

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

**I.T.A No. 1783/Kol/2012**  
**Assessment Year: 2006-07**

Narayan Chandra Roy  
(PAN: ADKPR9967J)  
(Appellant)

Vs. Income-tax Officer, Wd-1(1), Hooghly  
(Respondent)

Date of hearing: 22.12.2015  
Date of pronouncement: 20.01.2016

For the Appellant: Shri T. K. Chakraborty, Advocate  
For the Respondent: Shri Anil Kr. Pande, JCIT, Sr. DR

**ORDER**

**Per Shri Mahavir Singh, JM:**

This appeal by assessee is arising out of order of CIT(A)-XXXVI, Kolkata in Appeal No.248/CIT(A)-XXXVI/Kol/Wd-1(1),Hooghly/08-09/1312 dated 01.10.2012. Assessment was framed by ITO, Ward-1(1), Hooghly u/s. 143(3)/147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2006-07 vide its order dated 31.12.2008.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the addition made by AO on account of brokerage. For this, assessee has raised following ground nos. 1 and 2:

*“1. That on the facts and in the circumstances of the case the Ld. CIT(A) was not justified in confirming the addition of Rs.14,72,350/- on account of brokerage without considering the nature of business.*

*2. That the Ld. CIT(A) also failed to consider the SEBI rule while upholding the addition on account of income from brokerage.”*

3. Briefly stated facts are that the assessee is engaged in trading of shares and securities. During the year under consideration, a survey u/s. 133A of the Act was conducted on the business premises of the assessee on 06.09.2007 from where several documents including exercise book and hard disk of computer were impounded. On the basis of these documents and deposition of assessee made on the date of survey, the AO found huge mismatch in the brokerage income disclosed to the department and, therefore, he recorded reasons to believe that the assessee’s income has escaped assessment and accordingly, he issued notice u/s. 148 of the Act. The AO collated information from the

hard disk and computed the calculation in respect to purchase of shares as well as sale of shares, the receipts from brokerage and computed the brokerage at Rs.14,72,350/- as unexplained brokerage for the AY 2006-07. The assessee has disclosed brokerage income in its return of income at Rs.1,14,208/-. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO vide para 8 of his order as under:

*“8. I have heard the Ld. A/R and gone through the evidences produced by the appellant. The remand report of the A.O. on the issue, as extracted above, does not give any indication whether the brokerage found recorded in the impounded CD was in commensurate with the regular books of accounts or not. The impugned addition was made for huge mis-match of brokerage income found in the impounded document and as reflected in the books of account, on the basis of which return was filed. It is also fact that the appellant has not disowned or disputed the contents of the printout taken from the impounded hard disk. No Contract Notes etc. were filed by the appellant to establish share transaction with the broker on behalf of his customers. Further, the printout from the hard disk containing 11 pages portrays clearly and in detailed manner how the brokerage to the extent of Rs. 34.69,038/- has been earned during the year under consideration. The appellant has picked up a few transactions out of several hundreds transactions and tried to explain that the A.O. has calculated brokerage income on the total value of shares which was much higher than the brokerage actually earned. Question also peeps that when the brokerage income date-wise, party-wise etc. has been recorded in the computer in a systematic and detailed manner, then why in the accounts the same figure was not reflected, more so when income of Rs. 1,14,208/- has been shown under the specific head 'brokerage'. The explanation given by the assessee is not exhaustive. Therefore, ambiguity in the explanation and documents submitted at a later stage cannot be overruled. In view of the above and considering the totality of the facts and circumstances of the case and the impounded documents, I decline to interfere with the addition of Rs.14,72,350/- made by the A.O. as unexplained brokerage income. The addition is upheld and ground No.3 is dismissed.”*

Aggrieved, assessee came in second appeal before Tribunal.

4. We have heard rival submissions and gone through facts and circumstances of the case. Before us, Ld. Counsel for the assessee filed complete comparative Income Tax Department's calculation and assessee's own calculation as collated from the hard disk of the assessee. First of all, assessee's counsel explained the business pattern of the assessee that the assessee purchases as well as sells shares through broker SPT Securities Ltd. on the basis of orders given by retail customers. After purchasing shares from broker he sold those shares or transferred those shares in the name of clients and if the clients want to sell the shares on the same day and to book the profit or loss, as the case may be, he sold those shares through broker SPT Securities Ltd. for transferring the shares in the name of the customers. According to Ld. Counsel, such purchases on behalf of the customers are shown as purchase of shares in the P&L Account. While purchasing shares through share broker and transferring the same to clients, assessee booked the consideration as sales and

all those transactions are accounted for in the purchase and sale account reflected in the P&L account. According to Ld. Counsel, the AO has taken percentage as brokerage income whereas after purchasing of equity shares at the specified rate from the customers, the assessee sold those shares at a specified rate and difference is only earned by the assessee. But AO has taken assessee's brokerage income at a very higher figure which is evident from the comparative calculation chart given in pages 1 to 21 of assessee's paper book. The Ld. Counsel for the assessee explained by giving example, which reads as under:

*“For example – if 6 equity shares were sold at the rate of Rs.1335 it comes to Rs.8010, the AO had taken 0.75% as brokerage income which comes to Rs.60.08 (8010 x 0.75%), whereas after purchasing 6 equity shares at the rate of Rs.1325.66 from my customer I sold those shares at the rate of Rs.1335/-, thus a difference of Rs.9.34 is made by me per share. So, for 6 equity shares the gain will of Rs.56.04 (6 x 9.34). The AO had taken my brokerage income at Rs.60.07 which will be evident from a copy of the chart enclosed herein.”*

5. According to Ld. Counsel, the AO calculated the percentage of brokerage income on the total amount of sale value of shares whereas the assessee has computed the difference in sale and purchase price of shares multiplied by number of shares. Accordingly, in AY 2005-06, the same system was followed as in AY 2006-07. He narrated that the AO has wrongly calculated the income of brokerage at Rs.15,86,558/- as against assessee's income of rs.3,77,723/- and also brokerage income of Rs.1,14,200/- as declared from SPT Securities Ltd. The assessee's counsel now before us explained from the paper book that these two incomes have already been included in the P&L Account. We find from the above facts and circumstances that the assessee has now given comparative calculation of brokerage in sheets containing pages 1 to 21 (which are already available before the lower authorities) and made by the AO and also clarifies the amount of brokerage received by the assessee and profit earned from sale and purchase of shares. The assessee has given complete details of transaction showing the calculation made by the Department as well as computed by the assessee which is taken from the CD seized from the hard disk of the assessee's computer. We find that both the authorities below that the assessee is having two types of income i.e. profit from sale and purchase of shares i.e. their own transactions and brokerage from the trading transactions. When these comparative calculations were confronted to Ld. Sr. DR, he could not find any fault in the same but only relied on the assessment order and that of the order of CIT(A). In view of the above facts and circumstances, we are of the view that the assessee is able to

explain in entirety that the commission income earned by assessee from STP Securities Ltd. is to the extent of Rs.1,14,208/- and not as calculated by the AO at Rs.15,86,558/-. In term of the above facts and circumstances, we delete the addition and allow this issue of assessee's appeal.

6. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in restricting the addition on account of advance received being sundry creditors at Rs.3,52,173/-. For this, assessee has raised following ground no.3:

*“That the Ld. CIT(A) also erred in law in upholding the addition of Rs.3,52,173/- on account of advances received by the appellant holding the same to be bogus in contradistinction to the facts of the case.”*

7. Briefly stated facts are that during the course of assessment proceedings, the AO noted that the assessee has shown advances received at Rs.13,06,732/- from various parties. The assessee filed complete detail of advance received. The assessee before the AO filed ledger account of these parties only except supporting documents such as contract notes of share transactions and addresses of the persons. Accordingly, he treated the same as bogus advances and added to the returned income of the assessee amounting to Rs.13,06,731/-. Aggrieved, assessee preferred appeal before CIT(A), who partly allowed the claim of the assessee by holding that the advance payable to the customers amounting to Rs.9,54,559/-, which are carried forward from AY 2005-06 and only a sum of Rs.3,52,173/- pertains to the relevant AY 2006-07 and accordingly, he confirmed the addition to the extent of Rs.3,52,173/-. Aggrieved, assessee came in second appeal before tribunal.

8. We have heard rival submissions and gone through facts and circumstances of the case. We find from the facts of the case that the assessee filed complete details of advance taken from parties along with PAN. Ld. Counsel for the assessee also filed complete details of sale and purchase made with these parties and these are running parties and easily can be verified from I. T. records of the respective parties. According to assessee, these are simply trade creditors and advance received are adjusted against sales made to these parties either in this year or in the immediate next year. We find from the facts of the case that none of these facts have been denied by AO or by CIT(A) and even now before us Ld. SR. DR. In term of the above, we feel that once these are running parties, and accordingly, when PANs are given, this cannot be treated as unexplained in

the absence of any enquiry. Accordingly, we delete the addition and allow this issue of assessee's appeal.

9. In the result, the appeal of assessee is allowed.
10. Order is pronounced in the open court on 20.01.2016

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(Mahavir Singh)  
Judicial Member

Dated : 20th January, 2016

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT – Shri Narayan Chandra Roy, 18/3, Krishna Patty Seth Lane, Telinipara, Bhadreswar, Hooghly-712125
2. Respondent – ITO, Ward-1(1), Hooghly.
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.