

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Sri A.T.Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 362/Kol/2017

Assessment Year : 2012-13

Shafiuddin Basha
Kolkata
[PAN : AGYPB 6716 C]
(Appellant)

-vs.- I.T.O., Ward-32(2)
Kolkata

(Respondent)

For the Appellant : Shri Soumitra Choudhury, Advocate

For the Respondent : Shri Kalyan Nath, Addl.CIT

Date of Hearing : 23.06.2017.

Date of Pronouncement : 07.07.2017

ORDER

Per M.Balaganesh, AM

1. This appeal of the assessee arises out of the order of the Learned Commissioner of Income Tax, (Appeals) Kolkata-9, Kolkata [in short the Id CIT(A)] in Appeal No. 82/CIT(A)-9/Wd-32(2)/2015-16/Kol. dated 14.12.2016 against the order passed by the Income Tax Officer, Ward 32(2), Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act ‘) dated 20.03.2015 for the Asst Year 2012-13.

2. The only issue to be decided in this appeal is as to whether the learned CIT(A) was justified in estimating the net profit at 8% of turn over in addition to taxing the peak credit in respect of undisclosed bank account of the assessee, in the facts and circumstances of the case.

3. The brief facts of this issue is that the Id. AO in the course of assessment proceedings observed that the assessee had maintained a bank account with State Bank of India,

Netaji Subash Road Branch, Kolkata which was not disclosed by him. He obtained the bank statement from the bank by issuing notice u/s 133(6) of the Act. He observed that the assessee had made cash deposit of Rs.27,30,190/- in the said bank account and in the absence of any explanation given by the assessee he added the same as undisclosed income of the assessee in the assessment. In the appeal the Id. CIT(A) agreed to the contention of the assessee that the transaction reflected in the said bank account represented business receipts of the assessee and business transaction of the assessee. Accordingly he agreed to the version of the assessee that only peak credit thereon should be brought to tax. The Id. CIT(A) having done so went a step ahead and also directed the Id. AO to add the net profit at 8% of the total deposits in the said bank account u/s 44AE of the Acct. Aggrieved the assessee is in appeal on the following grounds :-

- “1. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in estimating the Net Profit @8% as per section 44AE of the I.T. Act, 1961 is totally erroneous, perverse and illegal.*
- 2. For that on the facts of the case, there is no application of sec. 44AE of the I.T. Act, as the appellant maintained books of accounts audited with the compulsory tax audit report, so the Net Profit on estimate @8% is vindictive of taxation law and illegal.*
- 3. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”*

4. We have heard the rival submissions. We find that the assessee had offered peak credit to be taxed in respect of undisclosed bank account before the Id. CIT(A). It is not in dispute that the transactions reflected in the undisclosed bank account represents business transaction of the assessee. In this scenario the Id. CIT(A) had rightly agreed to tax the peak credit offered by the assessee. We find that the Id. CIT(A) had further directed to add 8% of the total deposits in the said bank account u/s 44AE of the Act. We find that the provision of section 44AE cannot be made applicable at all to the facts of the instant case as admittedly the assessee is engaged in the business of perfumery works for which sale proceeds are received in cash and the provision of section 44AE of

the assessee are applicable only if the assessee is engaged in the business of plying, hiring or leasing goods carriages. We find that the Id. CIT(A) having accepted the contention of the assessee to tax the peak credit in respect of the subject mentioned undisclosed bank account, ought not to have further directed to add 8% on the very same total deposits in the said bank account. Accordingly the order of the Id. CIT(A) requires to be modified to this extent. Hence, we direct the Id. AO to add only the peak credit after verifying the workings given by the assessee in that regard. Accordingly the appeal of the assessee is allowed for statistical purposes.

5. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 07.07.2017

Sd/-
 [A.T.Varkey]
 Judicial Member

Sd/-
 [M.Balaganesh]
 Accountant Member

Dated : 07.07.2017

[RG PS]

Copy of the order forwarded to:

1. Shafiuddin Basha, 102A, Elliot Road, Kolkata-700016.
2. I.T.O., Ward-32(2), Kolkata.
3. C.I.T.(A)-9, Kolkata 4. C.I.T.-11, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Senior Private Secretary
 Head of Office/D.D.O., ITAT, Kolkata Benches

