

**Cit Vs. Arman Sheikh**

**Cit Vs. Arman Sheikh**

**SooperKanoon Citation :** [sooperkanoon.com/122674](http://sooperkanoon.com/122674)

**Court :** Guwahati

**Decided On :** Jun-29-2007

**Judge :** D. Biswas and A. Hazarika, JJ.

**Appellant :** Cit

**Respondent :** Arman Sheikh

**Advocate for Pet/Ap. :** Mr. U. Bhuyan

**Prior history :** 1. This appeal by the revenue preferred against the judgment and order dated 7-9-2005, passed by the Income Tax Appellate Tribunal, Guwahati Bench, in I. T. A. No. 119 (Gauhati) of 2003 has been admitted for hearing on the following question of law: Whether, on the facts and in the circumstances of the case, the Tribunal was justified and correct in law in confirming the order of the Commissioner (Appeals) in the interpretation of the meaning, scope and ambit of 'undisclosed income' defined in

**Judgement :**

1. This appeal by the revenue preferred against the judgment and order dated 7-9-2005, passed by the Income Tax Appellate Tribunal, Guwahati Bench, in I. T. A. No. 119 (Gauhati) of 2003 has been admitted for hearing on the following question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified and correct in law in confirming the order of the Commissioner (Appeals)

in the interpretation of the meaning, scope and ambit of 'undisclosed income' defined in Section 158B(b) of the Act, 1961, to hold that the deposits of Rs. 65.28 lakhs and 39.70 lakhs cannot be subjected to assessment under Section 158BC of the Income Tax Act, 1961 ?

2. We have heard Mr. U. Bhuyan, learned standing counsel for the revenue, and also Dr. A. K. Saraf, learned senior counsel for the respondent.

3. There was search and seizure in the business as well as residential premises of the assessee on 20-7-2000. Proceedings under Section 158BC of the Act were initiated. The assessee filed his return for the block period 1991-92 to 2001-02 declaring undisclosed income of Rs. 12,25,300. The assessing officer by the order dated 31-7-2002, assessed the income not disclosed by the assessee at Rs. 1,34,32,183. The assessee preferred an appeal before the Commissioner of Income-tax (Appeals-I), Guwahati, challenging the addition of Rs. 65,28,354 and Rs. 39,70,728 for the assessment years 2000-01 and 2001-02. The appellate authority vide order dated August 7, 2003, deleted the addition as the said amounts were found to have been disclosed. The revenue challenged the order of the first appellate authority before the learned Tribunal in I. T. A. No. 119(Gauhati) of 2003. The learned Tribunal dismissed the appeal affirming the order passed by the first appellate authority.

4. Mr. U. Bhuyan, learned Counsel for the appellant argued that the learned Tribunal affirmed the decision of the Commissioner (Appeals) without assigning any reason and without taking note of the fact that the respondent-assessee was unable to produce any evidence explaining the nature and source of the two bank deposits. Therefore, Mr. Bhuyan submitted that those two deposits were rightly treated as not explained by the assessing officer. According to Mr. Bhuyan, disclosure of particular bank account does not ipso facto denote that all the deposits shown therein are explained. Referring to the provisions of Clause (d) of Section 158BB(1), Mr. Bhuyan made further submission that in a case where previous year has not ended or the date of filing of the return under Section 139(1) of the Act has not expired, any income determined relying upon the entries in the books of account and other documents maintained in the normal course of

business on or before the date of search has to be excluded. No such document or any other evidence could be produced by the respondent-assessee to meet the requirement of Clause (d) of Section 158BB(1) of the Act and, therefore, the assessing officer was correct including the unexplained deposits as part of undisclosed income.

5. Dr. A. K. Saraf, learned senior counsel argued at length to counter the submission of Shri Bhuyan. Dr. Saraf challenged the maintainability of the appeal as, according to him, determination of undisclosed income is purely a matter of fact and such a question cannot be a subject-matter of appeal under Section 260A of the Income Tax Act, particularly when there is concurrent finding rendered by the two authorities below. According to Dr. Saraf, the assessee received the aforesaid amounts from the District Rural Development Agency, Government of Assam, as printing charges. The amount received was deposited in the bank account and also duly recorded in the regular books of account. The assessing officer has also not disputed this fact. Dr. Saraf further argued that the amount received has been treated by the assessee as revenue receipt and credited it to the profit and loss account and this cannot be treated as undisclosed income. According to Dr. Saraf, there is no scope for further addition as the declared net profit is adequate. It is also submitted by Dr. Saraf that the assessing officer accepted the source of investments made and, therefore, there cannot be any reason not to accept the deposits into bank account which have been duly explained in the fund flow statement.

6. The assessing officer in his order mentioned that the assessee explained the above deposits as printing charges from the DRDA and the same has not been accepted as the same was not verifiable for want of supporting evidence. The Commissioner (Appeals) noticed that in the order sheet dated 26-3-2001, it is mentioned that the regular books of account of the block period were produced and the explanation regarding various bank accounts were examined in details by the assessing officer. The Commissioner (Appeals) also took note of the observation of the assessing officer that the bank accounts were found recorded in the regular books of account and duly explained by the authorized representative. On this context, the Commissioner (Appeals) held that the same will not be

covered by the definition of undisclosed income. The Commissioner (Appeals) on examination of the documents observed as follows: Thus, from the order sheet it is evident that the appellant had regular books of account which was explained. The assessing officer had not given any finding on his examination of accounts and on the explanation on the deposits of the bank account. Since bank deposits are stated to have been disclosed in regular books of account and there is no material to prove that the appellant intended to conceal bank account, it will not be covered within the definition of undisclosed income. As such these deposits could not have been added as undisclosed income in these assessment years....

Considering the fact and circumstances of the case, the deposit of bank account No. CA-275 of Rs. 39,70,728 added in the assessment year 2001-02 will be treated as disclosed and the addition thereof is thus deleted. In so far as the bank deposits for the assessment year 2000-01 is concerned, on verification of material placed for my consideration, it transpired that the return of income which was due on 31st October of the assessment year i.e. October 31, 2000, was filed on April 1, 2002, and the account was audited only on 2-2-2001. Thus, in view of Section 158BB(1)(d), the bank deposit for this assessment year also could not be considered as undisclosed income as the same was disclosed in regular books of account which the assessing officer noted in his order sheet. Thus the addition of bank deposit for this year amounting to Rs. 65,28,354 shall have to be treated as disclosed. As such, this addition is also deleted in full.

7. The learned Tribunal after considering the materials on record came to the conclusion that the assessing officer erred in making the addition of Rs. 65,28,354 and Rs. 39,70,728. The reason given by the learned Commissioner (Appeals) was relied upon by the learned Tribunal in coming to the above conclusion.

8. We have considered the respective submissions made by learned Counsel for the parties in details. It would appear from the pleadings on record that the aforesaid two amounts were received by the assessee from a Government agency, i.e., DRDA by cheques and the same were deposited in the Canara bank account of the assessee and duly reflected in the regular books of account. The assessing officer in the order sheet dated March 26, 2001, recorded that the

explanation regarding various bank accounts have been examined in details and the bank accounts are found recorded in the regular books of account. The assessing officer relied upon a part of the entries in the books of account and rejected the other part. Since the entries made in the books of account before the date of search and seizure have been accepted, there was obviously no justification in not treating the receipts as disclosed income. (Ref. Kamal Kumar Saharia v. CIT reported in : (1994)1GLR291 . Had it been a case of disclosure of the receipts in the books of account after search, it would have been a case of income from undisclosed sources in the hands of the assessee as defined under Section 158B(b) of the Act. The amounts were received through cheques, duly credited to the bank account of the assessee and reflected in the books of account prior to the date of search. Therefore, in our considered opinion, the amount in question ought not to have been treated as undisclosed. The other important feature of the case is that the search took place on 20-7-2000, and August 9, 2000, on which dates the return for the assessment years 2000-01 and 2001-02 had not fallen due. The returns for the assessment years based on regular books of account were filed after search disclosing the bank deposits. In this situation, the bank accounts ought not to have been treated as undisclosed bank account. Consequently, it can be said that the transactions recorded in such bank accounts cannot be the subject-matter of block assessment proceedings. There is also no material on record to show that the assessee intended to hide any part of his income for the assessment years under consideration. (Ref. Ramesh Kumar Agarwal v. ACIT IT(S&S;) No. 21/Gau of 1997).

9. We have considered the decisions rendered in CIT v. Don Bosco Card Centre : [2007]289ITR329(Ker) ; Dr. Brijesh Lahoti v. CIT reported in : [2006]282ITR349(MP) and Smt. Harbans Kaur Bhatia v. CIT reported in : [2005]274ITR298(MP) . The decisions rendered in those judgments are on different facts and circumstances. Therefore, the decisions therein cannot determine the course of decision making in the instant case.

10. For reasons above, the question formulated is answered against the revenue and in favour of the assessee.

