

IN THE INCOME TAX APPELLATE TRIBUNAL, "A" BENCH, KOLKATA

Before : **Shri Mahavir Singh, Judicial Member, and
Shri M. Balaganesh, Accountant Member**

I.T.A No. 02/Kol/2013 A.Y 2007-08

Prasanta Kumar Bhattacharya Vs. I.T.O Ward 2(4), Hooghly
PAN: AEOPB 9130Q
(Appellant/Assessee) (Respondent/Department)

I.T.A No. 187/Kol/2013 A.Y 2007-08

I.T.O Ward 2(4), Hooghly Vs. Prasanta Kumar Bhattacharya
(Appellant) (Respondent)

For the Appellant/Assessee: Shri Somnath Ghosh, Advocate, Id.AR
For the Respondent: Shri Anil Kumar Pande, JCIT, Id.Sr.DR

Date of Hearing: 22-12-2015

Date of Pronouncement: 20-01-2016

ORDER

SHRI M.BALAGANESH, AM

These appeals arise out of the order of the Learned CITA in Appeal No. 260/CIT(A)-XXXVI/Kol/Wd.-2(2),Hg./2011-12/1584 dated 7.11.2012 for the Asst Year 2007-08 against the order of assessment framed u/s 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). Both the appeals of the assessee as well as the revenue are taken up together and disposed off by a common order for the sake of convenience.

2. The ground no.1 raised by the assessee is with regard to non-issuance of notice u/s 143(2) of the Act by the Learned AO. During the course of hearing, the Learned AR stated that this ground is not pressed. Accordingly, the ground no.1 raised by the assessee is dismissed as not pressed.

3. The ground nos. 2 to 4 raised by the assessee are in respect of addition made u/s 69A of the Act in the sum of Rs. 7,93,955/- in respect of undisclosed bank account of the assessee. All the grounds raised by the revenue are in respect of relief granted by the Learned CIT(A) to the tune of Rs. 9,67,037/- as against the addition made by the Learned AO in the sum of Rs. 17,60,992/- objecting to the peak credit addition adopted by the Learned CIT(A).

3.1. The brief facts of this issue is that the assessee is an individual engaged in the businesses of trading in potatoes, involved in operating saw mills and also running a cold storage unit under the name and style of 'Umesh Cold Storage'. The Learned AO observed that the assessee had an undisclosed savings bank account maintained with Axis Bank, Link Road Arambagh Branch vide account number 364010100007856 wherein a total deposit of Rs. 17,60,992/- was made during the relevant previous year and due to non-compliance on the part of the assessee for various opportunities granted by the Learned AO and for want of any explanation from the assessee with regard to the total deposits in the said bank account, the Learned AO proceeded to add the same as undisclosed income in the assessment. On first appeal, the Learned CIT(A) observed that there were various deposits as well as withdrawals in the said bank account and found that though the bank account was undisclosed, the subsequent deposits made in the said bank account stood explained by the previous withdrawals made by the assessee and accordingly proceeded to work out the peak credit of Rs. 3,85,217/- to tax apart from the amount withdrawn for the purposes for other investments in the sum of Rs. 4,08,738/-. In effect, the Learned CIT(A) confirmed the addition to the tune of Rs. 7,93,955/- and gave relief of Rs. 9,67,037/- to the assessee. Against the relief granted by Learned CITA, the revenue is in appeal before us and against the addition confirmed by Learned CITA, the assessee is in appeal before us.

3.2. The Learned AR argued that the Learned CITA ought to have restricted the addition only to the net profit of the excess of deposits over withdrawals instead of peak credit

addition. In support of this, he relied on the decision of the *Jurisdictional high court in the case of CIT vs Royal Security Guarding (P) Ltd in ITAT No. 196 of 2013 G.A.No. 3488 of 2013 dated 30.7.2014.* In response to this, the Learned DR vehemently supported the order of the Learned AO.

3.3. We have heard the rival submissions and perused the materials available on record. We find that in the facts and circumstances of the case, the Learned CIT(A) had rightly adopted the theory of peak credit for making an addition towards the undisclosed bank account of the assessee maintained with Axis Bank, Link Road Arambagh Branch. Wherever he found that there were certain withdrawals meant for personal expenses to the tune of Rs. 4,08,738/- , the same has been ignored while working out the peak credit addition. We find that no material has been brought on record by the Learned AR to controvert this finding. The action of the Learned CIT(A) in deciding this issue cannot be faulted with. The arguments of the Learned AR that only the net profit of the undisclosed bank account should be brought to tax does not hold any water as in the instant case, there is no material brought on record that the sources for deposits and withdrawals emanate out of the business transactions of the assessee. We find from the case relied upon by the Learned AR on the decision of Hon'ble Calcutta High Court, there was a clear cut finding recorded by the tribunal that the credits in the undisclosed bank represents undisclosed business receipts and withdrawals made thereon represent undisclosed business expenditure. In these circumstances, the Hon'ble Calcutta High Court affirmed the view of the tribunal to adopt the net profit thereon for the purpose of taxation. The facts in the instant case are squarely distinguishable from facts before the Hon'ble Calcutta High Court. Accordingly, the grounds raised by the assessee as well as the revenue are dismissed.

4. In the result, the appeal of the assessee in ITA No. 02/Kol/2013 is dismissed and the appeal of the revenue in ITA No. 187/Kol/2013 is dismissed.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 20-01-2016

Sd/-
(Mahavir Singh, Judicial Member)

Sd/-
(M. Balaganesh, Accountant Member)

Date 20/ 01/2016

Copy of the order forwarded
to:-

- 1.. The Appellant/Assessee: Shri Prasanta Kr. Bhattacharya C/o Shri Somnath Ghos, Advocate, Seven Brothers' Lodge P.O Buroshibtala P.S Chinsurah, Dist Hooghly PIN 712105.
- 2 The Respondent/Department-Income Tax Officer Ward 2(4) Hooghly Aaykar Bhawan G.T Road, Khadina More P.O Chinsurah P.S Chinsurah Dist Hooghly PIN 712101.
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

**PRADIP SPS