

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

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

**ITA No.747//Kol/2016**  
Assessment Year : **2008-09**

Prayag Dutt Shaw Kolkata (PAN: ALKPS 1197 H) (Appellant)	versus-	I.T.O., Ward-47(4) Kolkata  (Respondent)
---	---------	---

For the Appellant: Shri Miraj D.Shah, Advocate  
For the Respondent: Shri Arindam Bhattacharjee, Addl.CIT

Date of Hearing : 26.07.2017.

Date of Pronouncement : 31.10.2017.

**ORDER**

This appeal by the assessee is directed against the order of the Commissioner of Income Tax-(A)-14, Kolkata relating to A.Y. 2008-09 on the following grounds :-

*“1.For that in the facts and circumstances of the case the Appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.*

*2.For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the addition of Rs.2,10,500/- on account of unexplained cash credit u/s 68 of the IT Act 1961. The addition is not called for hence the same be deleted.*

*3. For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.27,040/- on account of interest on loan paid to family members. The disallowance is not called for hence the same be reversed.*

*4.For that the additions made merely on survey statements was not tenable in law and hence such additions be deleted.*

*5. For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the addition of Rs.3,68,085/- on account of unexplained purchase u/s 69C of the IT Act 1961. The addition is not called for hence the same be deleted.*

*6. For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the addition of Rs.11, 153 /- being profit*

*earned @ 3.03% of Undisclosed purchase of Rs.3,68,085/-. he addition is not called for hence the same be deleted.*

*7. For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the addition of Rs.12,78,362/- on account of undisclosed sales. The addition is not called for hence the same be deleted.*

*8. For that in the facts and circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the addition of Rs.3,12,890/- on account of cash difference. The addition is not called for hence the same be deleted.*

*9. For that the interest computed u/s 234A/B/C/D of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case it be directed to re-compute the interest as per law.*

*10. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.*

2. After hearing the rival contentions and perusing the papers on record I hold as follows :

2.1. Ground No.1 is general in nature. Ground no.2 is against the addition of Rs.2,10,500/- as unexplained cash credit u/s 68 of the Income Tax Act, 1961 (Act). The assessee claims that he has received unsecured loans from five persons. The assessee could not substantiate this claim by proving the creditworthiness and the genuineness of the transactions. The ld. CIT(A) has held that all the loan creditors are members of the family including ladies and that the assessee was running their financial affairs. Before me no evidence has been produced by the assessee. The ld. Counsel for the assessee could not controvert the factual finding of the ld. CIT(A) that the creditworthiness of the creditors not been proved by the assessee.. Thus I upheld the finding and dismiss ground no.2 of the assessee.

2.2. Ground No.3 is on the issue of disallowance of proportionate interest which is mentioned in ground no.2. This is consequential in nature and hence this ground is dismissed.

2.3. No argument was advanced by the Id. Counsel for the assessee on ground no.4. Hence the same is dismissed.

2.4. Ground No.5 is against the addition made on account of excess stock which was held as undisclosed purchase amounting to Rs.3,68,085/-. The AO has also made an addition on account of cash shortage on the date of survey at Rs.3,12,890/-. The same is raised in ground no.8 by the assessee. The claim of the assessee that ground no.5 and 8 have to be considered together and telescoped has force. Shortage of cash can be said to have been utilised for purchase of stock. Thus these two additions are telescoped and the addition on account of cash shortage is deleted and addition on account of undisclosed purchases is restricted to Rs.55,195/-. Thus ground nos.5 and 8 of the assessee are allowed in part.

2.5. Ground No.6 is in the issue of estimation of gross profit @ 3.03% of stock shortage on undisclosed purchase of Rs.3,68,085/-. As we have restricted the addition on account of undisclosed purchase, this addition being consequential in nature is hereby restricted to Rs.1,672/-.

2.6. Ground No.7 is addition made on account of undisclosed sources. There was a shortage in stock on the date of survey and such shortage was treated as undisclosed sale. In my view, the addition made of the entire amount of estimated undisclosed sales is bad in law. The AO has estimated the gross profit at 3.03% of undisclosed purchases. Applying the same I direct the AO to bring to tax 3.03% of Rs.12,78,362/- to tax as profit on undisclosed sales. Hence profit of Rs..38,735/- is to be taxed. The balance amount is hereby deleted. Ground no.7 is allowed in part.

2.7. Ground no.9 is on the issue of levying of interest. This is consequential in nature. Ground No.10 is general in nature.

3. 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. Prayag Dutt Shaw, (Prop. M/s. Shantoo Ram Shaw), C/o D.J. Shah & Co., Kalyan Bhawan, 2, Elgin Road, Kolkata-700020.
2. I.T.O., Ward-47(4), Kolkata.
3. C.I.T.(A)- 14, Kolkata      4. C.I.T-16, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

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