

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, KOLKATA**

Before Sri N.V. Vasudevan, Judicial Member & Sri J. Sudhakar Reddy, Accountant Member

I.T.A. Nos. 2333 & 2334/KOL/2016
Assessment Years: 2008-09 & 2009-10

Anirban Roy, KolkataAppellant
[PAN : AIGPR 2729 H]

ITO, Ward-48(1), Kolkata.....Respondent

Appearances by:

Shri Anil Kocher appearing on behalf of the assessee.

Shri Arindam Bhattacharjee appearing on behalf of the Revenue.

Date of concluding the hearing : September 13, 2017

Date of pronouncing the order : November 10, 2017

ORDER

Per J. Sudhakar Reddy, Accountant Member :-

Both these appeals by the assessee are directed against the identical orders of the ld. Commissioner of Income Tax (Appeals)-14, Kolkata for the assessment year 2008-09 and 2009-10 (hereinafter the 'ld. CIT(A)'), both dated 28.10.2016. As the issues arising in both the appeals are common, for the sake of convenience they are heard together and disposed off by way of various common order.

2. The assessee had filed his return of income at Rs. 176540/- on 03.11.2009. Subsequently, information was received from ITO(Inv), Unit-2, Kolkata on

15.02.2015 regarding very large value cheque deposits during the period from 15.02.2007 to 01.07.2008 followed by similar very large cash withdrawals in his savings bank account no. 033-269432-006, in HSBC, Howrah Branch, 21,GT Road(South) Howrah. During the proceedings before the ITO(Inv) Unit-2, Kolkata, the assessee had submitted an IT return, balance sheet and profit and loss account for the financial years 2007-08 and 2008-09. As per these, the assessee had declared his income from share of profit from partnership firm, Eastern Ply Film and net profit from his proprietorship concern which is in the business of Iron and Steel. The net profit of the proprietorship concern for the AY 2008-09 was the sale proceeds of the remaining stock of iron and steel from the previous year. When asked to explain the transactions of the said bank account, the assessee submitted that he had another proprietorship concern, but could not furnish any documents including sales vouchers, bills etc. in support of his claims saying that he did not have the documents for the assessment years 2008-09 and 2009-10. A notice was issued u/s 148 of the Act on 30th March, 2015 after obtaining permission from the concerned Commissioner. The assessee in response filed a return of income along with balance sheet, profit and loss account. This time the return was filed at an income of Rs. 265770/- claiming a refund of Rs. 26190/-, against the original returned income of Rs. 176540/- and refund claim of Rs. 35380/-. The assessee disclosed purchases of Rs. 2830210/- and sales of Rs. 2958881//-. The purchases were all in cash. Payments were received in cheque.

The AO pointed out certain discrepancies, such as, the fact that the assessee had received Rs. 10lakh from M/s Fairdeal Concern (5 lakh on 02.06.2008) but the sale details, did not show the name of the said concern. The assessee, in explanation, filed a reply that he did not maintain books of account and that the said transactions were from his undeclared business. The AO found further discrepancy in the fact that despite admitting that no books were maintained, the assessee had filed a profit and loss account and balance sheet along with a detailed list of sales and purchases, which were unsupported by any material. The AO noted that the assessee had kept silent on the source of the cheque deposits in the bank from 01.04.2008 to 01.07.2008. Since the source of these was not explained by the assessee, the said amount, was added back to the income of the assessee as income from undisclosed sources.

3. The Ld. CIT(A) confirmed the addition on the ground that the assessee has not provided any explanation regarding deposits.

4. The Ld. Counsel for the assessee submits that the AO has taken into consideration only a part of transaction in the bank account with HSBC, Howrah Branch, i.e. from 15.02.2007 to 01.07.2008. His case is that it was not corrected for the revenue authorities to take into consideration only the transaction period from 15.02.2007 to 31.03.2008 for the assessment year 2008-09 and 01.04.2008 to 01.07.2008 for the assessment year 2009-10 and that the transaction for the

whole year has to be considered. He filed a paper book and copy of bank statement with HSBC disclosing all the transactions in the assessment years 2008-09 and 2009-10 and submitted that the entire transaction should be considered and not merely transactions for broken period. He filed explanation for these deposits and withdrawals, both by cash and cheque for the assessment year 2008-09 and 2009-10 and argued that the addition cannot be sustained. Alternatively he submitted that in any case only the peak credit can be added.

5. The Ld. d/r referred to the profit and loss account and the balance sheet of the assessee which are at page 27 and 28 of the paper book and submitted that the bank account was not disclosed to the revenue and the assessee has not cooperated either before the AO or the Ld. CIT(A). He relied on the order of the first appellate authority.

6. After hearing the rival contentions perusing the papers on record we hold as follows. In our opinion, the transaction in this HSBC bank account should be considered for the entire year i.e. 01.04.2007 to 31.03.2008 for the assessment year 2008-09 and 01.04.2008 to 31.03.2009 for the assessment year 2009-10. The AO has taken only into consideration transaction from 15.02.2007 form 31.03,2008 for the assessment year 2008-09 and 01.04.2008 to 01.07.2008 only for the assessment year 2009-10. This is not correct. Under these circumstances we set aside the matter to the file of the AO with the direction to take into

consideration all the transactions in this unaccounted HSBC account for the relevant previous years are readjudicated the matter, de novo, in accordance with law. The explanation filed by the assessee shall be considered by the Ld. AO.

7. In the result, the appeals of the assessee are allowed for statistical purposes.

Kolkata, the 10th day of November, 2017.

Sd/-
[N.V. Vasudevan]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : .11.2017
SB, Sr. PS

Copy of the order forwarded to:

- 1. Anirban Roy,
C/o, S.L. Kocher, Advocate
86, Canning Street, Kolkata-1**
- 2. ITO, Ward-48(1), Kolkata
3, Govt. Place, West, Kolkata-700001**

3. CIT(A)-
4. CIT- ,
5. CIT(DR),

True copy

By order

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

