

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI S. S. VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.483, 484 & 485/Kol/2015

(निर्धारणवर्ष / Assessment Years: 2009-10, 2010-11 & 2011-12 respectively)

Sri Ishan Agarwal	Vs.	DCIT, Cir-1, Siliguri
Neha Footwear, Bidhan Market Road, Siliguri – 734001.		Aaykar Bhawan, Matigara, Siliguri – 734008.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AJNPA 9488 A		
(APPELLANT)	..	(RESPONDENT)

Appellant by

: Shri Subash Agarwal, Advocate

Respondent by

: Shri Arindam Bhattacharjee, Addl. CIT

सुनवाईकीतारीख/ **Date of Hearing** : **16/10/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **29/11/2017**

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned three appeals filed by the assessee, pertaining to Assessment Years 2009-10, 2010-11 & 2011-12 respectively are directed against the order passed by the Id Commissioner of Income Tax (Appeals)-, Siliguri, which in turn arise out of assessment orders passed by the Assessing Officer u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. Since, these three appeals relate to the same assessee, different Assessment Years, identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the same of convenience and brevity.

3. At the outset, the Id. Counsel for the assessee has submitted before us that in these three appeals, the main issue involved was that during the course of investigation carried out by ITO(Intelligence& Criminal Investigation), Siliguri, it was found that the assessee maintains one Account No.020801536166 with ICICI Bank, Siliguri which was not disclosed to the Income Tax Department. During the course of assessment proceedings, the assessee submitted that he maintains two other accounts in the same bank which are also not disclosed to the Income Tax Department. The assessee submitted a consolidated statement of all these accounts to the AO. The AO added the profits on the undisclosed turnover (that is, the consolidated total deposits made in the three undisclosed bank account) at the gross profit rates declared by the assessee on his disclosed turnover. The profit for A.Y. 2009-10 was calculated @ 4.69%, for A.Y. 2010-11 @ 4.74% and for A.Y. 2011-12 @ 6.45%. In addition to this, the AO added the peaks of the undisclosed accounts as Rs.7,29,925/- for A.Y. 2009-10, Rs.17,21,784/- for 2010-11 and Rs.28,92,939/- for A.Y. 2011-12. During the course of appellate proceedings, the assessee submitted that the peak of undisclosed bank accounts should not be added as the disclosed cash and stock declared in Balance Sheet were utilized for this undisclosed business. The assessee also submitted before the CIT(A) that instead of gross profit, net profit should have been applied for calculating the income from the undisclosed business. The CIT(A) held that the AO had calculated the peaks of undisclosed accounts by setting off the peaks of earlier years. However, the profits of earlier years and current year from this undisclosed business have not been considered in

calculation of the peak of current year. Once, the income is computed by applying the GP of the disclosed business to the undisclosed business, the cash is available which has to be taken into account for computing the peak of current year. Therefore, the Id. CIT(A) allowed the appeal of the assessee by adjusting the gross profit of the current year and earlier years to the peak of current year and directed the AO to take the peaks of the undisclosed accounts as computed by the Id. CIT(A), for A.Y.2009-10 at Rs.1,46,144, for A.Y. 2010-11 at Rs.6,91,713/- and for A.Y.2011-12 at Rs.16,30,768/-.

4. We have heard both the parties and perused the materials available on record. Before us, the Id. Counsel for the assessee submitted that Id. CIT(A) has passed a reasoned order after adjusting the profit of the current year and earlier years to the peak of current year and, therefore counsel stated before us the assessee does not have any objection in respect to the direction given by the Id. CIT(A) to the AO.

The Id. DR for the Revenue has also firmly agreed with the submission of the Id. Counsel for the assessee. Hence, the Id counsel for the assessee and the Id DR for the Revenue, both have agreed before us that Id. CIT(A) has passed the reasoned order and the same should be confirmed.

We have heard both the parties and perused the material available on record, we are of the view that Id. CIT(A) rightly concluded in his findings and passed an appropriate order after adjusting the profit of the current year and earlier years to the peak of current year and directed the AO to take the

peaks of the undisclosed accounts, as calculated by Id. CIT(A). Therefore, we confirm the order passed by the Id. CIT(A).

5. In the result, the appeals filed by the assessee in these three appeals (ITA No.483, 484,and 485/kol/2015), are dismissed.

Order pronounced in the open court on this **29/11/2017**.

Sd/- (S. S. VISWANETHRA RAVI) न्यायिक सदस्य / JUDICIAL MEMBER कोलकाता /Kolkata; दिनांक Dated 29/11/2017 RS,SPS	Sd/- (DR. A.L.SAINI) लेखा सदस्य/ACCOUNTANT MEMBER
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant – Sri Ishan Agarwal
2. प्रत्यर्थी/ The Respondent- DCIT, Cir-1, Siliguri
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.