

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri A.T.Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 605/Kol/2013

Assessment Year : 2009-10

Sri Bijoy Shribastab,  
Prop Isha Enterprise, Durgapur  
[PAN: BDNPS 0022 B]  
(Appellant)

-vs-

I.T.O., Ward-2 (4), Durgapur  
(Previously ITO-Wd-1(3)/DGP)  
(Respondent)

For the Appellant : Shri Arvind Agarwal, Advocate

For the Respondent : Shri Saurabh Kumar, Addl. CIT, Sr.DR

Date of Hearing : 08.05.2018.

Date of Pronouncement : 23.05.2018.

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the assessee arises out of the order of the Learned Commissioner of Income Tax- Durgapur in Appeal No.217/CIT(A)/DGP/2011-12 dated 01.10.2012 against the order passed by the Income Tax Officer, Ward-1(3), Durgapur [ in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short "the Act") dated 28.12.2012 for the Assessment Year 2009-10.
2. At the outset, there is a delay of 60 days in filing the appeal by the assessee before us. The assessee had filed a delay condonation petition wherein he had explained the reason that he was advised to wait for the giving effect order to Id CITA order to be passed by the Id AO and later on, the appeal is to be preferred to this tribunal. Based on such advise given by his counsel, he had to wait for the giving effect order to CITA order to be passed by the Id AO and once the same was passed, the assessee had

preferred an appeal before this tribunal. Hence it was a bonafide belief of the assessee based on legal advise given by his counsel which contributed to the delay in preferring the appeal. We find that the reason given by the assessee for delay is justified and are inclined to condone the delay of 60 days in filing the appeal before us and admit the appeal for adjudication herein.

3. The Ground No.1 raised by the assessee was stated to be not pressed by the Id AR and accordingly the same is dismissed as not pressed.

4. The only issue to be decided in this appeal is as to whether the Id CITA was justified in directing the Id AO to consider the peak balance of all the seven bank accounts of the assessee for determining the income of the assessee in the facts and circumstances of the case.

5. The brief facts of this case are that the assessee is an individual and proprietor of Isha Enterprises. The assessee is a transport operator. The return of income for the Asst Year 2009-10 was filed by the assessee on 22.9.2009 declaring total income of Rs 4,05,350/-. The assessee did not maintain books of accounts of his business activities. The assessee owned 4 trucks in the year under appeal. The income from transport business was offered to tax by the assessee under presumptive tax method prescribed u/s 44AE of the Act. During the course of assessment proceedings, the assessee produced bank statements of 6 bank accounts held by him with ICICI Bank, Axis Bank, HDFC Bank and Indus Ind Bank. A current account bearing No. 01880003275 in the name of M/s Isha Enterprise was maintained with ICICI Bank. The said bank account was opened with the intention to diversify the business of the assessee. The assessee entered into a partnership and intended to convert the said bank account as the current account of the prospective firm, but the said venture did not materialise. Hence this bank account was not disclosed by the assessee before the Id AO. But the assessee submitted

that the deposits made in the said bank account were out of proceeds of business of transport. The assessee further submitted that all the deposits in the remaining 6 bank accounts also represents business receipts , loans received and gifts received. The Id AO examined the veracity of the loans and gifts received by the assessee and accepted the same as genuine.

5.1. The Id AO treated the one current account with ICICI Bank vide A/c No. 01880003275 supra as undisclosed bank account of the assessee and proceeded to arrive at the peak credit balance thereon as unexplained money belonging to the assessee. The Id AO accordingly found that the peak credit balance in the said undisclosed bank account was Rs 16,03,470/- on 8.9.2008 and the same was added as income from undisclosed sources. In addition to this, the Id AO also treated the entire deposits in the disclosed 6 bank accounts as undisclosed income of the assessee after giving credit to the amount returned by the assessee, depreciation, loan receipt and gift receipts of the assessee apart from separately adding the repayment of loan to sundaram finance ltd made by the assessee in cash out of withdrawals from the said bank accounts. The total addition made on this account was Rs 24,30,074/-. Hence the assessment was completed by the Id AO by making total addition of Rs 40,33,544/- ( 16,03,470 + 24,30,074).

6. The assessee explained that in respect of the aforesaid bank account, there was an opening balance of Rs 7,60,607/-, total deposits were to the tune of Rs 13,02,000/- and total withdrawals were to the tune of Rs 8,04,000/- during the year. Out of the said withdrawals, Rs 1,99,000/- was transferred on 25.8.2008 for making deposit in another SB account with ICICI Bank which is already disclosed. Further withdrawal of Rs 1,20,000/- on 17.11.2008 through one of assessee's employees was for meeting business expenditure. It was duly submitted by the assessee before the Id AO that he had not maintained books of accounts for his transport business and since he owns less than 10

vehicles, he is not mandated as per law to maintain books of accounts and income from transport business was offered u/s 44AE of the Act by the assessee. The trucks were acquired out of financing from M/s Sundaram Finance Ltd to whom repayments were made by the assessee in cash out of the business proceeds of transport business. Hence the repayment of loans stand clearly explained by the business receipts itself and accordingly there is no need to make separate addition towards trucks loan repayment to Sundaram Finance Ltd in the sum of Rs 14,39,152/-. The assessee stated before the Id CITA that the Id AO vide letter dated 14.11.2011 had showcaused the assessee as to why the provisions of section 269T of the Act should not be invoked on the assessee towards repayments made to Sundaram Finance Ltd in cash. In response thereto, the assessee duly replied vide letter dated 5.12.2011 that the repayment of loan to Sundaram Finance Ltd in cash does not attract section 269T of the act as the same is a financial institution. This explanation of the assessee was accepted by the Id AO.

6.1. The assessee prepared a chart showing cash deposits in 6 bank accounts and withdrawals from them. Total deposits in those 6 bank accounts were arrived at Rs 39,74,999/-. There were withdrawals totaling to Rs 15,90,280/- and one such withdrawal for a sum of Rs 5,00,000/- was made by way of transfer from one bank to another bank. This fact was also observed by the Id AO in his order. Having observed so, the Id AO ought not to have considered the total deposits in the 6 bank accounts at Rs 34,74,999/-.

7. The Id CITA observed that the peak credit balance of all the 7 bank accounts should be worked out and the same be treated as income of the assessee and from the same, the amount held by the Id AO to be from explained sources should be subtracted to arrive at the total unexplained deposits. He also upheld the action of the Id AO in making addition towards repayment of loan to Sundaram Finance ltd as a separate addition. Aggrieved, the assessee is in appeal before us on the following grounds:-

*“2. Because that the Id. Commissioner of Income Tax (Appeals)-Durgapur was erred in law as well as in facts in confirming the addition of an amount of Rs.14,39,152/- paid to Sundaram Finance Co as alleged income from other source,*

*on the ground that, the appellant has no cogent explanation to offer, his such conclusions are based on his surmises and conjunctures and contrary to the facts and material on record.*

*3. Because that the Id. Commissioner of Income Tax (Appeals) was erred in law as well as in facts in directing the Id. AO. to calculate the peak credit of all the 7 Bank Accounts to ascertain the total deposits actually made: by the appellant, his such directions are without jurisdiction and contrary to the provisions of law.*

*4. Because that in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) ought to have adjudicated the Grounds of Appeal before him, in favour of the appellant that there was no undisclosed income of Rs.24,30,074/-.*

*5. Because that in the facts and circumstances of the case, and explanations furnished before the Id. Commissioner of Income Tax (Appeals), he was erred in law as well as in facts in holding against the appellant that the peak credit balance of undisclosed bank account of Rs.16,03,470/- was income under the head other source.*

*6. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”*

8. We have heard the rival submissions. It is not in dispute that the assessee had not maintained books of accounts for his transport business. It is not in dispute that the assessee owns less than 10 vehicles and is accordingly entitled to offer income u/s 44AE of the Act. It is not the case of the revenue that the assessee's disclosed income is not sufficient to meet the outgoings and investments made by the assessee. We find that no addition has been made towards unexplained investment u/s 69 of the Act. We find that the assessee had offered income from transport business u/s 44AE of the Act. The assessee had duly explained that the deposits in all the bank accounts (i.e 7 in number) represents only business proceeds which are received in cash and deposited in the bank accounts. Apart from this, there were certain loans and gifts received by the assessee which were treated as genuine by the Id AO and there is no dispute on the same. Since the income of the assessee is offered u/s 44AE of the Act, there is no need to make

addition towards cash deposits when the same were duly explained to be business proceeds. Accordingly, we direct the ld AO to delete the addition made towards unexplained cash deposits in the bank accounts made on peak credit theory. Moreover, the repayment of loan to Sundaram finance Ltd were made only in respect of trucks used in the transport business which were purchased out of loan from the said company. The cash withdrawals made from the bank accounts and the cash sales of the assessee from transport business duly explain the source for making repayments to Sundaram finance ltd. Hence there is no need to make any separate addition towards the same. Accordingly, we direct the ld AO to delete the same. Accordingly, the Grounds 2 to 6 raised by the assessee are allowed.

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

**Order pronounced in the Court on 23.05.2018.**

Sd/-

[A.T.Varkey]  
Judicial Member

Sd/-

[ M.Balaganesh ]  
Accountant Member

Dated : 23.05.2018.  
RG, Sr. PS

Copy of the order forwarded to:

1. Shri Bijoy Shribastab, Prop. Isha Enterprise, Shalbagan, SBSTC Garage, Durgapur-713201.
2. ITO, Ward-2(4), Durgapur )Previously ITO Wd-1(3)/DGP.
- 3..C.I.T.-(A)-Durgapur.
4. C.I.T.- Durgapur.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches

