

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

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 2047/Kol/2014
Assessment Year 2010-11

Shri Kartick Kaity.....Appellant
C/o. V.N. Purohit & Co., Chartered Accountants
Diamond Chambers, Unit-III, 4th Floor
Suit No. 4G, 4, Chowringhee Lane,
Kolkata - 700 016
[PAN: ALXPK3438N]

ITO Ward 2(4), Hooghly,.....Respondent
Aayakar Bhawan, G.T. Road
Khadina More, Chinsurah
Hooghly - 712101

I.T.A. No. 2263/Kol/2014
Assessment Year 2010-11

ITO Ward 2(4), Hooghly,.....Respondent
Aayakar Bhawan, G.T. Road
Khadina More, Chinsurah
Hooghly - 712101

Shri Kartick Kaity.....Appellant
C/o. V.N. Purohit & Co., Chartered Accountants
Diamond Chambers, Unit-III, 4th Floor
Suit No. 4G, 4, Chowringhee Lane,
Kolkata - 700 016
[PAN: ALXPK3438N]

Appearances by:

Shri V.N. Purohit, FCA appearing on behalf of the Assessee.
Shri Sallong Yaden, Addl. CIT appearing on behalf of the Assessee.

Date of concluding the hearing : September 11, 2017
Date of pronouncing the order : September 20, 2017

ORDER

SHRI P.M. JAGTAP, AM

These two appeals, one by the assessee being ITA No. 2017/K/2014 and the other filed by the revenue being ITA No.

2263/K/2014, are cross appeals which are directed against the order of Ld. CIT (A) – 36, Kolkata dated 30.09.2014.

2. At the outset, it is noticed that there is delay of 8 days on the part of the revenue in filing its appeal before the Tribunal. In this regard, an application is filed by the revenue seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of 8 days on the part of the revenue in filing its appeal before the Tribunal. Even the learned counsel for the assessee has not raised any objection in this regard. The said delay is accordingly condoned.

3. The first common issue involved in ground no 1 of the revenue's appeal as well as ground no 1 of the assessee's appeal relates to the addition of Rs. 58,06,020/- made by the AO on account of deposits found to be made in the undisclosed bank account of the assessee which is restricted by the Ld. CIT (A) to Rs. 8,79,039/- thereby giving relief of Rs. 49,26,981/- to the assessee.

4. The assessee in the present case is an individual who is engaged in the business of dealing in cement and hardware under the name and style of his proprietary concern M/s. Mahaprabhu Hardware Stores. The return of income for the year under consideration was filed by him on 27.09.2010 declaring a total income of Rs. 2,09,578/-. An enquiry made by the AO during the course of assessment proceedings revealed that there were two bank accounts maintained by the assessee with HDFC and Axis Bank. It was also revealed that the said bank accounts involving transactions of Rs. 13,49,500/- and

Rs. 44,56,520/- were not reflected in the books of accounts of the assessee. In this regard, the assessee could not offer any explanation as regards the transactions reflected in the said two bank accounts to the satisfaction of the AO. The AO therefore, treated the said transactions as unexplained and made an addition of Rs. 58,06,020/- to the total income of the assessee in the assessment completed u/s 143(3) vide an order dated 12.03.2013.

5. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT (A). During the course of appellate proceedings before the Ld. CIT (A), a written submission was filed by the assessee submitting that the transactions reflected in his two bank accounts with HDFC Bank and Axis Bank were related to his business and the person maintaining the books of accounts of his business had negligently failed to record the said transactions in the books of accounts. The submission made by the assessee was forwarded by the Ld. CIT (A) to the AO for his comments. In the remand report submitted to the Ld. CIT (A), AO offered his comment on the submissions made by the assessee. When the said remand report was confronted by the Ld. CIT (A) to the assessee, the assessee also filed a rejoinder. Even the relevant assessment records was also called for and verified by the Ld. CIT (A). After considering the entire material available on record, the Ld. CIT (A) decided the issue relating to the addition i.e. liable to be made to the total income of the assessee on account of the relevant transactions reflected in the two bank accounts of the assessee vide paragraph no 3.5 of his impugned order which reads as under:

“Appellant’s submission and facts available on record is carefully considered. Assessment record was called for and verified. As is evident from the bank a/c’s deposits and withdrawals of which were evidently not accounted for, all the withdrawals one for making payment to Untra-tech Cement, Grasim Cement and other companies, which are evidently for purchase of cement, rod etc., which as assessee’s business. All these transactions were not to be accounted for, but came to the knowledge of the department, due to receipt of AIR information from bank. However on verification and enquiry from bank, as it has been ascertained that the entire withdrawal was in the form of cheque/draft for making payment to leading companies like Ultra-tech Grasim etc., it can be presumed that the withdrawals and subsequent deposit represented his unaccounted for business in steel, cement etc. However as the assessee has failed to produce any evidence of purchase and sales relating to the transaction, 10% of the deposits representing sales is added as income from profit from trading in steel, cement etc., not accounted for. However, the profit made from trading during the year cannot explain the initial peak deposit in bank account. Therefore, the initial peak deposit of Rs. 2,00,900/- in HDFC bank, Arambagh and Rs. 97537/- as on 02.04.2009 in Axis Bank, Hooghly is taken as unexplained investment and further added to the income of the assessee. In the result appeal is partly allowed.”

The Ld. CIT (A) thus restricted the addition of Rs. 58,06,020/- made by the AO to Rs. 8,79,039/-.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. The main contention raised by the learned DR in support of the revenue’s case on this issue is that there was no evidence adduced by the assessee to show that the relevant transactions reflected in the two undisclosed bank accounts of the assessee were related to his banks. However, as rightly pointed out by the learned counsel for the assessee from the relevant transactions reflected in the two bank accounts of the assessee, majority of the payments were made to the suppliers of cement and other products in which the assessee was dealing. As

further submitted by him, the sales of the said goods were made by the assessee in cash and after depositing the proceeds of such sales in the said two bank accounts, cheques were issued to the suppliers regularly during the year under consideration. Even the Ld. CIT (A) in his impugned orders has recorded the finding in this regard after verifying the relevant assessment record and considering the submissions made by the assessee that the transactions reflected in the two undisclosed bank accounts of the assessee were related to the assessee's business which had remained to be accounted for. He accordingly treated the entire credits reflected in the said two bank accounts of the assessee as sales and estimated the income of the assessee from such unaccounted sales by applying the net profit rate of 10%. He also treated the initial peak deposits of Rs. 2,00,900/- and Rs. 97,537/- as the unexplained investment of the assessee made for the purpose of undisclosed business and directed the AO to make a further addition on account of such unexplained investment to the total income of the assessee in addition to the net profit of 10% estimated by him.

7. After considering the submissions made by both the sides and perusing the relevant material on record, we find that the approach adopted by the Ld. CIT (A) while deciding this issue is quite fair and reasonable. When the relevant transactions reflected in the undisclosed bank accounts of the assessee were found to be pertaining to the regular business of the assessee of dealing in cement and hardware, we are of the view that the entire credit in the said accounts cannot be treated as the income of the assessee as done by the AO and the Ld. CIT (A) was fully justified in treating the same as

the undisclosed sales of the assessee and estimating the income of the assessee from such sale by applying the net profit rate of 10%. At the time of hearing before us, even the learned counsel for the assessee has not raised any contention to dispute the NP rate of 10% adopted by the Ld. CIT (A). He however has contended that the initial peak credit of HDFC Bank taken by the Ld. CIT (A) at Rs. 2,00,900/- for making the addition on account of unexplained investment is not correct as the initial peak credit in the said account was only to the extent of Rs. 1,15,000/-. A perusal of the bank statement of the assessee of HDFC Bank account (copy at page no 12 of the paper book) however shows that from the initial peak credit of Rs. 1,15,000/- as reflected on 21.11.2009, the payment of Rs. 1,10,000/- was made by the assessee on 21.11.2009 itself and further cash of Rs. 1,95,900/- was deposited immediately on 25.11.2009 making the credit balance of Rs. 2,00,900/-. In our opinion, the initial peak credit in HDFC account thus was rightly taken by the Ld. CIT (A) of Rs. 2,00,900/- and there is no infirmity in his impugned order on this issue calling for any interference. We therefore, uphold the impugned order of the Ld. CIT (A) on this issue and dismiss ground no 1 of the revenue's appeal as well as ground no 1 of the assessee's appeal.

8. The issue raised in ground no 2 of revenue's appeal relates to the deletion by the Ld. CIT (A) of the addition of Rs. 1,00,224/- made by the AO on account of unexplained investment made by the assessee in the bank deposits to the extent of Rs. 91,705/-.

9. As found by the AO during the course of assessment proceedings, investment of Rs. 1,00,0224/- was made by the assessee

in fixed deposits with bank which was offered as security. Since the said deposits were not reflected in the balance sheet of the assessee, the AO treated the same as unexplained investment of the assessee and an addition of Rs. 1,00,224/- was made by him to the total income of the assessee. On appeal, it was found by the Ld. CIT (A) that the relevant investment in fixed deposits with bank was made by the assessee in the earlier year and not in the year under consideration. He, therefore, deleted the addition made by the AO on account of unexplained investment made by the assessee in the bank deposits. 'The learned CIT (A) however found that the interest accrued for the year under consideration on the said bank deposits was not disclosed by the assessee in his return of income. He, therefore, directed the AO to make addition on account of such interest.

10. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the Ld. CIT (A) has allowed relief to the assessee on this issue after having found that the investment in bank deposits was made by the assessee in the earlier year and not in the year under consideration. This position was accepted even by the AO on verification in his remand report. At the time of hearing before us, the learned DR has not been able to bring anything on record to rebut or controvert this factual position. We, therefore, find no infirmity in the impugned order of the Ld. CIT (A) giving relief to the assessee on this issue and upholding the same, we dismiss ground no 2 of the revenue's appeal.

11. As regards the issue raised in ground no 2 of assessee's appeal relating to the addition of Rs. 30,153/- made by the AO and confirmed by the Ld. CIT (A) on account of undisclosed commission income, the only contention raised by the learned counsel for the assessee is that the said commission income to the extent of Rs. 24,741/- was already disclosed by the assessee in his books of accounts. It is observed a similar claim was made by the assessee even before the Ld. CIT (A) and when the matter was remanded by the Ld. CIT (A) to the AO, the AO found on verification of the relevant record that the claim made by the assessee was misleading and not acceptable. Keeping in view the same, we find no infirmity in the impugned order of the Ld. CIT (A) confirming the addition of Rs. 30,153/- made by the AO on account of undisclosed commission income and upholding the same, we dismiss ground no 2.

13. In the result, the appeal of the revenue as well as that of the assessee are dismissed.

Order Pronounced in the Open Court on 20th September, 2017.

Sd/-
(S.S. Viswanethra Ravi)
(JUDICIAL MEMBER)

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 20/09/2017
Biswajit, Sr. P.S.

Copy of order forwarded to:

1. Shri Kartick Kaity, C/o. V.N. Purohit & Co., Chartered Accountants, Diamond Chambers, Unit-III, 4th Floor, Suit No. 4G, 4, Chowringhee Lane, Kolkata – 700016.
2. I.T.O. Ward 2(4), Hooghly, Aayakar Bhawan, G.T. Road, Khadina More, Chinsurah, Hooghly – 712101.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata