

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

[Before Hon'ble Shri J.Sudhakar Reddy, AM]

ITA No.1038//Kol/2017
Assessment Year : **2009-10**

Mukul Bikas Maity Purba Medinipur (PAN: AIVPM 5312 N) (Appellant)	versus-	I.T.O., Ward-27(4) Haldia. (Respondent)
--	---------	---

For the Appellant: Shri Subash Agarwal, Advocate
For the Respondent: Shri Soumyajit Dasgupta, JCIT

Date of Hearing : 08.09.2017.

Date of Pronouncement : 31.10.2017.

ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax-(A)-7, Kolkata relating to A.Y. 2009-10 on the following grounds :-

"1) That Ld. Commissioner of Income Tax (Appeals) - 7, Kolkata was grossly erred in confirming the adding to the extent of Rs. 4,45,000/- as unexplained investment U/s 69B of the I.T. Act, 1961.

2) That the action of Ld. CIT (Appeal) - 7, Kolkata in confirming the addition to the extent of Rs. 4,45,000/- as unexplained investment is highly arbitrary, unjustified and unwarranted to the facts of the case.

3) That when Ld. Assessing Officer in the remand report made a positive finding as to investments made from disclosed sources, it was wrong on the part of Ld. CIT (Appeals) - 7 to ignore his categorical finding by substituting his own estimates.

4) I may add, alter, amend, modify or withdraw any grounds of appeal on or before the "date of hearing."

2. The assessee is an individual and derives income from contracts. He filed return of income on 16.11.2009 for A.Y.2009-10 declaring total income of Rs.8,24,830/-. The AO found that the assessee had earned interest income from Punjab National Bank and had not offered the same for taxation. The AO also found that the assessee had a term deposit in Punjab National Bank amounting to Rs.5,10,015/-. The same was added under the provision of section 69 B of the Income tax Act, 1961 (Act.)

3. Aggrieved the assessee carried the matter on appeal. The First Appellate Authority held that the assessee changed the explanation given initially and claimed that the investment in term deposit was from out of cash in hand of Rs.6,53,958/-. The assessee filed a balance sheet as on 31.03.2008 disclosing cash in hand at Rs.6,53,958.04 and claimed that the deposits were made out of this cash balance. The ld. CIT(A) projected this explanation as an after thought. Nevertheless he submitted that the opening cash in hand is Rs.2,00,000/- and granted relief. Aggrieved the assessee is before us.

4. After hearing the rival contentions, we find that the First Appellate Authority partly accepted the claim of the assessee that it had certain cash balance. The deposits in question are as follows :-

FDR No.	In Bank	Date of made FD	Amount
PR 9700	PNB,Haldia Br.	01/18/2008	95000
PR 10674	-do-	05/03/2008	18679
PR 10425	-do-	04/08/2008	250000
PR 11646	-do-	08/18/2008	25000
PR 12247	-do-	10/16/2008	100000
PR 12256	-do-	10/16/2008	200000
PR 13307	-do-	11/14/2008	30000
PR 144494	-do-	01/10/2009	<u>40000</u>
			<u>7,58,679"</u>

Out of this amount an addition of Rs.5,10,051/- has been made during the year. The first deposit is made on 18.01.2008. As this does not fall in the financial year relating to the impugned assessment year, the same has to be deleted. Similar fixed deposits on 03.05.2008 of Rs.18,679/-, 18.08.2008 of Rs.25,000/-, 14.11.2008 of Rs.30,000/- and

10.01.2009 of Rs.40,000/-has to be deleted as the assessee had explained that the source of funds as opening and running cash balances. Thus this amount of Rs.4,45,000/- is deleted. The balance additon made by the AO to the extent sustained by the CIT(A) is sustained u/s 69B of the Act.

5. In the result the appeal of the assessee is allowed in part.

Order pronounced in the Court on 31.10.2017.

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 31.10.2017.

[RG Sr.PS]

Copy of the order forwarded to:

- 1.Mukul Bikas Maity, Dwarikapur, Tatanala, Bhagwanpur, Purba Medinipur (W.B.)-721458.
2. I.T.O., Ward-27(4), Haldia.
3. C.I.T.(A)- 7, Kolkata 4. C.I.T-9, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

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