IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER AND PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.67/CTK/2018
Assessment Year : 2013-2014

ITO, Bhawanipatna Ward, Bhawanipatna	Vs.	Smt. Seema Sachdeva, Prop. M.S.Sachdeva & Co., At: Ghodaghat Chowk, PO: Bhawanipatana.
PAN/GIR No.AIVPS 8332 A		
(Appellant)	..	(**Respondent**)

Assessee by : S.K.Agrawalla, AR
Revenue by : Shri Subhendu Datta, DR

Date of Hearing : 20/08/ 2018
Date of Pronouncement : 23 /08/ 2018

O R D E R

Per N.S.Saini, AM

This is an appeal filed by the revenue against the order of the CIT(A), Sambalpur dated 7.11.2017 for the assessment year 2013-2014.

2. In Ground No.1 of appeal, the grievance of the revenue is that the CIT(A) was not justified in deleting the addition made by the Assessing Officer towards undisclosed income" of Rs.3,50,000/-.

3. The Assessing Officer observed that out of total capital introduced on different dates, an amount of Rs.3,50,000/- was deposited to the CC account of the assessee on 22.5.2012 as a transfer credit. The amount has been transferred from the account of the firm M/s. Smarsh Fastners in which the assessee is a partner to the cash credit account No.514130100001402 with Bank of India, Bhawanipatna Branch in the trade name of M.S.Sachdeva & Co., the proprietary business concern of the assessee. The Assessing Officer asked the assessee as to why the said amount was not disclosed in the balance sheet of the assessee, it was explained that the amount was repaid in two instalments, both in cash before the end of the relevant financial year and, therefore, there was no entry to reflect this transaction in the balance sheet. The Assessing Officer disbelieved the explanation of the assessee and added the same to the income of the assessee.

4. On appeal, the CIT(A) deleted the addition.

5. Before us, ld D.R. supported the order of the Assessing Officer and ld A.R. supported the order of the CIT(A).

6. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant

case, the Assessing Officer made addition of Rs.3,50,000/- on account of capital introduced by the assessee in her firm M.S.Sachdeva & Co., on the ground that the amount was received from M/s. Smarsh Fasteners, a proprietorship firm where the assessee is a partner and that this was not shown in the balance sheet of the assessee.

7. On appeal, the CIT(A) deleted the addition by observing as under:

> "1 have considered the matter. The addition made by the AO does not appear to be on a sound basis. The repayments of Rs.3,50,000/- to M/s. Smarsh Fastners are duly reflected in the books of account of the assessee and the sources are well explained in the books. The AO has examined the books of account produced by the assessee including the cash book, bank book and ledger accounts etc. as is clearly mentioned in para 3 of the assessment order. The cash repayments having been duly recorded in the cash book, there is no need for the assessee to explain the sources of such repayments .separately. It appears that the AO has not understood the implications of the entries in the books of account and made the impugned addition in a careless manner. Hence, the addition of Rs.3,50,000/- is uncalled for and directed to be deleted."

8. Ld D.R. relied on the order of the Assessing Officer and ld A.R. relied on the order of the CIT(A).

9. We find that no specific error in the order of the CIT(A) could be pointed out by the ld D.R. No error in the findings of the CIT(A) could be pointed out by ld D.R. by bringing any positive

material on record that the amount received from M/s. Smarsh Fastners was repaid in cash during the year and same was reflected in the cash book of the assessee and, therefore, it was not shown in the balance sheet of the assessee. Hence, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

10. In Ground No.2 of appeal, the grievance of the revenue is that the CIT(A) was not justified in deleting the addition made under the head "cash in hand" of Rs.14,29,711/-.

11. The Assessing Officer observed that the assessee has shown cash in hand in the balance sheet as on 31.3.2013 at Rs.14,29,711/- and cash in hand in the preceding assessment year as at 31.3.2012 at Rs.14,81,197/- . The Assessing officer was of the opinion that it is not possible to accumulate cash of such substantial amounts in personal hands as the assessee is maintaining multiple bank accounts in her own name in addition to joint account with her spouse. Therefore, the Assessing Officer asked the assessee to explain to furnish the sources of cash in hand. It was explained by the assessee that her father was having cash in hand of Rs.19.73,187.00 as on 31.3.2010 and

Rs.20,73,190/- as on 31.3.2011 and after his demise in February, 2011, the cash was transferred to her and therefore, the cash in hand has been increased to Rs.17,38,209/- as on 31.3.2011. The above explanation of the assessee did not find favour and the Assessing Officer disallowed Rs.14,29,711/- shown as cash in hand and added the same to the income of the assessee.

12. On appeal, the CIT(A) deleted the addition by observing as under:

> "6.2 I have perused the materials on record, the reasons given by the AO for making the addition and the written submission of the assessee. Going through the assessment order, it appears that the AO is highly confused and has not been able to see the facts in their proper perspective. The AO has discussed in the assessment order about the cash in hand position of assessee's late father-in-law who was a co-partner of the assessee in the erstwhile firm M/s. M S Sachdeva & Co. which ceased to exist from 13.2.2011. The AO has also discussed't he possibility of capital introduction of the assessee's father-in-law during the FY«2010-11 till his demise on 13.2.2011. This firm after the death of the father-in-law of the assessee, who was a co-partner, came to become a proprietary concern of the assessee. The assessee has shown cash in hand of Rs. 14,81,197/- as on 31.3.2012 in the balance sheet and the same has been shown at Rs.14,29,711/- as on 31.3.2013. The AO has not questioned the cash in hand position as on 31.3.2012. Moreover, there is no evidence brought on record by him to show that the cash in hand disclosed at Rs.14,29,711/- in the balance sheet is not correct. The assessee's books of account are duly audited u/s.44AB and cash in hand at the end of the year has duly emerged from such accounts. The AO cannot treat the cash in hand at the end of the year as unexplained when the same is duly reflected in the books of account which have been examined by the AO at the time of assessment. **The cash in hand having been properly explained as per the books of account, the addition made**

> **by the AO of Rs. 14,29,711/- cannot be sustained. Hence, the same is deleted."**

13. Before us, ld D.R. supported the order of the Assessing Officer and ld D.R. supported the order of the CIT(A).

14. We find that ld D.R. could not point out any specific error in the order of the CIT(A). He could not point out any error in the findings of the CIT(A) by bringing any positive material on record that the assessee had opening balance of cash in hand of Rs.14,81,197/-, which was duly shown in the balance sheet filed with the return of income for assessment year 2012-13 and accepted by the department. Further, during the year, the cash in hand shown by the assessee is Rs.14,29,711/- and that the Assessing Officer has brought no material on record to show that the cash balance shown is not correct. Hence, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

15. In Ground No.3 of appeal, the grievance of the revenue is that the CIT(A) is not justified in deleting the addition made under the head "unsecured loan and interest therein" to the tune of Rs.12,06,080/-.

16. The Assessing Officer has observed that the unsecured loan of the assessee as on 31.3.2013 stood at Rs.11,64,712/-. The

unsecured loan creditors are Sri Ankush Sachdeva of Rs.7,82,747/- and Sri Rohan Sachdeva of Rs.3,81,965/-. The Assessing Officer required the assessee to furnish the details of unsecured loan creditors, such as complete address of the creditors with their relationship with the assessee, initial amount of loan date with mode of receipt and the interest paid as on 31.3.2013. The assessee submitted that the loans were obtained prior to assessment year 2005-06 and the details are not available. The loans have been reflected in the audited balance sheet of the assessee. The Assessing Officer observed that both the loan creditors are the son of the assessee and the assessee is unaware of the details. Since the assessee has failed to establish the genuineness and creditworthiness of the loans, the Assessing officer made addition of Rs.12,06,080/- being unsecured loan of Rs.11,64,712/- including interest thereon of Rs.41,368/- and added the same to the total income of the assessee.

17. On appeal, the CIT(A) deleted the addition by observing as under:

> "8.2 I have perused the facts on record and gone through the written submission of the assessee. The loans in question were obtained during the FY 2004-05 relevant to AY 2005-06 and the genuineness of the same had never been questioned earlier. Along with interest due for the relevant previous year 2012-13 of Rs.41,368/-, the loan outstanding as on 31.3.2013 stands at Rs.11,64,712/-. However, the AO after making addition of Rs.11,64,712/-

has once again added the interest amount of Rs.41,368/-, thus making the addition on account of interest twice. The loans having been obtained during FY 2004-05, no addition can be made treating the same as not genuine u/s.68 in the assessment for the AY 2013-14. Moreover, the genuineness of the loans have not been questioned in the earlier years and the interest on the same has all along been allowed. On a sudden change of opinion, the AO cannot consider the loans as bogus in the assessment year 2013-14. No addition u/s.68 can be made for loans obtained during the earlier years. Hence, the addition u/s.68 of Rs.12,06,080/- cannot be sustained in the eye of law and is, therefore, deleted."

18. Before us, ld D.R. supported the order of the Assessing Officer and ld A.R. supported the order of the CIT(A).

19. We find that ld D.R. could not point out any specific error in the order of the CIT(A). He could not point out any error in the findings of the CIT(A) by bringing any positive material on record that the unsecured loans of Rs.12,06,080/ having been obtained in the financial year 2004-05, no addition can be made in the assessment year 2013-14. Hence, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

20. In Ground No.4 of the appeal, the grievance of the revenue is that the CIT(A) was not justified in deleting the addition made by the Assessing Officer towards "undisclosed income" of Rs.55,10,000/-.

21. The facts of the case are that the Assessing Officer found that an amount of Rs.55,10,000/- is outstanding from Shri H.K.Sachdeva, husband of the assessee as on 31.3.2013. Since the above amount is not reflected in the balance sheet of the assessee, the Assessing officer treated the same as undisclosed income of the assessee and added the same to the total income.

22. On appeal, the CIT(A) deleted the addition.

23. Before us, ld D.R. supported the order of the Assessing Officer whereas ld A.R.supported the order of the CIT(A).

24. After considering the rival submissions and perusing the orders of lower authorities, we find that the CIT(A) has deleted the addition by observing as under:

> " 9.2 I have considered the matter. The facts of the case have been perused. I have also gone through the assessment order and the written submission of the assessee. From the facts on record, it is found that the entire transactions of the assessee with her husband Sri H. K. Sachdeva are duly reflected in the books of account of both. The statement of the assessee that the amounts were being transferred from **her** bank accounts to the bank accounts of her husband on certain occasions for compelling reasons is also found to be correct. It is also a fact that the total amount of transfer from the bank accounts of the assessee to the bank accounts of her husband amounted Rs.71,88,000/- during the relevant previous year 2012-13 and the same amount was given by her husband to her either in cash or through account transfers on various dates. At the end of the year, the account was squared **off and there** Even after being fully aware of this, the AO has mentioned as under before making the impugned addition:
>
> > "*...However, the sums of Rs.16,78,000/- which have been transferred back to the current account of the*

assessee from the cash credit account of her husband was allowed being treated as reconciled, and the balance amount of Rs.55,10,000/-[Rs.71,88,000 — Rs.16,78,000] was added to the total income of the aessee as undisclosed income of the assesssee during The year under assessment as the said amount was receivable and remain outstanding during the year and the assessee has not disclosed the said amount in her balance sheet as at 31.03.2013 relevant to the assessment year under consideration under Assets."

9.2.1 It is obvious from the accounts of the assessee as well as of her husband that no amount was outstanding against the husband of the assessee as on 31.3.2013. Hence, in the balance sheet of the assessee, there was no entry showing any outstanding amount due from assessee's husband. Despite this, the AO is of the view that the assessee should have shown an amount of Rs.55,10,000/- as due from her husband and since the same is not reflected in her balance sheet, an addition of Rs.55,10,000/- is required to be made. Such a conclusion on the part of the AO clearly reveals that he has not understood the correct implications of the entries in the accounts of the assessee and has presumed the existence of a fact which does not exist in reality. The impugned addition appears to have been made on wrong understanding of the facts and accounting entries in the books of the assessee. The addition of Rs.55,10,000/- is found not based on valid reasons. Hence, the same is directed to be deleted."

25. Before us, ld D.R. could not point out any specific error in the findings of the CIT(A) by bringing any positive material on record that it is obvious from the accounts of the assessee as well as of her husband that no amount was outstanding against the husband of the assessee as on 31.3.2013. Hence, in the balance sheet of the assessee, there was no entry showing any outstanding amount due from the assessee's husband. Hence, we

find no error in the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

26. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 23 /08/2018.

Sd/- sd/-

(**Pavan Kumar Gadale)** **(N.S Saini)**
JUDICIALMEMBER **ACCOUNTANT MEMBER**

Cuttack; Dated 23 /08/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : ITO, Bhawanipatna Ward, Bhawanipatna
2. The Respondent. Prop. M.S.Sachdeva & Co., At: Ghodaghat Chowk, PO: Bhawanipatana
3. The CIT(A)- Sambalpur
4. Pr.CIT- Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.

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By order

Sr. Pvt. Secretary,
ITAT, Cuttack