

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. C.N. PRASAD, JUDICIAL MEMBER**

ITA No.426 & 427/Del/2022
Assessment Year: 2013-14 to 2014-15

DCIT Central Circle – 05 Delhi	Vs	Ashok Kumar Singh C-6 and 7 Flat No. 6529 Vasant Kunj, Delhi PAN no.AAXPS1360E
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. B. S. Anand, Sr DR
Respondent by	Sh. Gautam Jain, Advocate

Date of hearing:	13/04/2023
Date of Pronouncement:	19/04/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.426/Del/2022 and 427/Del/2022 are two separate appeals by the revenue preferred against a consolidated order of the CIT(A)-24, New Delhi dated 23.08.2021 pertaining to A.Y.2013-14 and 2014-15.

2. Since common issues are involved in both the appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in both the appeals is that the CIT(A) erred in deleting the addition made on protective basis without appreciating that the assessment u/s. 10(3) of the Black Money Act has not yet attained finality and is under sub-judice.

4. Briefly stated the facts of the case are that a search and seizure operation u/s.132 of the Act was carried out on 07.04.2016. Accordingly statutory notices were issued and served upon the assessee.

5. During the course of the assessment proceedings certain information was available on website of International Consortium of Investigative Journalists (ICIJ) regarding Indians having undisclosed foreign companies and assets offshore. Investigation was carried out by the Investigation Wing, Delhi which revealed that the assessee was Director and Shareholder of a BVI Company namely M/s. Everbez Business Inc. Assessee was asked to explain his relationship with the said company who submitted that he is neither been beneficial owner/ trustee/ settler in any foreign entity nor he has foreign bank account after 01.04.1997.

6. Information was received from BVI under the tax information exchange agreement thereafter information was also received from competent authority of Singapore who informed that company M/s. Everbez business NIC had one bank account

with UBS AG Singapore dealing in three foreign currencies. The details of bank accounts are under :-

Name of the Bank	Name of the Client	Bank Account Number (Forex category)
UBS AG Singapore	M/s. Everbez Business Inc.	1/140,735/00,16 Euro
UBS AG Singapore	M/s. Everbez Business Inc.	1/140,735/00, 08 Singapore Dollar
UBS AG Singapore	M/s. Everbez Business Inc.	1/140,735/00, 07 Euro Dollar

7. The AO further noted that there are huge credits in these bank accounts as under :-

A.Y.	Fin. Year	Credits in US Dollar	Credits in Euro	Credits in Sing Dollar	Total of credits equivalent to Indian Rs.
2009-10	2008-09	4,50,714.18	NIL	1500	9,63,133
2010-11	2009-10	4671	9000	NIL	1,21,052
2011-12	2010-11	2656	NIL	NIL	1,27,283

2012-13	2011-12	446833.79	NIL	NIL	2,43,11,824
2013-14	2012-13		NIL	NIL	2,75,75,955
2014-15	2013-14		NIL	NIL	7,37,94,690
Total		136331.88	9000	1500	

8. Assessee was asked to furnish his explanation and his statement was also recorded u/s.131 of the Act which is extracted at para-2.6.1 of the assessment order.

9. Invoking the provisions of Black money (undisclosed foreign income and assets) and imposition of tax Act, 2015 the AO made the following observations :-

“2.10 Proceeding under the Black Money (Undisclosed Foreign Income and Assets) and imposition of Tax Act 2015 (“BM Act”) have also been initiated after examining the details/ materials including the information relating to the incorporation of the BVI company Everbez Business Inc. and also the copy of the foreign bank, accounts maintained in the name of Everbez Business Inc. which were not disclosed in returns of income in case of Shri Asho Kumar Singh by issuing the notices under section 10 (1) of the BM Act on 25.09.2017 by the AO under Black Money Act and Additional Commissioner of Income Tax, Central Range02, Delhi. However, final orders are yet to be passed under BM Act.

2.10.2 *But, it is also clearly understood that the same income cannot be added twice-(i) once under the Income-tax Act and then (ii) in the BM Act, as a measure of abundant precaution, income is assessed protectively in the hands of the assessee under income tax act. Accordingly, in the present case of Sh. Ashok Kmar Singh, unexplained credits of Rs.2,43,11,824/- in the bank account of Everbez Business Inc. is being added to his income for AY 2013-14 u/s. 68 r.w.s. 115BBE of the Income-tax Act, 1961. I am satisfied that assessee has concealed particulars of his income and accordingly, penalty proceedings u/s. 271 (1) (c) of the Income-tax Act, 1961 is being initiated separately.*

(Addition Rs.2,43,11,824/-)”

10. The assessee challenged the matter before the CIT(A) and convinced the CIT(A) that the addition so made by the AO amounts to double addition and, therefore, the same should be deleted.

11. The CIT(A) after considering the facts and the submissions held as under ;-

6.5.1 *In Ground No. 5, the appellant has contended that the Assistant Commissioner of Income Tax has erred both in law and on facts in making an addition of Rs. 2,43,11,824/- on protective basis representing alleged unexplained credits in the bank account of Everbez Business Inc. and brought to tax under section 68 of the Act*

read with section 115BBE of the Act. That the learned Assistant Commissioner of Income Tax has failed to appreciate that no sum credited in the bank account of M/s Everbez Business Inc. could be alleged unexplained credit and taxable in the hands of the appellant u/s 68 of the Act even on protective basis. That the finding and conclusion that “appellant was the beneficial owner of bank accounts of Everbez Business Inc. and the credits appearing in the foreign bank accounts of Everbez Business Inc.” are assessable in the hands of the appellant is factually incorrect and legally misconceived and wholly untenable. That furthermore the learned Assistant Commissioner of Income Tax has erred both in law and on facts in arbitrarily and unjustifiably rejecting the explanation tendered by the appellant and making the impugned addition in the hands of the appellant for the instant assessment year. That the entire addition is based on surmises conjecture and suspicion and therefore illegal, invalid and, unsustainable. That various adverse findings and conclusions recorded in the impugned order of assessment are factually incorrect, contrary to record, legally misconceived and untenable.

6.5.2 6.5.2 In view of detailed reasons recorded in determination of Ground No. 5 of above Appeal No: CIT (A), Delhi- 24/10492/2018-19 for AY 2011-12, addition of Rs. 2,43,11,824/- is hereby deleted and Ground No. 5 of the appeal is allowed.

12. Before us the though DR strongly supported the findings of the AO but fairly conceded that the additions made under the Black Money Act are subjudice before the first appellate authority and to safeguard the interest of revenue protective addition has been made under the IT Act.

13. The Counsel for the assessee relied upon the findings of the CIT(A) and pointed out that the protective addition has been made vide assessment order dated 29.12.2018 which is earlier than the substantive addition made under the Black Money Act.

14. We have carefully perused the orders of the authorities below. Without going into the merits of the case, we are of the considered view that once additions have been made under Black Money Act the same addition cannot be made under the IT Act on the same set of facts, therefore, the deletion of the addition by the CIT(A) does not call for any interference. Hence, both the appeal by the revenue are dismissed

Order pronounced in the open court on 19.04.2023.

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .04.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi