

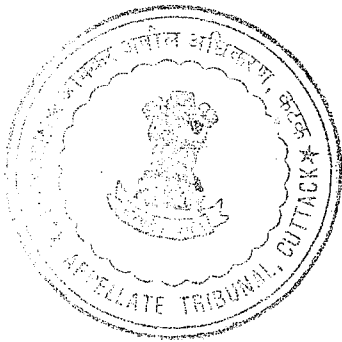
4/11/2016

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK 'SMC' BENCH,
CUTTACK**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.211/CTK/2015
Assessment Year :2010-2011

Sridhar Sahoo, Kanheipur, Jajpur Road, Odisha	Vs.	ITO, Ward-1(2), Cuttack
PAN/GIR No.		
(Appellant)	..	(Respondent)



Assessee by : Shri S.N.Sahu
Revenue by : Shri Suwendu Dutta, DR

Date of Hearing : 20 /10/ 2016
Date of Pronouncement : 21/10/ 2016

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-Cuttack, dated 23.2.2015, for the assessment year 2010-2011.

2. The sole issue involved in this appeal is that the Id CIT(A) erred in confirming the addition of Rs.20 lakhs made u/s.68 of the Act by the Assessing Officer.

3. The brief facts of the case are that the assessee maintained a saving bank account No.501010100010061 with Axis Bank, Jajpur Road Branch

jointly with his wife Smt. Jasobanti Sahoo, who is a house wife. On verification of bank account, the Assessing Officer observed that the assessee had deposited an amount of Rs.20 lakhs in cash on 21.1.2010. The assessee was required to explain the source of said deposits. The assessee submitted that Rs.20 lakhs was a cash deposit made by his wife Smt. Jasobanti Sahoo as the account was a joint account and the said amount was a cash advance received from her relatives. On 22.2.2013, the assessee furnished original affidavits given by 20 relatives of his wife Smt. Jasobanti Sahoo stating that they had given cash advance of Rs.1 lakh each. The Assessing Officer examined all the 20 persons on oath, who have stated in the written statement on 8.3.2012 about the fact of giving cash advance of Rs.1 lakh each to Smt. Jasobanti Sahoo. The Assessing Officer observed that none of the persons who had advanced money had any bank account, all of them were petty agriculturists without any PAN and meagre income source and the payment of all the advances were in cash. Therefore, he observed that the creditors had genuine identity on the basis of documents like copy of voter identity card, copy of land deed, etc submitted by them. However, the creditworthiness and genuineness of their alleged transaction could not be proved. The Assessing Officer observed that mere identity is not adequate in establishing the genuineness of transaction and their creditworthiness in giving the cash advance. He referred to the decision of Hon'ble Calcutta High Court in the case of Shankar Industries vs CIT, 114

ITR 689 (Cal), wherein, it was held that "where cash credit entries in name of third parties were appearing in books of account of assessee, and in respect of such entries assessee established only identity of creditor and nothing more, the Tribunal was justified in treating cash credits as assessee's income from undisclosed sources". The Assessing Officer observed that in the instant case, the assessee has not been able to convincingly establish the creditworthiness and genuineness of transaction of the persons giving cash advance. Thus, the onus of explaining the source of cash deposit of Rs.20,00,000/- could not be discharged by the assessee. In view of these facts and circumstances of the case, Smt. Jasobanti Sahoo did not have any independent income source and, therefore, the AO deemed it proper to treat the above amount of Rs.20 lakhs as unexplained cash credit in the hands of the assessee under consideration u/s.68 of the Act and, accordingly, added the same to the total income of the assessee.

4. On appeal, Id CIT (A) confirmed the order of the Assessing Officer, inter alia, by observing as under:

3. The appellant did not add anything evidential during appeal hearing. The appellant only stated that his wife wanted to purchase a flat at Bhubaneswar for that she had to advance a sum of Rs.20,00,000/- to the builder. She collected temporary loan from her friends and relatives and deposited the amount in Bank so as to keep the advance ready for the builder. But unfortunately the negation with the builder did not materialise. She abandoned the idea of purchasing the flat at Bhubaneswar and refunded the money to the friends and relatives that she had received through three persons. The appellant then cited ratios of few cases mostly discussing that the evidence through affidavits cannot be rejected.

4. From the facts of the case it is evident that in the Axis Bank account of the assessee jointly with his wife there has been very few credit and debit entries during the year in small denomination. For example, the total transaction in the account was for Rs.22,16,356/-, out of which Rs.20,00,000/- cash deposits on 20.01.2010. Such cash deposit has been given by cheque to three persons - on 02.03.2010 to Sri Ganeswar Sahoo in two cheques amounting to Rs.8,00,000/- and Rs.7,00,000/-, on 18.03.2010 to Damodar Sahoo amounting to Rs.4,00,000/- and on 22.03.2010 to Subash Chandra Sahoo amounting to Rs.1,00,000/-. The transaction as above was not explained by the assessee with evidence. The facts as presented by the assessee could not be taken into consideration by the AO in the absence of evidences. The appellant submitted that each of the 20 persons have given loan to his wife cash of Rs.1,00,000/- each out of their agricultural surplus income and they do not have any bank account. It is highly improbable that the persons who do not have PAN, do not have bank account could be having enough agricultural surplus to give cash loan to the wife of the assessee amounting to Rs.1,00,000/-. Moreover, it is highly unlikely that the wife of the appellant deposited all the cash together on one day i.e. on 22.01.2010. The events of the case defy any standard of human probability. In the case of **Sumati Dayal v. CIT 214 ITR 801 (SC) and CIT v. D.P.More 82 ITR 540 (SC)** it was decided by the Apex Court that "the maxim, the apparent is real is not always sacrosanct. If facts and circumstances so warrant that the same do not accord with the best of human probabilities, transfers are to be held as non-genuine."

5. The ratio of the above case is squarely applicable to the case of the appellant. The AO also very correctly referred to the decision of the Hon'ble High Court, Karnataka, Supra, where it was held only the identity of the loan creditor is not enough evidence in accepting the cash credit. Thus in the absence of evidence of creditworthiness of the loan creditors and genuineness of transaction and the highly improbable manner in which the facts are presented, I am inclined to agree with the decision of the AO. The addition made by the AO is confirmed."

5. I have heard the rival submissions and perused the materials available on record. In the instant case, the undisputed facts of the case are that the assessee is maintaining a saving bank account No.501010100010061 with Axis Bank, Jajpur Road Branch, which was in the joint name of the assessee

and his wife Smt. Smt. Jasobanti Sahoo. Further, in the said bank account, cash deposit of Rs.20 lakhs was made on 21.1.2010. During the course of assessment proceedings, the assessee explained that said amount was deposited by his wife Smt. Jasobanti Sahoo. The assessee further explained that his wife intended to purchase a flat and for that purpose, she received advance of Rs.1 lakh each from 20 persons. In support of the above explanation, the assessee furnished affidavits of those 20 persons before the Assessing Officer, wherein, each of them admitted the fact of advancing Rs.1 lakh to the wife of the assessee.

6. Further, each of the said 20 persons appeared before the Assessing Officer in pursuance to the summons issued u/s.131 of the Act. The Assessing Officer recorded the statement of each of the 20 persons. In their deposition before the Assessing officer, each of the 20 persons duly affirmed the fact of advancing of Rs. One lakh by them to the wife of the assessee.. He produced the evidences of owning agricultural land by them from which agricultural income was earned by them out of which, the advance was given by them.

7. The assessee also explained that unfortunately, the deal of purchase of flat could not materialize and, therefore, the advances received by the wife were returned back by cheque issued to persons through whom advances were received. The addition of 20 lakhs to the income

of the assessee by treating the source of aforesaid deposit of cash in the said Axis Bank as unexplained.

8. According to the Assessing Officer, though the assessee explained the identity of 20 creditors but could not substantiate the genuineness of the transaction as well as creditworthiness of the creditors to advance Rs.1 lakh to the wife of the assessee. According to the Assessing Officer, the creditors were not having PAN, the only source of income of the creditors were agricultural income and the creditors were having meager income. In this view of the matter, the Assessing Officer was not satisfied with the genuineness of the transactions as well as creditworthiness of the creditors.

9. On appeal, the Id CIT(A) confirmed the action of the Assessing Officer.

10. I find that after examining 20 persons u/s.131 of the Act, the Assessing Officer could not bring on record any material to show that the creditors have not actually advanced money to the wife of the assessee or they did not have source enough out of which they could have advanced the money in question. I find that the 20 persons duly appeared before the Assessing Officer, affirmed the fact of advancing money in question to the wife of the assessee not only by way of affidavit but also in the statement given before the Assessing officer and the creditors also produced before the Assessing Officer the evidence of owning agricultural land by them wherefrom agricultural income was earned by them out of which money in

question was advanced. In the above circumstances, in my considered view, the initial onus which was upon the assessee under the law was duly discharged. Thereafter, the Assessing Officer has brought no material on record to show that the statements given by the said 20 persons were incorrect or not possible. The Assessing Officer has stated in the order of assessment that the genuineness of the transaction has not been proved by the assessee. However, I find that in support of the genuineness of the transaction, not only the assessee filed the affidavits of 20 persons but each of the 20 persons appeared before the Assessing Officer in compliance to the summons issued u/s.131 of the Act and duly confirmed the genuineness of transaction before the Assessing officer.

11. In the above circumstances, I fail to appreciate how the Assessing Officer can state that genuineness of the transaction was not proved.

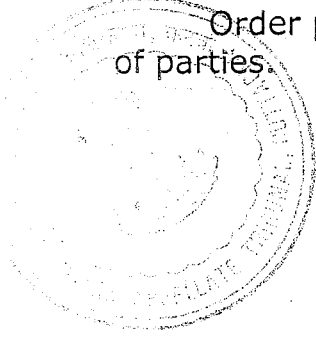
12. Further, in respect of the capacity of the creditors, I find that each of the creditors has in support of their capacity produced evidence of ownership of agricultural land owned by them before the Assessing Officer. After examining those evidences, the Assessing Officer could not bring any positive material on record to show that from agricultural land possessed by

the creditors, they could not have earned so much of agricultural income out of which Rs.1 lakh could not be advanced by them.

13. The Assessing Officer has merely stated that the creditors had meager income without bringing on record any material in support of the same. In my considered view, such vague and unspecific and unsubstantiated observation has no value in the eyes of law. Therefore, considering the entirety of the facts of the case, I find that the explanation of the assessee which was a plausible explanation was rejected by the Assessing Officer merely on the basis of suspicion or doubt and without bringing on record any positive material even after examining all the 20 persons under section 131 of the Act. In my considered view, a plausible explanation offered by the assessee cannot be so rejected by the Assessing Officer without bringing even an iota of material on record and even pointing out any inconsistency in the statement of the creditors recorded u/s.131 of the Act. My above view finds support from the decision of Hon'ble Supreme Court in the case of Sreelekha Banerjee vs CIT 49 ITR 112 (SC), wherein, it was held that the department cannot by merely rejecting unreasonably a good explanation convert good proof into no proof. Therefore, in my considered opinion, the order of the Assessing Officer cannot be sustained and the Id CIT(A) was not justified in confirming the same. I, therefore, set aside the orders of lower authorities and delete the addition of Rs.20,00,000/- in issue. Thus, the grounds of appeal raised by the assessee are allowed.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21 /10/2016 in the presence of parties.



Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 21 /10 /2016

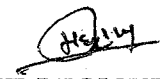
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sridhar Sahoo, Kanheipur,
Jajpur Road, Odisha
2. The Respondent. ITO, Ward-1(2), Cuttack
3. The CIT(A), Cuttack
4. ~~Dr.~~ CIT ,Cuttack
5. DR, ITAT, Cuttack
6. Guard file.

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BY ORDER,


ASST.REGISTRAR,
ITAT, Cuttack
Assistant Registrar,
भायकर अपिलीय अधीकरण
Income Tax Appellate Tribunal
कटक न्यायपिठ
Cuttack Bench