the Ld. Commissioner of Inc-tax (Appeals) erred in confirming addition made by the Ld. Inc-tax Officer of a sum of Rs.8,60,000/- as unexplained cash credit.”*

3. Brief facts of the case are that assessee is an individual and his return of income was processed u/s 143(1) of the Act. Subsequently said assessment was picked up for scrutiny assessment and issued notice u/s. 143(2) & 143(1) of the Act to Saraswati Co-op. Bank Ltd., Mumbai and Bank of Baroda Mumbai. In response thereto the copy of transactions during financial year 2006-07 was furnished by said Saraswati Co-op. Bank Ltd. On examination of bank statement of said Saraswati Co-Op Bank Ltd. AO found that cash of Rs.1 lakh and Rs.7.60 lakh were deposited by assessee on 07.03.2007 and 09.03.2007 and as per the assessment proceedings passed by AO as assessee failed to explain the source of depositing the above total cash amount (Rs.1 lakh + Rs.7.60 lakh) as well as lack of any proper material evidence being provided by assessee. Therefore, AO treated the same as unexplained credit and accordingly he added the sum to the total income of assessee. During the course of assessment proceedings before the AO Ld. AR of the assessee filed copy of balance sheet as on 31.03.2007 showing the balances of bank accounts as under:-

Name of bank	A/c No.	Balance as on 31.3.07
Indian Bank	SB A/c 3892	1410.89
Union Bank of India		1202
United Bank of India	SB A/c No. 407607	568.88
Bank of Baroda	SB A/c No. 29488	1696.40

However, on examination of assessee's books of account AO revealed that assessee was having account with Saraswat Co-op Bank but the balance as on 31.03.2007 was shown nil as the account was closed by the assessee before the end of the previous year ending on 31.03.2007. AO further noted that as per the statement furnished by the bank of Saraswat Co-op Bank balance of Rs.1,211.53 was appearing but in the books of account of the assessee the balance was nil. On being asked assessee as to why balance of 1211.53 held with Saraswat Co-op Bank as on 31.03.2007 was not shown in the balance sheet as on 31.03.2007 and assessee replied that he had written off balance amount of Rs.1211.53 as they have given the application for closing of said account and assessee was not sure of this meager amount back from the bank.

4. On detailed examination by AO the bank account of assessee held with Saraswat Co-Op Bank it was revealed that cash of Rs.1 lakh was deposited on 07.03.2007 and a cheque for Rs.1 lakh was issued to Sandeep Jajodia on 09.03.2007 and again cash of Rs.7.60 lakh was deposited and on the very same date a cheque was issued for the said amount to Sandeep Jajodia. On being enquiry made by AO for the source of cash amount of Rs.8.60 lakh (Rs.1 lakh + Rs.7.60 lakh) assessee's reply was that said amount was deposited out of cash in hand balance held by assessee in his cash book maintained in his regular books of account. Assessee further submitted that the source of the said cash fund is out of cash withdrawn from his bank account on various dates. However, AO was not satisfied with the reply and detailed filed by the assessee and he passed assessment order stating that it is quite contrary to his explanation by which bypassing the actual situation of depositing of cash in the said undisclosed bank account. Under the circumstances as stated above, it is found that Rs. 1 lakh and Rs.7.60 lakh were deposited on 07.03.2007 and 09.03.2007 in assessee's account as undisclosed deposits that the same are being treated as unexplained credit and undisclosed income to his bank account and accordingly it is added to the total income of the assessee of the present year under consideration. Aggrieved, assessee went in appeal before Ld. CIT(A).

5. During the appellate proceedings, Ld. AR of the assessee submitted various details including time book, cash book, details of transactions entered into in cash at bank as well as the source of cash deposits of Rs.8.60 lakh. However, Ld. CIT(A) was not able to co-relate the cash deposits with the source of cash and therefore he confirmed the addition of Rs.8.60 lakh made by AO. Further, Ld. CIT(A) also noted that the details filed about the source of deposits which were claimed to have withdrawn from the bank account held by assessee were made in July 2007 whereas deposits were made in the month of March, 2007. As per Ld. CIT(A), this fact strengthened the view of cash remained unexplained and in view of the facts and circumstances of the case, Ld. CIT(A) found no infirmity in the order of AO he dismissed the appeal of assessee. Aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before the Tribunal.

6. At the time of hearing Ld. Counsel for assessee filed Paper Book giving brief submissions, copy of cash book, from 01.04.2006 to 31.03.2007 Xerox copy of bank statement of Sarswat Co-op Bank together with separate typed copy of said bank statement for financial year 2006-07 as the Xerox copy of said bank statement was not fairly read out. Ld. Counsel for assessee further submitted as under:-

*“8) The Assessing Officer has verified and satisfied with the transactions of the appellant in course of earning income from commodity trading of Rs.103676.23 in MCX Exchange through broker M/s Sandeep Jajodia having account payee crossed cheques deposit and withdrawals through banks Sarswat Co-op Bank Ltd. Malad Branch and Bank of Baroda, Malad Branch, Mumbai and has accepted the income from commodity trading of Rs.103676.23 on the one hand and has disbelieved source of deposit of Rs.100000/- and Rs.760000/- in cash on 7.3.2007 and 9.03.2007 in Sarswat Co-op Bank Ltd., Malad Branch, Mumbai on the other hand solely on the ground of inadvertent mistake on the part of the appellant of not showing closing balance of Rs.1211.53 with the said Sarswat Co-op Bank Ltd. At the same time he is satisfied with the source of deposit of Rs.1960000/- out of total deposit of Rs.2820043/- in the said Sarswat Co-op Bank Ltd., which according to him is undisclosed bank account. The source of deposit of Rs.100000/- and Rs.760000/- in cash on 7.3.2007 and 9.03.2007 in Sarswat Co-op Bank Ltd., Malad Branch, Mumbai was fully explained through cash book and bank account with bank of Baroda and Sarswat Co-op Bank Ltd., Malad Branch, Mumbai.*

*9) In view of the aforesaid facts and submission your honour will find that the Assessing Officer has erred in adding a sum of Rs.860000/- as un-explained credit in undisclosed bank account and the same is liable to be deleted.”*

7. Ld. DR of Department heavily relied on the orders of lower authorities.

8. I have heard rival contentions of both parties and gone through the materials available on record in regard to addition of Rs.8.60 lakh as unexplained cash credit as any sum credited in the books of assessee which maintained for a previous year may be charged income tax as income of assessee of that previous year if (i) the assessee offered no explanation about the nature and source of such sum; or (ii) the explanation offered by him is on the opinion of the Assessing Officer not satisfactory after the enactment of Section 68 the burden is placed on the assessee to prove a credit appearing in its bank account that burden has to be discharged with material when it is

contended that a person had advance money or had given a loan, it has to be established that the person was not a man of straw and had accepted to give the money to the conclusion regarding creditworthiness or otherwise to a person is an essentially one of fact. It does not give rise to a question of law unless it is established that the conclusion was contrary to the materials on record [Organic Products Exporting Co v. CIT (2000) 241 ITR 497 (Kel)].

9. For invocation of Section 68 of the Act proper inquiry is needed. The Section 68 empowers the Assessing Officer to make enquiry specifically to be satisfied regarding the cash credit. If he satisfied that these entries are not genuine, he has every right to add these amounts as “income from other source”. The satisfaction of the Assessing Officer is the basis of invocation of the powers u/s 68 of the Act and the satisfaction must be derived from relevant factors on the basis of proper inquiry. The inquiry envisaged u/s 68 of the Act within an enquiry which reasonable and just it has been held in the decision of Hon’ble Gauhati High Court in the case of *Khandelwal Constructions v. CIT* (1997) 227 ITR 900 (Gauhati) that the amount of cash credit could not be included in the total income of the assessee because the inquiry was not properly made. From the going through the Paper Book filed by assessee, it is seen that the cash of Rs. 4.95 lakh was withdrawn from the bank of Bank of Baroda on 04.07.2006; Rs.3.05 lakh on 20.07.2006 from Bank of Baroda; Rs.9.90 lakh on 21.07.2006 of Bank of Baroda; Rs.9.78 lakh on 22.07.2006 from Bank of Baroda and Rs.9.80 lakh on 16.10.2006 from Saraswat Bank as on 16.10.2006 the assessee was having cash balance of Rs.39,39,832/- there were five cash withdrawals of Rs.2,500/- each on 31.10.2006, 31.11.2006, 31.12.2006, 31.01.2007 and 28.02.2007. As on 28.02.2007 assessee was having cash balance of Rs.39,27,332/- out of this balance available cash in hand assessee has deposited following amounts:-

Date	Amount
05.03.2007	Rs.9.80 lakh
07.03.2007	Rs.1 lakh
09.03.2007	Rs.7.60 lakh

Thereafter about the three deposits assessee remained with cash balance of Rs.20,87,332/-. During the course of assessment proceedings as well as appellate proceedings before Ld. CITT(A) this fact of cash withdrawals made by assessee, cash balance held by assessee has never been questioned and nor any fact to the contrary has been brought on record. There was sufficient cash balance in the hand of assessee to deposits the cash of Rs.8.60 lakh. In view of the aforesaid facts and circumstances of the case and my observation, I hereby delete the addition made by AO u/s. 68 of the Act and this ground of assessee's appeal is allowed.

10. **In the result, appeal filed by assessee is allowed.**

Order pronounced in open court on 11/08/2015

Sd/-  
(Mahavir Singh)  
Judicial Member

Kolkata,

\*Dkp

दिनांक:- 11/08/2015 कोलकाता

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी / Appellant – Neeraj Murarka, C/o R.P.Sharma, Advocate, 19-D  
Muktaram Babu Street, Kolkata -07
2. प्रत्यर्थी / Respondent-ITO, Ward-35(2), Aayakar Bhawan Poorva, 7<sup>th</sup> Floor  
110, Shanti Palli, E.M.Bypass, Kolkata -107
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता