

आयकर अपीलिय अधीकरण, न्यायपीठ –“B(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)

[Before Shri A. T. Varkey, JM]

I.T.A. No. 298/Kol/2020
Assessment Year: 2012-13

Shri Sati Nath Chatterjee (PAN: ACKPC 6915 C)	Vs.	ITO, Ward-3(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	18.02.2021
Date of Pronouncement	25.02.2021
For the Appellant	Shri D. K. Sen, Advocate
For the Respondent	Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

This is an appeal preferred by the Assessee against the order of Ld.CIT(A)-Durgapur, dated 31.01.2020 for A.Y. 2012-13.

2. At the outset, the Ld. Counsel for the assessee Shri D. K. Sen does not want to press ground nos. 1 and 3. So, Ground no. 1 is general in nature so not adjudicated ground no. 4 is also in general in nature and ground no.3 is not pressed so dismissed.

3. Ground no. 2 is only pressed which is as under:

2. *For that Ld. CIT(A) in consideration of the facts and circumstances of the case, is not justified to add bank loan liability of Rs. 2,33,950/- with the income of the appellant u/s 69A as unexplained money.*

4. Brief facts of the case as noted by the AO is that during the course of assessment proceedings, it was observed that the assessee maintained personal loan account bearing no. 720907121000151 with Vijaya Bank, Kharagpur Branch,

Kharagpur. From the said bank statement, it was found by the AO that the assessee had paid interest to the tune of Rs. 48,831/- during the FY 2011-12 relevant to AY 2012-13 and closing balance stood at Rs. 2,33,950/- (Dr.). According to the AO, the assessee had not shown the liability in his accounts i.e. either in M/s United Industries or in his personal account. According to AO, he asked the Ld. A.R of the assessee to explain as to why the amount of Rs. 2,33,950/- should not be added to the total income of the assessee, since the corresponding asset had not been reflected in the Balance sheet as on 31.03.2012. According to AO, the Ld. A.R of the assessee could not offer any satisfactory explanation on this issue. Hence, the amount of Rs. 2,33,950/- was added by the AO to the total income of the assessee as undisclosed investment u/s 69B of the Income Tax Act, 1961 (hereinafter referred to as the Act).

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) against the addition of Rs. 2,33,950/- and the Ld. CIT(A) confirmed the same as well as directed the AO to examine whether the assessee has shown the interest expenditure of Rs.48,831/- incurred by the assessee on this loan of Rs.2,33,950/- which had been recorded by the assessee in the books of account; and if not recorded by the assessee, then this interest expenditure to be brought to tax u/s. 69C of the Act (Against this direction of Ld. CIT(A), though the assessee preferred an appeal by raising separate ground no. 3, at the time of hearing the ld. Advocate has not pressed the same. So, it stands dismissed). The Ld. CIT(A) held as under:

“5.1 The assessing officer found that the appellant had paid interest to the tune of Rs. 48,831/- during the previous year relevant to the assessment year 2012-13. As a result, the closing balance against the loan obtained by the appellant stood at Rs. 2,33,950/-. The assessing officer also found that the liability towards this loan had not been disclosed by the appellant. With this fact in mind, the assessing officer required the appellant to explain why the undisclosed loan obtained by him should not be added back u/s 69B treating the same to be as undisclosed investment. Since, according to the assessing officer, the appellant could not explain the query satisfactorily, he added back the balance amount against loan amounting to Rs. 2,33,950/- u/s 69B of the Act. During the appellate proceedings, the Ld. A.R argued that, the amount in question was not an investment but it was a loan, and that too, to a personal loan. Therefore, the Ld. AO was not justified in making the addition u/s 69B.

5.2. I have considered the facts of the case. First of all, the Ld. A.R has stressed that the loan was of personal nature and hence it was not required to be recorded in the appellant's balance sheet. I find this argument unacceptable. Any financial transaction whether it is for business or for the individual, needs to be recorded in the balance sheet. The Income Tax Act has no general provision exempting the personal transactions from taxation. Moreover, the

appellant is an individual and files his return in this capacity itself. Therefore, in my view, he was duty bound to disclose the said loan transaction. Since the appellant has failed to do so, it needs to be treated as undisclosed liability incurred by the appellant. There, however, are two issues which are not clear, i) has the appellant disclosed the payment of interest? ii) what is the source of loan, is it in the nature of a hundi or is it from the bank? I also find that the Ld. AO has invoked the provisions of Section 69B for taxing the undisclosed loan. In my view, this is incorrect because the amount in question is a loan, a liability. It is not in the nature of investment. Therefore, the Ld. AO is directed to tax the undisclosed loan u/s 69A, treating it as unexplained 'money' in possession of the appellant. However, if the loan has come out of hundi, it may be taxed u/s 69D. If the interest paid is also not recorded in the books, the same may be taxed u/s 69C. this ground of appeal is dismissed."

6. Aggrieved by the aforesaid action of the Ld. CIT(A) the assessee has preferred this ground of appeal only ground no.2 (supra) before this Tribunal.

7. I have heard both the parties and perused the records. The AO during the assessment proceedings observed that the assessee maintained personal loan account bearing no. 720907121000151 with Vijaya Bank, Kharagpur Branch, Kharagpur. From the said personal loan account, it was found by the AO that the assessee had paid interest to the tune of Rs. 48,831/- during the FY 2011-12 relevant to AY 2012-13 and closing balance stands at Rs. 2,33,950/- (Dr.). However, The AO observed that the assessee had not shown the liability in his accounts i.e. either in M/s United Industries or in his personal account. He confronted the assessee about non-disclosure of this loan liability in his balance sheet. And, according to AO, since the corresponding asset has not been reflected in the balance sheet as on 31.03.2012, he show-caused the assessee as to why the unclosed loan amount of Rs. 2,33,950/- should not be added to the total income of the assessee. According to the AO since the assessee could not offer any satisfactory explanation in this regard, he added the amount of Rs. 2,33,950/- as undisclosed investment u/s 69B of the Act. On appeal the Ld. CIT(A) was of the view that the loan transaction should have been reflected in the balance sheet and non-disclosure of the same need to be treated as undisclosed liability incurred by the assessee. However, he was of the opinion that Section 69B is not applicable, whereas according to him it should be taxed u/s 69A treating it as unexplained money in possession of the assessee and he also directed that if the interest paid (Rs. 48,831/-) is also not recorded in the books, the same may be taxed u/s 69C of the Act. Before this Tribunal, the Ld. Advocate for the assessee Shri D. K.

Sen has not pressed ground no. 3 which is against this direction of the Ld. CIT(A) to tax Rs. 48,831/- if not recorded in the books. Therefore, this action of Ld. CIT(A) is confirmed and so that ground no. 2 of the assessee stands dismissed.

8. It is noted that the AO while going through the *personal loan account* of the assessee with Vijaya Bank, Kharagpur Branch supra has observed that the assessee had paid interest to the tune of Rs. 48,831/- during the relevant assessment year and the closing balance stands at Rs. 2,33,950/-. So the source of the loan has to be from Vijaya Bank since it is a finding recorded by the AO and not disturbed by the Ld. CIT(A). During the first appellate proceeding, the assessee has explained before the Ld. CIT(A) that he has taken the loan of Rs. 2,33,950/- from Vijaya Bank for his personal requirement and contended that there was no requirement to reflect the same in his balance sheet. However, the said contention of assessee was repelled by the Ld. CIT(A) and as per him, since the assessee has not disclosed this loan amount as a liability in the balance sheet, the same need to be taxed u/s 69A and not u/s. 69B as made by the AO. So, Ld. CIT(A) has taxed it u/s 69A of the Act treating it as unexplained money in possession of the assessee. This action of Ld. CIT(A) is assailed before me by the assessee. This Tribunal does not countenance this impugned action of the Ld. CIT(A) for the reason that it is a common knowledge that a liability (loan) cannot be income of the assessee. In this context, the AO's observation is noted "*..... the A.R of the assessee is asked to explain why the amount of Rs. 2,33,950/- will not be added to the total income of the assessee as the corresponding asset had not been reflected in the Balance sheet as on 31.03.2012.....*" From this observation the AO made it clear that the assessee has not shown any asset being acquired by the assessee for the amount of loss (Rs.2,33,950/-), which the assessee has recorded as an item of asset in the balance sheet. Therefore, the question of taxing the asset which is not existing in the balance sheet does not arise and the AO erred in making the addition u/s 69B of the Act. Coming to the action of the Ld. CIT(A) he confirmed the addition u/s 69A of the Act treating it as unexplained money in possession of the assessee u/s 69A of the Act which is also

erroneous, since the source of loan is acknowledged by the AO as from Vijaya Bank and therefore the question of unexplained money does not arise and so addition u/s. 69A of the Act is not legally sustainable. Therefore, the addition made by the authorities below on the facts and circumstances of the case is erroneous and, therefore, even though for whatever reason/over-sight the assessee had not disclosed the loan as liability in the balance sheet and since the incurring of interest on it has been disallowed being personal in nature and the source of loan is from Vijaya Bank as noted by the AO, the loan amount of Rs.2,33,950/- cannot be taxed as it is a liability and not income, so, I am inclined to direct the deletion of Rs. 2,33,950/-.

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

Order is pronounced in the open court on 25.02.2021.

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 25.02.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sati Nath Chatterjee, Rabindra Sarani, P. O. Bankura, Dist. Bankura, Pin-722101
2. Respondent- ITO, Ward-3(1), Bankura
3. The CIT(A)- Durgapur (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata